118TH CONGRESS
1st Session
HOUSE OF REPRESENTATIVES
REPORT
118–127

BUILD IT IN AMERICA ACT

JUNE 30, 2023.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. SMITH of Missouri, from the Committee on Ways and Means, submitted the following

R E P O R T

together with

DISSENTING VIEWS

[To accompany H.R. 3938]

The Committee on Ways and Means, to whom was referred the bill (H.R. 3938) to amend the Internal Revenue Code of 1986 to encourage economic growth, having considered the same, reports favorably thereon with an amendment and recommends that the bill as amended do pass.

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The amendment is as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE; TABLE OF CONTENTS, ETC.

(a) SHORT TITLE.—This Act may be cited as the "Build It in America Act".

(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:

Sec. 1. Short title; table of contents, etc.

TITLE I—INVESTMENT IN AMERICA

Sec. 101. Deduction for research and experimental expenditures.
Sec. 102. Extension of allowance for depreciation, amortization, or depletion in determining the limitation on business interest.
Sec. 103. Extension of 100 percent bonus depreciation.

TITLE II—SUPPLY CHAIN SECURITY

Sec. 201. Termination of Hazardous Substance Superfund financing rate.
Sec. 202. Election to determine foreign income taxes paid or accrued to certain Western Hemisphere countries without regard to certain regulations.
Sec. 203. Imposition of tax on the acquisition of United States agricultural interests by disqualified persons.

TITLE III—REPEAL OF SPECIAL INTEREST TAX PROVISIONS

Sec. 301. Repeal of clean electricity production credit.
Sec. 302. Repeal of clean electricity investment credit.
Sec. 303. Modification of clean vehicle credit.
Sec. 304. Repeal of credit for previously-owned clean vehicles.
Sec. 305. Repeal of credit for qualified commercial clean vehicles.

TITLE I—INVESTMENT IN AMERICA

SEC. 101. DEDUCTION FOR RESEARCH AND EXPERIMENTAL EXPENDITURES.

(a) DELAY OF AMORTIZATION OF RESEARCH AND EXPERIMENTAL EXPENDITURES.—Section 174 is amended by adding at the end the following new subsection:

"(e) SUSPENSION OF APPLICATION.—This section shall apply to amounts paid or incurred in taxable years beginning after December 31, 2025 (and shall not apply to amounts paid or incurred in taxable years beginning on or before such date).".

(b) REINSTATEMENT OF EXPENSING FOR RESEARCH AND EXPERIMENTAL EXPENDITURES.—Part VI of subchapter B of chapter 1 is amended by inserting after section 174 the following new section:

"SEC. 174A. TEMPORARY RULES FOR RESEARCH AND EXPERIMENTAL EXPENDITURES.

"(a) TREATMENT AS EXPENSES.—Notwithstanding section 263, there shall be allowed as a deduction any research or experimental expenditures which are paid or incurred by the taxpayer during the taxable year in connection with the taxpayer's trade or business.

"(b) AMORTIZATION OF CERTAIN RESEARCH AND EXPERIMENTAL EXPENDITURES.—

"(1) IN GENERAL.—At the election of the taxpayer, made in accordance with regulations or other guidance provided by the Secretary, research or experimental expenditures which—

"(A) are paid or incurred by the taxpayer in connection with his trade or business, and

"(B) would (but for subsection (a)) be chargeable to capital account but not chargeable to property of a character which is subject to the allowance under section 167 (relating to allowance for depreciation, etc.) or section 611 (relating to allowance for depletion),

may be treated as deferred expenses to which subsection (a) does not apply. In computing taxable income, such deferred expenses shall be allowed as a deduction ratably over such period of not less than 60 months as may be selected by the taxpayer (beginning with the month in which the taxpayer first realizes benefits from such expenditures). Such deferred expenses are expenditures properly chargeable to capital account for purposes of section 1016(a)(1) (relating to adjustments to basis of property).

"(2) TIME FOR AND SCOPE OF ELECTION.—The election provided by paragraph (1) may be made for any taxable year, but only if made not later than the time prescribed by law for filing the return for such taxable year (including extensions thereof). The method so elected, and the period selected by the taxpayer, shall be adhered to in computing taxable income for the taxable year for which the election is made and for all subsequent taxable years unless, with the approval of the Secretary, a change to a different method (or to a different period) is authorized with respect to part or all of such expenditures. The election shall not apply to any expenditure paid or incurred during any taxable year before the taxable year for which the taxpayer makes the election.

"(c) ELECTION TO CAPITALIZE EXPENSES.—In the case of a taxpayer which elects (at such time and in such manner as the Secretary may provide) the application of this subsection, subsections (a) and (b) shall not apply. Such election shall not apply to any expenditure paid or incurred during any taxable year before the taxable year for which the taxpayer makes the election and may be made with respect to part of the expenditures paid or incurred during any taxable year only with the approval of the Secretary.

"(d) LAND AND OTHER PROPERTY.—This section shall not apply to any expenditure for the acquisition or improvement of land, or for the acquisition or improvement of property to be used in connection with the research or experimentation and of a character which is subject to the allowance under section 167 (relating to allowance for depreciation, etc.) or section 611 (relating to allowance for depletion); but for purposes of this section allowances under section 167, and allowances under section 611, shall be considered as expenditures.

"(e) EXPLORATION EXPENDITURES.—This section shall not apply to any expenditure paid or incurred for the purpose of ascertaining the existence, location, extent, or quality of any deposit of ore or other mineral (including oil and gas).

"(f) SOFTWARE DEVELOPMENT.—For purposes of this section, any amount paid or incurred in connection with the development of any software shall be treated as a research or experimental expenditure.

"(g) ONLY REASONABLE RESEARCH EXPENDITURES ELIGIBLE.—This section shall apply to a research or experimental expenditure only to the extent that the amount thereof is reasonable under the circumstances.

"(h) COORDINATION WITH RESEARCH CREDIT.—

"(1) IN GENERAL.—Section 41(d)(1)(A) shall be applied by substituting 'expenses under section 174A' for 'specified research or experimental expenditures under section 174'.

"(2) DENIAL OF DOUBLE BENEFIT.—

"(A) IN GENERAL.—Section 280C(c) shall not apply and the amount taken into account under this section as research or experimental expenditures shall be reduced by the amount of the credit allowable under section 41(a).

"(B) ELECTION OF REDUCED CREDIT.—

"(i) IN GENERAL.—In the case of any taxable year for which an election is made under this subparagraph—

"(I) subparagraph (A) shall not apply, and

"(II) the amount of the credit under section 41(a) shall be the amount determined under clause (ii).

"(ii) AMOUNT OF REDUCED CREDIT.—The amount of credit determined under this clause for any taxable year shall be the amount equal to the excess of—

"(I) the amount of credit determined under section 41(a) without regard to this subparagraph, over

"(II) the product of the amount described in subclause (I), multiplied by the rate of tax under section 11(b).

"(iii) ELECTION.—An election under this subparagraph for any taxable year shall be made not later than the time for filing the return of tax for such year (including extensions), shall be made on such return, and shall be made in such manner as the Secretary may prescribe. Such an election, once made, shall be irrevocable.

"(C) CONTROLLED GROUPS.—Paragraph (3) of section 280C(b) shall apply for purposes of this paragraph.

"(i) COORDINATION WITH LONG-TERM CONTRACT RULES.—For purposes of determining percentage of completion under section 460(b)(1)(A), any research or experimental expenditures paid or incurred by the taxpayer in connection with the taxpayer's trade or business shall be taken into account as a cost allocated to the contract for the taxable year in which so paid or incurred.

"(j) COORDINATION WITH CERTAIN OTHER PROVISIONS.—A reference to the corresponding provision of this section shall be treated as included in any reference to section 174 in section 56(b), 59(e), 144(a), 168(i), 170(e), 195(c), 263(a), 263A(c), 469(c), 543(d), 864(g), 993(d), 1016(a)(14), 1202(a), or 1298(e).

"(k) TERMINATION.—

"(1) IN GENERAL.—This section shall not apply to amounts paid or incurred in taxable years beginning after December 31, 2025.

"(2) CHANGE IN METHOD OF ACCOUNTING.—Paragraph (1) (and the corresponding application of section 174) shall be treated as a change in method of accounting for purposes of section 481 and—

"(A) such change shall be treated as initiated by the taxpayer,

"(B) such change shall be treated as made with the consent of the Secretary, and

"(C) such change shall be applied only on a cut-off basis for any research or experimental expenditures paid or incurred in taxable years beginning after December 31, 2025, and no adjustment under section 481(a) shall be made.".

(c) COORDINATION OF AMORTIZATION WITH CERTAIN OTHER PROVISIONS.—Section 174, as amended by subsection (a), is amended by redesignating subsection (e) as subsection (f) and by inserting after subsection (d) the following new subsection:

"(e) COORDINATION WITH CERTAIN OTHER PROVISIONS.—

"(1) COORDINATION WITH ALTERNATIVE MINIMUM TAX.—Sections 56(b)(2) and 59(e)(2)(B) shall not apply to specified research or experimental expenditures to which this section applies.

"(2) COORDINATION WITH BASIS ADJUSTMENT RULES.—Section 1016(a)(14) shall be applied by substituting 'an amortization deduction under section 174(a)' for 'deductions as deferred expenses under section 174(b)(1)'.

"(3) COORDINATION WITH LONG-TERM CONTRACT RULES.—For purposes of determining percentage of completion under section 460(b)(1)(A), the amortization deduction under subsection (a) shall be taken into account as a cost allocated to the contract.".

(d) CONFORMING AMENDMENTS.—

(1) Section 13206 of Public Law 115-97 is amended by striking subsection (b) (relating to change in method of accounting).

(2) The table of sections for part VI of subchapter B of chapter 1 is amended by inserting after the item relating to section 174 the following new item:

"Sec. 174A. Temporary rules for research and experimental expenditures.".

(e) EFFECTIVE DATE.—

(1) IN GENERAL.—Except as otherwise provided in this subsection, the amendments made by this section shall apply to amounts paid or incurred in taxable years beginning after December 31, 2021.

(2) REPEAL OF SUPERCEDED CHANGE IN METHOD OF ACCOUNTING RULES.—The amendment made by subsection (d)(1) shall take effect as if included in Public Law 115-97.

(f) TRANSITION RULES.—

(1) ELECTION REGARDING TREATMENT AS CHANGE IN METHOD OF ACCOUNTING.—In the case of any taxpayer which (as of the date of the enactment of this Act) had adopted a method of accounting provided by section 174 of the Internal Revenue Code of 1986 (as in effect prior to the amendments made by this section) for the taxpayer's first taxable year beginning after December 31, 2021, and elects the application of this paragraph—

(A) the amendments made by this section shall be treated as a change in method of accounting for purposes of section 481 of such Code,

(B) such change shall be treated as initiated by the taxpayer for the taxpayer's immediately succeeding taxable year,

(C) such change shall be treated as made with the consent of the Secretary, and

(D) such change shall be applied on a modified cut-off basis, taking into account for purposes of section 481(a) of such Code only the capitalized expenditures which were not allowed as an amortization deduction by reason of section 174 prior to amendment by this Act for the taxpayer's first taxable year beginning after December 31, 2021.

(2) ELECTION REGARDING 10-YEAR WRITEOFF.—

(A) IN GENERAL.—An eligible taxpayer which files, during the 1-year period beginning on the date of the enactment of this Act, an amended income tax return for the taxable year described in subparagraph (B)(ii) may elect the application of section 59(e) of the Internal Revenue Code of 1986 with respect to qualified expenditures described in section 59(e)(2)(B) of such Code with respect to such taxable year. Such election shall be filed with such amended income tax return and shall be effective only to the extent that such election would have been effective if filed with the original income tax return for such taxable year.

(B) ELIGIBLE TAXPAYER.—For purposes of subparagraph (A), the term "eligible taxpayer" means any taxpayer which—

(i) does not elect the application of paragraph (1), and

(ii) filed an income tax return for such taxpayer's first taxable year beginning after December 31, 2021, before the earlier of—

(I) the due date for such return, and

(II) the date of the enactment of this Act.

SEC. 102. EXTENSION OF ALLOWANCE FOR DEPRECIATION, AMORTIZATION, OR DEPLETION IN DETERMINING THE LIMITATION ON BUSINESS INTEREST.

(a) IN GENERAL.—Section 163(j)(8)(A)(v) is amended by striking "January 1, 2022" and inserting "January 1, 2026".

(b) EFFECTIVE DATE.—

(1) IN GENERAL.—Except as otherwise provided in this subsection, the amendment made by this section shall apply to taxable years beginning after December 31, 2022.

(2) ELECTION TO APPLY EXTENSION RETROACTIVELY.—In the case of a taxpayer which elects (at such time and in such manner as the Secretary may provide) the application of this paragraph, paragraph (1) shall be applied by substituting "December 31, 2021" for "December 31, 2022".

SEC. 103. EXTENSION OF 100 PERCENT BONUS DEPRECIATION.

(a) IN GENERAL.—Section 168(k)(6)(A) is amended—

(1) in clause (i)—

(A) by striking "2023" and inserting "2026", and

(B) by adding "and" at the end, and

(2) by striking clauses (ii), (iii), and (iv), and redesignating clause (v) as clause (ii).

(b) PROPERTY WITH LONGER PRODUCTION PERIODS.—Section 168(k)(6)(B) is amended—

(1) in clause (i)—

(A) by striking "2024" and inserting "2027", and

(B) by adding "and" at the end, and

(2) by striking clauses (ii), (iii), and (iv), and redesignating clause (v) as clause (ii).

(c) PLANTS BEARING FRUITS AND NUTS.—Section 168(k)(6)(C) is amended—

(1) in clause (i)—

(A) by striking "2023" and inserting "2026", and

(B) by adding "and" at the end, and

(2) by striking clauses (ii), (iii), and (iv), and redesignating clause (v) as clause (ii).

(d) EFFECTIVE DATES.—

(1) IN GENERAL.—Except as otherwise provided in this subsection, the amendments made by this section shall apply to property placed in service after December 31, 2022.

(2) PLANTS BEARING FRUITS AND NUTS.—The amendments made by subsection (c) shall apply to specified plants planted or grafted after December 31, 2022.

TITLE II—SUPPLY CHAIN SECURITY

SEC. 201. TERMINATION OF HAZARDOUS SUBSTANCE SUPERFUND FINANCING RATE.

(a) IN GENERAL.—Section 4611 (as amended by section 13601 of Public Law 117–169) is amended by inserting after subsection (d) the following new subsection:

"(e) APPLICATION OF HAZARDOUS SUBSTANCE SUPERFUND FINANCING RATE.—The Hazardous Substance Superfund financing rate under this section shall not apply after December 31, 2022.".

(b) TERMINATION OF AUTHORITY FOR ADVANCES.—Section 9507(d)(3)(B) (as so amended) is amended—

(1) by striking "December 31, 2032" and inserting "the date of the enactment of the Build It in America Act", and

(2) by striking "on or before such date" and inserting "as soon as practicable thereafter".

(c) EFFECTIVE DATE.—

(1) IN GENERAL.—The amendment made by subsection (a) shall take effect on January 1, 2023.

(2) TERMINATION OF AUTHORITY FOR ADVANCES.—The amendments made by subsection (b) shall take effect on the date of the enactment of this Act.

SEC. 202. ELECTION TO DETERMINE FOREIGN INCOME TAXES PAID OR ACCRUED TO CERTAIN WESTERN HEMISPHERE COUNTRIES WITHOUT REGARD TO CERTAIN REGULATIONS.

(a) ELECTION WITH RESPECT TO DETERMINING CERTAIN FOREIGN INCOME TAXES.—In the case of any taxpayer which elects (at such time and in such manner as the Secretary may provide) the application of this subsection, the determination of whether any Western Hemisphere tax paid or accrued by such taxpayer is an income, war profits, or excess profits tax for purposes of any provision of the Internal Revenue Code of 1986 shall be made without regard to any specified regulation.

(b) SEPARATE ELECTION WITH RESPECT TO ALLOCATION AND APPORTIONMENT OF FOREIGN INCOME TAXES RELATING TO DISREGARDED PAYMENTS FROM CERTAIN DISREGARDED ENTITIES.—

(1) IN GENERAL.—If the owner of any specified disregarded entity elects (at such time and in such manner as the Secretary may provide) the application of this subsection with respect to such entity, then for purposes of allocating and apportioning any foreign income taxes (as defined in section 986(a)(4) of the Internal Revenue Code of 1986 and determined after the application of subsection (a) of this section) paid or accrued by reason of any remittance made by such entity to such owner during the applicable period, any items of foreign gross income included by reason of the receipt of such remittance shall be assigned to a category based on current and accumulated earnings and profits of such entity (in lieu of being assigned on the basis of the tax book value method described in a specified regulation).

(2) SPECIFIED DISREGARDED ENTITY.—For purposes of this subsection, the term "specified disregarded entity" means any entity (including any trade or business) if—

(A) such entity is disregarded as an entity separate from its owner for purposes of applying chapter 1 of the Internal Revenue Code of 1986,

(B) such entity is created or organized in a possession of the United States or a foreign country described in subsection (d)(1)(B),

(C) at all times after December 31, 2019 (or, if later, the date on which such entity is created or organized) substantially all of the income of such entity is derived from trades or businesses conducted in the possession or country referred to in subparagraph (B), and

(D) at all times after the date on which such entity is created or organized, such entity maintains separate books and records.

(c) APPLICATION TO DEEMED PAID CREDIT.—In the case of any tax paid or accrued by a controlled foreign corporation and deemed to have been paid by a United States shareholder under section 960 of the Internal Revenue Code of 1986—

(1) any election under subsection (a) or (b) shall be made by such controlled foreign corporation and shall be binding on all United States shareholders of such controlled foreign corporation, and

(2) the applicable period under subsection (d) shall be determined with respect to the taxable years of such controlled foreign corporation.

(d) WESTERN HEMISPHERE TAX.—For purposes of this section—

(1) IN GENERAL.—The term "Western Hemisphere tax" means any tax which is paid or accrued for a taxable year which is in the applicable period to—

(A) any possession of the United States, or

(B) any foreign country (other than Cuba and Venezuela) which is located in North, Central, or South America (including the West Indies).

(2) APPLICABLE PERIOD.—The term "applicable period" means—

(A) in the case of any election made under subsection (a), all taxable years beginning after December 31, 2021, and before January 1, 2027, and

(B) in the case of any election made under subsection (b), all taxable years beginning after December 31, 2019, and before January 1, 2027.

(3) DETERMINATION BASED ON TAXABLE YEAR FOR WHICH TAX ACTUALLY PAID OR ACCRUED.—The determination of the taxable year for which any tax is paid or accrued for purposes of determining whether a foreign tax is paid or accrued for a taxable year which is in the applicable period shall be made without regard to any taxable year with respect to which such tax is deemed to have been paid under section 904(c) or 960 of the Internal Revenue Code of 1986.

(e) SPECIFIED REGULATION.—For purposes of this section, the term "specified regulation" means—

(1) Treasury Regulations relating to "Guidance Related to the Foreign Tax Credit; Clarification of Foreign-Derived Intangible Income" (87 Fed. Reg. 276; published on January 4, 2022),

(2) proposed Treasury Regulations relating to "Guidance Related to the Foreign Tax Credit" (87 Fed. Reg. 71271; published on November 22, 2022), and

(3) any regulation or other guidance published after January 4, 2022, to the extent that such regulation or other guidance is substantially similar to, or predicated upon, any portion of the regulations referred to in paragraph (1) or (2).

In the case of any regulation or other guidance which is published after the date of the enactment of this Act and any portion of which is described in paragraph (3), the Secretary shall identify such regulation or guidance (or portion thereof) as not applying with respect to taxpayers which have elected the application of subsection (a) or (b), as the case may be.

(f) SECRETARY.—For purposes of this section, the term "Secretary" means the Secretary of the Treasury or the Secretary's delegate.

SEC. 203. IMPOSITION OF TAX ON THE ACQUISITION OF UNITED STATES AGRICULTURAL INTERESTS BY DISQUALIFIED PERSONS.

(a) IN GENERAL.—Subtitle D is amended by inserting after chapter 50A the following new chapter:

"CHAPTER 50B—ACQUISITION OF UNITED STATES AGRICULTURAL INTERESTS BY DISQUALIFIED PERSONS

"Sec. 5000E. Imposition of tax on acquisition of United States agricultural interests by disqualified persons.

"SEC. 5000E. IMPOSITION OF TAX ON ACQUISITION OF UNITED STATES AGRICULTURAL INTERESTS BY DISQUALIFIED PERSONS.

"(a) IN GENERAL.—In the case of any acquisition of any United States agricultural interest by any disqualified person, there is hereby imposed on such person a tax equal to 60 percent of the amount paid for such interest.

"(b) DISQUALIFIED PERSON.—For purposes of this section—

"(1) IN GENERAL.—The term 'disqualified person' means—

"(A) any citizen of a country of concern (other than a citizen, or lawful permanent resident, of the United States and other than an individual domiciled in Taiwan possessing a valid identification card or number issued by the government of Taiwan),

"(B) any entity domiciled in a country of concern (other than an entity domiciled in Taiwan),

"(C) any country of concern and any political subdivision, agency, or instrumentality thereof, and

"(D) except as provided in paragraph (3), any entity if persons described in subparagraph (A), (B), or (C) (in the aggregate) 10-percent control such entity.

"(2) COUNTRY OF CONCERN.—The term 'country of concern' means any country the government of which is engaged in a long-term pattern or serious instances of conduct significantly adverse to the national security of the United States or the security and safety of United States persons, including the People's Republic of China, the Russian Federation, Iran, North Korea, Cuba, and the regime of Nicolas Maduro in Venezuela.

"(3) EXCEPTION FOR CERTAIN PUBLICLY TRADED CORPORATIONS.—

"(A) IN GENERAL.—An entity shall not be treated as described in paragraph (1)(D) if—

"(i) such entity is a specified publicly traded corporation, or

"(ii) specified publicly traded corporations (in the aggregate) control such entity.

"(B) SPECIFIED PUBLICLY TRADED CORPORATION.—

"(i) IN GENERAL.—The term 'specified publicly traded corporation' means any corporation if—

"(I) the stock of such corporation is regularly traded on an established securities market located in the United States, and

"(II) specified disqualified persons do not (in the aggregate) control such corporation.

"(ii) SPECIFIED DISQUALIFIED PERSONS.—The term 'specified disqualified persons' means, with respect to any corporation referred to in clause (i), any person which—

"(I) is described in subparagraph (A), (B), or (C) of paragraph (1), and

"(II) 10-percent controls such corporation.

"(c) PRORATED TAX ON ACQUISITIONS BY ENTITIES NOT MORE THAN 50 PERCENT CONTROLLED BY DISQUALIFIED PERSONS.—

"(1) IN GENERAL.—In the case of any disqualified person described in subsection (b)(1)(D) with respect to which persons described in subparagraphs (A), (B), or (C) of subsection (b)(1) do not (in the aggregate) control such disqualified person, subsection (a) shall be applied by substituting 'the applicable percentage of the amount' for 'the amount'.

"(2) APPLICABLE PERCENTAGE.—For purposes of this section, the term 'applicable percentage' means, with respect to any disqualified person to which paragraph (1) applies, the highest percentage which could be substituted for '50 percent' both places it appears in section 954(d)(3) without causing persons described in subparagraph (A), (B), or (C) of subsection (b)(1) (in the aggregate) to control (determined by taking into account such substitution) such disqualified person.

"(d) CONTROL.—For purposes of this section—

"(1) IN GENERAL.—The term 'control' has the meaning given such term under section 954(d)(3), determined by treating the rules of section 958(a)(2) as applying to both foreign and domestic corporations, partnerships, trusts, and estates.

"(2) 10-PERCENT CONTROL.—The term '10-percent control' means control (as defined in paragraph (1)), determined by substituting '10 percent' for '50 percent' both places it appears in section 954(d)(3).

"(e) UNITED STATES AGRICULTURAL INTEREST.—For purposes of this section—

"(1) IN GENERAL.—The term 'United States agricultural interest' has the meaning which would be given the term 'United States real property interest' by section 897(c) if—

"(A) paragraph (1)(A)(i) were applied by substituting 'an interest in agricultural land' for 'an interest in real property' and all that follows,

"(B) paragraph (1)(A)(ii) were applied by substituting 'such corporation was not a United States real property holding corporation at the time of acquisition' for 'such corporation' and all that follows,

"(C) paragraph (1)(B) did not apply, and

"(D) paragraph (3) were applied by substituting 'at the time of acquisition' for 'at some time during the shorter of the periods described in paragraph (1)(A)(ii)'.

"(2) AGRICULTURAL LAND.—For purposes of paragraph (1), the term 'agricultural land' means—

"(A) agricultural land as defined in section 9 of the Agricultural Foreign Investment Disclosure Act of 1978 (7 U.S.C. 3508), and

"(B) land located in one or more States and used for livestock production purposes (determined under rules similar to the rules that apply under such section 9).".

(b) REPORTING REQUIREMENTS.—

(1) IN GENERAL.—Subpart B of part III of subchapter A of chapter 61 is amended by adding at the end the following new section:

"SEC. 6050AA. RETURNS RELATING TO ACQUISITION OF UNITED STATES AGRICULTURAL INTERESTS BY DISQUALIFIED PERSONS.

"(a) IN GENERAL.—The required reporting person, with respect to any acquisition of any United States agricultural interest by a presumptively disqualified person to which section 5000E(a) applies, shall make a return at such time as the Secretary may provide setting forth—

"(1) the name, address, and TIN of such presumptively disqualified person,

"(2) a description of such United States agricultural interest (including the street address, if applicable), and

"(3) the amount paid for such United States agricultural interest.

"(b) STATEMENT TO BE FURNISHED TO PRESUMPTIVELY DISQUALIFIED PERSON.—Every person required to make a return under subsection (a) shall furnish, at such time as the Secretary may provide, to each presumptively disqualified person whose name is required to be set forth in such return a written statement showing—

"(1) the name and address of the information contact of the required reporting person, and

"(2) the information described in paragraphs (1), (2), and (3) of subsection (a) which relates to such disqualified person.

"(c) REQUIRED REPORTING PERSON.—For purposes of this section, the term 'required reporting person' means, with respect to any acquisition of any United States agricultural interest—

"(1) the person (including any attorney or title company) responsible for closing the transaction in which such United States agricultural interest is acquired, or

"(2) if no one is responsible for closing such transaction (or in such other cases as the Secretary may provide), the transferor of such United States agricultural interest.

"(d) PRESUMPTIVELY DISQUALIFIED PERSON.—For purposes of this section, the term 'presumptively disqualified person' means any person unless such person furnishes to the required reporting person an affidavit by the such person stating, under penalty of perjury, that such person is not a disqualified person (as defined in section 5000E(b)).

"(e) REQUIREMENT TO REQUEST AFFIDAVIT.—If the required reporting person, with respect to any acquisition of any United States agricultural interest, has not, as of the time of such acquisition, been furnished the affidavit described in subsection (d) by the acquirer of such interest, such required reporting person shall furnish to such acquirer, at such time, a written statement informing such acquirer of the required reporting person's obligation to make the return described in subsection (a) with respect to such acquisition and including such other information as the Secretary may require.

"(f) UNITED STATES AGRICULTURAL INTEREST.—For purposes of this section, the term 'United States agricultural interest' has the meaning given such term in section 5000E.".

(2) PENALTIES.—Section 6724(d) is amended—

(A) in paragraph (1)(B), by striking "or" at the end of clause (xxvii), by striking "and" at the end of clause (xxviii) and inserting "or", and by adding at the end the following new clause:

"(xxix) section 6050AA(a) (relating to returns relating to acquisition of United States agricultural interests by disqualified persons), and", and

(B) in paragraph (2), by striking "or" at the end of subparagraph (KK), by striking the period at the end of subparagraph (LL) and inserting ", or", and by inserting after subparagraph (LL) the following new subparagraph:

"(MM) subsection (b) or (e) of section 6055AA (relating to statements relating to acquisition of United States agricultural interests by disqualified persons).".

(c) CLERICAL AMENDMENTS.—

(1) The table of chapters for subtitle D is amended by inserting after the item relating to chapter 50A the following new item:

"CHAPTER 50B. ACQUISITION OF UNITED STATES AGRICULTURAL INTERESTS BY DISQUALIFIED PERSONS.".

(2) The table of sections for subpart B of part III of subchapter A of chapter 61 is amended by adding at the end the following new item:

"Sec. 6050AA. Returns relating to acquisition of United States agricultural interests by disqualified persons.".

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

TITLE III—REPEAL OF SPECIAL INTEREST TAX PROVISIONS

SEC. 301. REPEAL OF CLEAN ELECTRICITY PRODUCTION CREDIT.

(a) IN GENERAL.—Subpart D of part IV of subchapter A of chapter 1 is amended by striking section 45Y (and by striking the item relating to such section in the table of sections for such subpart).

(b) CONFORMING AMENDMENTS.—

(1) Section 38(b) is amended by striking paragraph (39) and redesignating paragraphs (40) and (41) as paragraphs (39) and (40), respectively.

(2) Section 6417(b) is amended by striking paragraph (8) and redesignating paragraphs (9) through (12) as paragraphs (8) through (11), respectively.

(3) Section 6418(f)(1) is amended—

(A) in subparagraph (A), by striking clause (vii) and by redesignating clauses (viii) through (xi) as clauses (vii) through (x), respectively, and

(B) in subparagraph (B), by striking "(v), or (vii)" and inserting "or (v)".

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect as if included in section 13701 of Public Law 117–169.

SEC. 302. REPEAL OF CLEAN ELECTRICITY INVESTMENT CREDIT.

(a) IN GENERAL.—Subpart E of part IV of subchapter A of chapter 1 is amended by striking section 48E (and by striking the item relating to such section in the table of sections for such subpart).

(b) CONFORMING AMENDMENTS.—

(1) Section 46, as amended by Public Law 117–169, is amended—

(A) in paragraph (5), by adding "and" at the end,

(B) in paragraph (6), by striking ", and" and inserting a period, and

(C) by striking paragraph (7).

(2) Section 48(e)(4)(D) is amended by striking "except as provided in section 48E(h)(4)(D)(ii)".

(3) Section 48C(f) is amended by striking "48E,".

(4) Section 49(a)(1)(C), as amended by Public Law 117–169, is amended—

(A) by adding "and" at the end of clause (v),

(B) by striking the comma at the end of clause (vi) and inserting a period, and

(C) by striking clauses (vii) and (viii).

(5) Section 50(a)(2)(E), as amended by Public Law 117–169, is amended by striking "48D(b)(5), or 48E(e)" and inserting "or 48D(b)(5)".

(6) Section 50(c)(3), as amended by Public Law 117–169, is amended by striking "or clean electricity investment credit".

(7) Section 168(e)(3)(B), as amended by Public Law 117–169, is amended—

(A) in clause (vi)(III), by inserting "and" at the end,

(B) in clause (vii), by striking ", and" and inserting a period, and

(C) by striking clause (viii).

(8) Section 6417(b), as amended by the preceding provisions of this Act, is amended by striking paragraph (11).

(9) Section 6418(f)(1)(A), as amended by the preceding provisions of this Act, is amended by striking clause (x).

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect as if included in section 13702 of Public Law 117–169.

SEC. 303. MODIFICATION OF CLEAN VEHICLE CREDIT.

(a) PER VEHICLE DOLLAR LIMITATION.—Section 30D(b) is amended by striking paragraphs (2) and (3) and inserting the following:

"(2) BASE AMOUNT.—The amount determined under this paragraph is $2,500.

"(3) BATTERY CAPACITY.—In the case of a vehicle which draws propulsion energy from a battery with not less than 5 kilowatt hours of capacity, the amount determined under this paragraph is $417, plus $417 for each kilowatt hour of capacity in excess of 5 kilowatt hours. The amount determined under this paragraph shall not exceed $5,000.".

(b) FINAL ASSEMBLY.—Section 30D(d) is amended—
(1) in paragraph (1), by striking subparagraph (G), and
(2) by striking paragraph (5).
(c) ADDITIONAL MODIFICATIONS TO VEHICLE DEFINITION.—
(1) IN GENERAL.—Section 30D(d), as amended by subsection (b), is amended—
(A) in the heading, by striking "CLEAN" and inserting "QUALIFIED PLUG-IN ELECTRIC DRIVE MOTOR",
(B) in paragraph (1)—
(i) in the matter preceding subparagraph (A), by striking "clean" and inserting "qualified plug-in electric drive motor",
(ii) in subparagraph (C), by striking "qualified" before "manufacturer",
(iii) in subparagraph (E), by adding "and" at the end,
(iv) in subparagraph (F)—
(I) in clause (i), by striking "7" and inserting "4", and
(II) in clause (ii), by striking the comma at the end and inserting a period, and
(v) by striking subparagraph (H),
(C) in paragraph (3)—
(i) in the heading, by striking "QUALIFIED MANUFACTURER" and inserting "MANUFACTURER", and
(ii) by striking "The term 'qualified manufacturer' means" and all that follows through the period and inserting "The term 'manufacturer' has the meaning given such term in regulations prescribed by the Administrator of the Environmental Protection Agency for purposes of the administration of title II of the Clean Air Act (42 U.S.C. 7521 et seq.).", and
(D) by striking paragraph (6).
(2) CONFORMING AMENDMENTS.—Section 30D is amended—
(A) in subsection (a), by striking "new clean vehicle" and inserting "new qualified plug-in electric drive motor vehicle", and
(B) in subsection (b)(1), by striking "new clean vehicle" and inserting "new qualified plug-in electric drive motor vehicle".
(d) CRITICAL MINERAL AND BATTERY COMPONENT REQUIREMENT MODIFICATIONS.—
(1) IN GENERAL.—Section 30D(e), as added by Public Law 117–169, is amended by striking paragraphs (1) and (2), by redesignating paragraph (3) as paragraph (4), and by inserting before paragraph (4) (as so redesignated) the following new paragraphs:

"(1) CRITICAL MINERALS REQUIREMENT.—No credit shall be allowed under this section with respect to any vehicle unless, with respect to the battery from which the electric motor of such vehicle draws electricity, the percentage of the value of the applicable critical minerals (as defined in section 45X(c)(6)) contained in such battery that were—
"(A) extracted or processed—
"(i) in the United States, or
"(ii) in any country with which the United States has a free trade agreement in effect, or
"(B) recycled in North America,
is equal to or greater than 80 percent (as certified by the manufacturer, in such form or manner as prescribed by the Secretary). For purposes of subparagraph (A)(ii), the term 'free trade agreement' means an international agreement approved by Congress that eliminates duties and other restrictive regulations of commerce on substantially all the trade between the United States and one or more other countries.

"(2) BATTERY COMPONENTS.—No credit shall be allowed under this section with respect to any vehicle unless, with respect to the battery from which the electric motor of such vehicle draws electricity, all of the components contained in such battery were manufactured or assembled in North America (as certified by the manufacturer, in such form or manner as prescribed by the Secretary).

"(3) RESTRICTION ON FOREIGN ENTITIES OF CONCERN.—No credit shall be allowed under this section which respect to any vehicle placed in service after December 31, 2024, if any of the applicable critical minerals contained in the battery of such vehicle (as described in paragraph (1)) were extracted, processed, or recycled by a foreign entity of concern (as defined in section 40207(a)(5) of the Infrastructure Investment and Jobs Act (42 U.S.C. 18741(a)(5))).".

(2) CONFORMING AMENDMENT.—Section 30D(d) is amended by striking paragraph (7).
(e) TRANSFER OF CREDIT REPEALED.—
(1) IN GENERAL.—Section 30D is amended by striking subsection (g).

(2) CONFORMING AMENDMENTS REVERSED.—Section 30D(f) is amended—

(A) by inserting after paragraph (2) the following:

"(3) PROPERTY USED BY TAX-EXEMPT ENTITY.—In the case of a vehicle the use of which is described in paragraph (3) or (4) of section 50(b) and which is not subject to a lease, the person who sold such vehicle to the person or entity using such vehicle shall be treated as the taxpayer that placed such vehicle in service, but only if such person clearly discloses to such person or entity in a document the amount of any credit allowable under subsection (a) with respect to such vehicle (determined without regard to subsection (c)). For purposes of subsection (c), property to which this paragraph applies shall be treated as of a character subject to an allowance for depreciation.", and

(B) in paragraph (8), by striking ", including any vehicle with respect to which the taxpayer elects the application of subsection (g)".

(f) REINSTATEMENT OF LIMITATION ON NUMBER OF VEHICLES ELIGIBLE FOR CREDIT.—Section 30D is amended by inserting after subsection (f) the following:

"(g) LIMITATION ON NUMBER OF NEW QUALIFIED PLUG-IN ELECTRIC DRIVE MOTOR VEHICLES ELIGIBLE FOR CREDIT.—

"(1) IN GENERAL.—In the case of a new qualified plug-in electric drive motor vehicle sold during the phaseout period, only the applicable percentage of the credit otherwise allowable under subsection (a) shall be allowed.

"(2) PHASEOUT PERIOD.—For purposes of this subsection, the phaseout period is the period beginning with the second calendar quarter following the calendar quarter which includes the first date on which the number of new qualified plug-in electric drive motor vehicles manufactured by the manufacturer of the vehicle referred to in paragraph (1) sold for use in the United States after December 31, 2009, is at least 200,000.

"(3) APPLICABLE PERCENTAGE.—For purposes of paragraph (1), the applicable percentage is—

"(A) 50 percent for the first 2 calendar quarters of the phaseout period,

"(B) 25 percent for the 3rd and 4th calendar quarters of the phaseout period, and

"(C) 0 percent for each calendar quarter thereafter.

"(4) CONTROLLED GROUPS.—Rules similar to the rules of section 30B(f)(4) shall apply for purposes of this subsection.".

(g) TERMINATION REPEALED.—Section 30D is amended by striking subsection (h).

(h) ADDITIONAL CONFORMING AMENDMENTS.—

(1) The heading of section 30D is amended by striking "**CLEAN VEHICLE CREDIT**" and inserting "**NEW QUALIFIED PLUG-IN ELECTRIC DRIVE MOTOR VEHICLES**".

(2) Section 30B(h)(8) is amended by inserting ", except that no benefit shall be recaptured if such property ceases to be eligible for such credit by reason of conversion to a qualified plug-in electric drive motor vehicle", before the period at the end.

(3) Section 38(b)(30) is amended by striking "clean" and inserting "qualified plug-in electric drive motor".

(4) The table of sections for subpart B of part IV of subchapter A of chapter 1 is amended by striking the item relating to section 30D and inserting after the item relating to section 30C the following item:

"Sec. 30D. New qualified plug-in electric drive motor vehicles."

(i) GROSS UP REPEALED.—Section 13401 of Public Law 117–169 is amended by striking subsection (j).

(j) EFFECTIVE DATES.—

(1) IN GENERAL.—Except as otherwise provided in this subsection or subsection (k), the amendments made by this section shall apply to vehicles placed in service after June 9, 2023.

(2) FINAL ASSEMBLY AND MANUFACTURER LIMITATION.—The amendments made by subsections (b) and (f) shall apply to vehicles sold after June 9, 2023. Notwithstanding the preceding sentence, the phaseout period (as defined in section 30D(g) of the Internal Revenue Code of 1986, as amended by this section) shall be determined by taking into account all vehicles described in section 30D(g) of such Code (as so amended).

(k) TRANSITION RULE.—Notwithstanding subsection (j) (other than the last sentence of subsection (j)(2)), the amendments made by this section shall not apply with respect to any vehicle which is—

(1) acquired by the taxpayer pursuant to a written binding contract that was in effect on June 9, 2023, and

(2) placed in service before June 9, 2024.

(l) COORDINATION WITH PROVISIONS WHICH HAVE NOT TAKEN EFFECT.—

(1) TRANSFER OF CREDIT.—Notwithstanding subsection (k)(4) of section 13401 of Public Law 117–169, the amendments made by subsection (g) of such section shall not apply.

(2) PER VEHICLE DOLLAR LIMITS AND RELATED REQUIREMENTS.—Notwithstanding subsection (k)(3) of section 13401 of Public Law 117–169, the amendments made by subsection (a) of such section shall not apply unless the guidance referred to in such subsection (k)(3) is issued on or before June 9, 2023.

SEC. 304. REPEAL OF CREDIT FOR PREVIOUSLY-OWNED CLEAN VEHICLES.

(a) IN GENERAL.—Subpart A of part IV of subchapter A of chapter 1 is amended by striking section 25E (and by striking the item relating to such section in the table of sections for such subpart).

(b) CONFORMING AMENDMENT.—Section 6213(g)(2) is amended—

(1) in subparagraph (T), by adding "and" at the end,

(2) by striking subparagraph (U), and

(3) by redesignating subparagraph (V) as subparagraph (U).

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to vehicles acquired after June 9, 2023.

(d) TRANSITION RULE.—Notwithstanding subsection (c), the amendments made by this section shall not apply with respect to any vehicle which is—

(1) acquired by the taxpayer pursuant to a written binding contract that was in effect on June 9, 2023, and

(2) placed in service before June 9, 2024.

(e) COORDINATION WITH PROVISIONS WHICH HAVE NOT TAKEN EFFECT.—Notwithstanding subsection (c)(2) of section 13402 of Public Law 117–169, the amendments made by subsection (b) of such section shall not apply.

SEC. 305. REPEAL OF CREDIT FOR QUALIFIED COMMERCIAL CLEAN VEHICLES.

(a) IN GENERAL.—Subpart D of part IV of subchapter A of chapter 1 is amended by striking section 45W (and by striking the item relating to such section in the table of sections for such subpart).

(b) CONFORMING AMENDMENTS.—

(1) Section 38(b), as amended by the preceding provisions of this section, is amended by striking paragraph (37) and redesignating paragraphs (38) through (40) as paragraphs (37) through (39), respectively.

(2) Section 6213(g)(2), as amended by the preceding provisions of this Act, is amended—

(A) in subparagraph (S), by adding "and" at the end,

(B) in subparagraph (T), by striking ", and" and inserting a period, and

(C) by striking subparagraph (U).

(3) Section 6417(b), as amended by the preceding provisions of this Act, is amended by striking paragraph (6) and redesignating paragraphs (7) through (10) as paragraphs (6) through (9), respectively.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to vehicles acquired after June 9, 2023.

(d) TRANSITION RULE.—Notwithstanding subsection (c), the amendments made by this section shall not apply with respect to any vehicle which is—

(1) acquired by the taxpayer pursuant to a written binding contract that was in effect on June 9, 2023, and

(2) placed in service before June 9, 2024.

I. SUMMARY AND BACKGROUND

A. PURPOSE AND SUMMARY

The bill, H.R. 3938, the "Build It in America Act," as ordered reported by the Committee on Ways and Means on June 13, 2023, promotes jobs and growth, restores American business competitiveness, and secures our global supply chains.

B. BACKGROUND AND NEED FOR LEGISLATION

Restores American competitiveness and innovation by extending the ability for companies to immediately deduct research and development (R&D) costs.

Starting in 2022, companies could no longer immediately deduct R&D costs and have been required to gradually spread

those expenses over time, for a minimum of 5 years and as high as 15 years.

Losing the immediate deduction has led to higher tax bills for small, innovative businesses—forcing them to slow their growth, reduce their workforce, or borrow funds to pay a big tax bill to the IRS.

This provision will ensure that the United States sustains its status as a global innovation leader.

Ensures that mid-sized businesses can deduct borrowing costs during this time of rising interest rates by extending interest deductibility.

Starting in 2022, employers face a more restrictive limit on the amount of business interest that they can deduct each year. Instead of using "earnings before interest, taxes, depreciation, and amortization," companies may deduct interest expenses only up to 30 percent of their "earnings before interest and taxes," resulting in higher tax costs.

With today's higher interest rates, due to high inflation in the current economy, the 2022 change has increased costs for mid-sized companies and industries that are required to finance their operations with debt and do not have the ability to issue other financing options like issuing stock.

This provision will ensure that the United States is a competitive location to hire, invest, and grow for manufacturing, energy production, and other critical industries.

Promotes American jobs and manufacturing by extending 100 percent expensing.

Starting in 2023, job creators are able to immediately deduct only 80 percent—rather than 100 percent—of the cost of equipment, machinery, and vehicles, with the rest of the deduction claimed over the life of each asset.

This provision will ensure that businesses are incentivized to re-shore their operations and facilities from China back to the United States.

Lowers the price at the pump by repealing Democrats' superfund tax on petroleum.

Policies that harm affordable and clean American energy production drive up gasoline prices and increase American dependence on foreign countries.

Repealing this tax on affordable and secure energy resources from Democrats' so-called Inflation Reduction Act will improve our energy security and lower prices for consumers.

Encourages supply chains to get out of China by protecting American companies from the Biden Administration's misguided tax regulations that discourage near-shoring to Western Hemisphere countries.

The Biden Administration's foreign tax credit regulations favor countries like China and Russia over our neighboring, allied countries in Central and South America.

By rolling back these regulations, this provision removes an unnecessary roadblock to moving operations closer to home.

Stops agricultural land purchases by foreign adversaries with a tax rule blocking the purchases of American farm and ranch land by buyers from "Countries of Concern," including China, Russia, and Iran, and preventing undisclosed purchases of such land.

America's foreign adversaries are attempting to secure access to agricultural products by quietly acquiring U.S. farmland. China's reported holdings of farmland are said to be 384,000 acres and that acreage has grown by more than 50 percent since 2019. What's more, questions remain about whether China's ownership has been fully reported.

This provision builds off existing tax rules for real estate sales by foreign companies and investors. The rule applies to "Countries of Concern," which are those engaged in a long-term pattern of conduct significantly adverse to the national security of the United States, including the People's Republic of China (not including Taiwan), the Russian Federation, Iran, North Korea, Cuba, and the regime of Nicolas Maduro in Venezuela.

U.S. citizens and permanent residents, including dual citizens, are exempt from this provision.

Replaces Democrats' bad tax policy—which includes hundreds of billions of dollars in special interest tax breaks for big business and the wealthy—with good tax policy that returns money to American taxpayers and provides real assistance to our small businesses and job creators.

The Inflation Reduction Act included handouts that placed the American taxpayer on the hook for big payouts to big corporations and big banks.

Companies with over $1 billion in sales receive more than 90 percent of special interest tax subsidies for electricity. Banks and insurers receive over half of these tax breaks, and more than three times as much as any other industry.

The Inflation Reduction Act also created new tax credits for luxury electric vehicles purchased by the wealthy. Nearly 80 percent of electric vehicle credits flow to households earning over $100,000.

Under the Build It in America Act, those bad tax policies—which are intended to benefit a hand-picked group of politically connected individuals and corporations—are replaced in favor of broad-based policies that create jobs and benefit hard-working Americans.

This provision repeals two special interest credits not operative until 2025 or later and three electric vehicle credits, which have ballooned in cost by over 700 percent since 2022.

C. Legislative History

Background

H.R. 3938 was introduced on June 9, 2023, and was referred to the Committee on Ways and Means.

Committee Hearings

Pursuant to clause 3(c)(6) of rule XIII, the following hearings were used to develop and consider H.R. 3938:

- On February 6, 2023, the Committee held a hearing entitled "Field Hearing on the State of the American Economy: Appalachia."

• On March 7, 2023, the Committee held a hearing entitled "Field Hearing on the State of the American Economy: The Heartland."

• On April 19, 2023, the Committee held a hearing entitled "Hearing on the U.S. Tax Code Subsidizing Green Corporate Handouts and the Chinese Communist Party."

• On April 21, 2023, the Committee held a hearing entitled "Field Hearing on the State of the American Economy: The South."

• On May 9, 2023, the Committee held a hearing entitled "Field Hearing on Trade in America: Securing Supply Chains and Protecting the American Worker—Staten Island."

Committee Action

The Committee on Ways and Means marked up H.R. 3938, the "Build It in America Act," on June 13, 2023, and ordered the bill, as amended, favorably reported (with a quorum being present).

D. Designated Hearings

Pursuant to clause 3(c)(6) of rule XIII, the following hearings were used to consider H.R. 3938:

Committee on Ways and Means hearing which took place on February 6, 2023, entitled, "the State of the American Economy: Appalachia".

Committee on Ways and Means hearing which took place on March 7, 2023, entitled, "the State of the American Economy: The Heartland".

Committee on Ways and Means hearing which took place on April 19, 2023, entitled, "The U.S. Tax Code Subsidizing Green Corporate Handouts and the Chinese Communist Party".

Committee on Ways and Means hearing which took place on April 21, 2023, entitled: "the State of the American Economy: The South".

Committee on Ways and Means hearing which took place on May 9, 2023, entitled: "Trade in America: Securing Supply Chains and Protecting the American Worker—Staten Island".

II. EXPLANATION OF THE BILL

TITLE I—INVESTMENT IN AMERICA

1. Deduction for Research and Experimental Expenditures (Sec. 101 of the Bill and Secs. 174 and New Sec. 174A of the Code)

PRESENT LAW

Public Law 115–97 [1] modified the cost recovery rules for research or experimental expenditures paid or incurred in taxable years beginning after December 31, 2021 (with conforming changes made to sections 41 and 280C).[2] Section 174 as applicable to amounts paid or incurred in taxable years beginning before January 1, 2022, is described first below, followed by a description of section 174 as ap-

[1] December 22, 2017.
[2] Sec. 174.

plicable to amounts paid or incurred in taxable years beginning after December 31, 2021.

Amounts paid or incurred in taxable years beginning before January 1, 2022

Business expenses associated with the development or creation of an asset having a useful life extending beyond the current year generally must be capitalized and depreciated over such useful life.[3] However, taxpayers may elect to deduct the amount of reasonable research or experimental expenditures paid or incurred in taxable years beginning before January 1, 2022 in connection with a trade or business.[4] Alternatively, taxpayers may elect to capitalize their research or experimental expenditures and recover them ratably over the useful life of the research, but in no case over a period of less than 60 months.[5] Taxpayers may also elect to amortize their research or experimental expenditures over a period of 10 years.[6] Research and experimental expenditures deductible under section 174 are not required to be capitalized under either section 263(a)[7] or section 263A.[8] Section 174 deductions are generally reduced by the amount of the taxpayer's research credit under section 41.[9]

Research or experimental expenditures generally include all costs incurred in the experimental or laboratory sense related to the development or improvement of a product.[10] In particular, qualifying costs are those incurred for activities intended to discover information that would eliminate uncertainty concerning the development or improvement of a product.[11] Uncertainty exists when information available to the taxpayer is not sufficient to ascertain the capability or method for developing, improving, and/or appropriately designing the product.[12] The determination of whether expenditures qualify as deductible research expenses depends on the nature of the activity to which the costs relate, not the nature of the product or improvement being developed or the level of technological advancement the product or improvement represents.[13] Examples of qualifying costs include salaries for those engaged in research or experimentation efforts, amounts incurred to operate and

[3] Secs. 167 and 263(a).
[4] Former secs. 174(a) and (e).
[5] Former sec. 174(b). Taxpayers that have a taxable loss or that would have taxable loss after allowance of the deduction for research and experimental expenses, including taxpayers that incur research and experimental expenses before the start of an active trade or business, may elect to capitalize these expenses under this rule.
[6] Former secs. 174(f)(2) and 59(e). This special 10-year election is available to mitigate the effect of the individual alternative minimum taxable income adjustment for research expenditures set forth in section 56(b)(2). The election under section 59(e) to amortize research or experimental expenditures over a 10-year period does not apply to research or experimental expenditures paid or incurred in taxable years beginning after December 31, 2021. A technical correction may be necessary to reflect this intent.
[7] Sec. 263(a)(1)(B).
[8] Sec. 263A(c)(2).
[9] Former secs. 280C(c)(1) and (2). Taxpayers may instead elect to claim a reduced research credit amount under section 41 in lieu of reducing deductions otherwise allowed. Sec. 280C(c)(3), as effective for amounts paid or incurred in taxable years beginning before January 1, 2022.
[10] Treas. Reg. sec. 1.174–2(a)(1) and (2). Product is defined to include any pilot model, process, formula, invention, technique, patent, or similar property, and includes products to be used by the taxpayer in its trade or business as well as products to be held for sale, lease, or license. Treas. Reg. sec. 1.174–2(a)(11), Example 10, provides an example of new process development costs for which the cost recovery rules of section 174 apply.
[11] Treas. Reg. sec. 1.174–2(a)(1).
[12] *Ibid.*
[13] *Ibid.*

maintain research facilities (*e.g.*, utilities, depreciation, rent, *etc.*), and expenditures for materials and supplies used and consumed in the course of research or experimentation (including amounts incurred in conducting trials).[14] In addition, under administrative guidance, the costs of developing computer software have been accorded treatment similar to the cost recovery treatment of research and experimental expenditures.[15]

Research or experimental expenditures do not include expenditures for quality control testing; efficiency surveys; management studies; consumer surveys; advertising or promotions; the acquisition of another's patent, model, production or process; or research in connection with literary, historical, or similar projects.[16] For purposes of section 174, quality control testing means testing to determine whether particular units of materials or products conform to specified parameters, but does not include testing to determine if the design of the product is appropriate.[17]

Generally, no deduction under section 174 is allowable for expenditures for the acquisition or improvement of land or of depreciable or depletable property used in connection with any research or experimentation.[18] In addition, no deduction is allowed for any expenditure incurred for the purpose of ascertaining the existence, location, extent, or quality of any deposit of ore or other mineral, including oil and gas.[19]

In the case of a long-term contract, the taxable income from the contract is determined under the percentage-of-completion method, in part, by incorporating research and experimental expenditures.[20] Under this method, the taxpayer must include in gross income for the taxable year an amount equal to the product of (1) the gross contract price and (2) the percentage of the contract completed during the taxable year.[21] The percentage of the contract completed during the taxable year is determined by comparing costs allocated to the contract and incurred before the end of the taxable year with the estimated total contract costs.[22] Costs allocated to the contract typically include all costs (including research and experimental costs) that directly benefit or are incurred by reason of the taxpayer's long-term contract activities.[23]

Amounts paid or incurred in taxable years beginning after December 31, 2021

For taxable years beginning after December 31, 2021, specified research or experimental expenditures must be capitalized and am-

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[14] See Treas. Reg. sec. 1.174–4(c). The definition of research and experimental expenditures also includes the costs of obtaining a patent, such as attorneys' fees incurred in making and perfecting a patent application. Treas. Reg. sec. 1.174–2(a)(1).

[15] Rev. Proc. 2000–50, 2000–2 C.B. 601.

[16] Treas. Reg. sec. 1.174–2(a)(6).

[17] Treas. Reg. sec. 1.174–2(a)(7).

[18] Former sec. 174(c). However, depreciation and depletion allowances may be considered section 174 expenditures. *Ibid*.

[19] Former sec. 174(d). Special rules apply with respect to geological and geophysical costs (section 167(h)), qualified tertiary injectant expenses (section 193), intangible drilling costs (sections 263(c) and 291(b)), and mining exploration and development costs (sections 616 and 617).

[20] Sec. 460(a).

[21] See Treas. Reg. sec. 1.460–4. This calculation is done on a cumulative basis. Thus, the amount included in gross income in a particular year is that proportion of the expected contract price that the amount of costs incurred through the end of the taxable year bears to the total expected costs, reduced by the amounts of gross contract price included in gross income in previous taxable years.

[22] Sec. 460(b)(1).

[23] Sec. 460(c).

ortized ratably over a five-year period (or, in the case of expenditures that are attributable to research that is conducted outside of the United States, over a 15-year period),[24] beginning with the midpoint of the taxable year in which such specified research or experimental expenditures are paid or incurred (referred to as a half-year convention).[25] Specified research or experimental expenditures that are required to be capitalized include expenditures for software development.[26] Specified research or experimental expenditures exclude expenditures for the acquisition or improvement of land or for depreciable or depletable property used in connection with the research or experimentation and include depreciation and depletion allowances in respect of that property.[27] Also excluded are exploration expenditures incurred for ore or other minerals (including oil and gas).[28]

In the case of retired, abandoned, or disposed property with respect to which specified research or experimental expenditures are paid or incurred, any remaining basis may not be recovered in the year of retirement, abandonment, or disposal, but instead must continue to be amortized over the remaining amortization period.[29]

If a taxpayer's research credit under section 41 for a taxable year beginning after 2021 exceeds the amount allowed as an amortization deduction under section 174 for that taxable year, the amount chargeable to capital account under section 174 for such taxable year must be reduced by that excess amount.[30] A taxpayer instead may elect to claim a reduced research credit amount under section 41.[31] If this election is made, the research credit is reduced by an amount equal to the amount of the credit multiplied by the highest corporate tax rate.[32]

Taxpayers must continue to include specified research and experimental expenditures incurred for a long-term contract as a contract cost under the percentage-of-completion method.[33]

REASONS FOR CHANGE

The Committee recognizes that the full and immediate expensing of research or experimental expenditures, including software development costs, lowers the tax burden on critical research and development. Forcing businesses to capitalize and amortize these expenditures during a time of high inflation erodes the value of those expenditures, increases the cost of important research, and inhibits investment in new and innovative products. The adverse treatment of research and experimental expenditures under current law will force domestic businesses to cut jobs and curtail research to pay a higher tax bill.

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[24] For this purpose, the term "United States" includes the United States, the Commonwealth of Puerto Rico, and any possession of the United States. Sec. 174(a)(2)(B), by reference to sec. 41(d)(4)(F).
[25] Sec. 174(a)(2)(B).
[26] Sec. 174(c)(3).
[27] Sec. 174(c)(3).
[28] Sec. 174(c)(2).
[29] Sec. 174(d).
[30] Sec. 280C(c)(1).
[31] Sec. 280C(c)(2)(A).
[32] Sec. 280C(c)(2)(B).
[33] Sec. 460(c).

The Committee believes that allowing businesses to immediately deduct research expenses will lower their cost of wages, supplies, and equipment to initiate or expand research programs.

EXPLANATION OF PROVISION

The provision temporarily suspends the application of section 174 for research or experimental expenditures paid or incurred in taxable years beginning after December 31, 2021, and before January 1, 2026. For expenditures to which the suspension of the application of section 174 applies, the provision provides rules (in new section 174A) similar to the rules of prior law section 174.

The provision provides that research or experimental expenditures paid or incurred by a taxpayer during the taxable year in connection with the taxpayer's trade or business are deductible. Alternatively, a taxpayer may elect to either (1) capitalize part or all of its research or experimental expenditures and recover them ratably over the useful life of the research (but in no case over a period of less than 60 months), or (2) capitalize part or all of its research or experimental expenditures to a capital account.

Similar to present law section 174, research or experimental expenditures include software development costs.[34]

The provision requires a taxpayer to reduce the amount taken into account as research or experimental expenditures (whether expensed or capitalized) by the amount of the research credit allowable under section 41. Taxpayers instead may elect to claim a reduced research credit amount under section 41.

For purposes of recognizing taxable income under the percentage of completion method of section 460, a taxpayer that pays or incurs a research or experimental expenditure under a long-term contract must include the amount paid or incurred as a cost allocated to the contract for the taxable year. For example, a taxpayer that pays or incurs $100 of research or experimental expenditures under a long-term contract must include that $100 as a cost allocated to the contract in that year for purposes determining the percentage of completion under section 460, regardless of whether it deducts the full $100 or instead claims a smaller amortization deduction in that year.

The provision treats the requirement to capitalize and amortize research or experimental expenditures paid or incurred in taxable years beginning after December 31, 2025, as a change in the taxpayer's method of accounting for purposes of section 481. This change is treated as initiated by the taxpayer, is treated as made with the consent of the Secretary, and is applied prospectively on a cut-off basis with no corresponding catch-up adjustment to taxable income under section 481(a).

For research or experimental expenditures paid or incurred in taxable years beginning after December 31, 2025, the provision coordinates the applicable rules (that is, the present law section 174 rules that the provision temporarily suspends) with the application of the alternative minimum tax rules for individuals, including the optional election under section 59(e), and the rules for making certain basis adjustments. Under these coordination rules, neither the

[34] Under former section 174, taxpayers relied on Rev. Proc. 2000 50, *supra*, for the treatment of software development expenditures.

adjustment to an individual's alternative minimum taxable income under section 56(b)(2) nor the election under section 59(e)(2)(B) to capitalize and amortize research and experimental expenditures over 10 years apply to specified research or experimental expenditures. In addition, the provision clarifies that the basis of property is reduced by amortization deductions allowed under section 174(a). For purposes of recognizing taxable income under the percentage of completion method of section 460, a taxpayer that pays or incurs a specified research or experimental expenditure under a long-term contract in a taxable year must include the amortization deduction under section 174(a) as a cost allocated to the contract in that year.

EFFECTIVE DATE

The provision is effective for amounts paid or incurred in taxable years beginning after December 31, 2021.

The provision provides two elective transition rules. The first election allows a taxpayer that adopts a method of accounting under section 174 before the date of the provision's enactment for the taxpayer's first taxable year beginning after December 31, 2021, to treat the application of the temporary rules as a change in method of accounting initiated by the taxpayer for the taxpayer's immediately succeeding taxable year with a catch-up adjustment to taxable income under section 481(a) made on a modified cut-off basis.[35]

The second transition rule allows an eligible taxpayer to make a late election under section 59(e)(2)(B) to capitalize and amortize research or experimental expenditures over 10 years by filing an amended income tax return within one year of the date of enactment.[36] An eligible taxpayer is any taxpayer that does not elect the application of the first transition rule, and that filed an income tax return for the taxpayer's first taxable year beginning after December 31, 2021, before the earlier of the due date for that return and the date of enactment.

2. EXTENSION OF ALLOWANCE FOR DEPRECIATION, AMORTIZATION, OR DEPLETION IN DETERMINING THE LIMITATION ON BUSINESS INTEREST (SEC. 102 OF THE BILL AND SEC. 163(j) OF THE CODE)

PRESENT LAW

Limitation on deduction of business interest expense

Interest paid or accrued by a business generally is deductible in the computation of taxable income, subject to a number of limita-

[35] The section 481(a) adjustment only includes an adjustment for the capitalized expenditures which were not allowed as an amortization deduction by reason of section 174 prior to amendment by the provision for the taxpayer's first taxable year beginning after December 31, 2021.

[36] Generally, an election under section 59(e)(2)(B) must be filed no later than the date prescribed by law for filing the taxpayer's original income tax return (including extensions) for the tax year in which the amortization of the qualified expenditures subject to the election begins. See Treas. Reg. sec. 1.59–1(b)(1).

tions.[37] The deduction for business interest expense[38] is generally limited to the sum of (1) business interest income of the taxpayer for the taxable year,[39] (2) 30 percent of the adjusted taxable income of the taxpayer for the taxable year (not less than zero), and (3) the floor plan financing interest[40] of the taxpayer for the taxable year.[41] Thus, other than floor plan financing interest, business interest expense in excess of business interest income is generally deductible only to the extent of 30 percent of adjusted taxable income.[42]

The limitation generally applies at the taxpayer level (although special rules apply in the case of partnerships, described below). In the case of a group of affiliated corporations that file a consolidated return, the limitation applies at the consolidated tax return filing level.[43] The amount of any business interest expense not allowed as a deduction for any taxable year is generally treated as business interest expense paid or accrued by the taxpayer in the succeeding taxable year. This business interest expense may be carried forward indefinitely.[44]

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[37] Sec. 163(a). Interest deductions limitations that are not described in this document include: denial of the deduction for the disqualified portion of the original issue discount on an applicable high yield discount obligation (sec. 163(e)(5)), denial of deduction for interest on certain obligations not in registered form (sec. 163(f)), reduction of the deduction for interest on indebtedness with respect to which a mortgage credit certificate has been issued under section 25 (sec. 163(g)), disallowance of deduction for interest on debt with respect to certain life insurance contracts (sec. 264(a)), and disallowance of deduction for interest relating to tax-exempt income (sec. 265(a)(2)). In some circumstances, interest expense is required to be capitalized. See, *e.g.*, secs. 263A(f) (capitalization of interest incurred to produce certain tangible property) and 461(g) (prepaid interest). Section 385 also recharacterizes as equity some instruments that are purported to be indebtedness with the results that payments on the interest are treated as nondeductible dividends rather than deductible interest.

[38] Business interest means any interest paid or accrued on indebtedness properly allocable to a trade or business and does not include investment interest (within the meaning of section 163(d)). Sec. 163(j)(5). Section 163(j) applies only to business interest that would otherwise be deductible in the current taxable year, absent the application of section 163(j). Treas. Reg. sec. 1.163(j)–3(b)(1). Thus, section 163(j) applies after the application of provisions that subject interest to deferral, capitalization, or other limitation (e.g., secs. 163(e)(3), 163(e)(5)(A)(ii), 246A, 263A, 263(g), 267, 1277, and 1282), but before application of sections 461(l), 465, and 469. See Treas. Reg. sec. 1.163(j)–3(b)(2)–(6).

[39] Business interest income means the amount of interest includible in the gross income of the taxpayer for the taxable year that is properly allocable to a trade or business and does not include investment income (within the meaning of section 163(d)). Sec. 163(j)(6).

[40] Floor plan financing interest means interest paid or accrued on floor plan financing indebtedness. Floor plan financing indebtedness means indebtedness used to finance the acquisition of motor vehicles held for sale or lease to retail customers and secured by the inventory so acquired. A motor vehicle means a motor vehicle that is: (1) any self-propelled vehicle designed for transporting person or property on a public street, highway, or road; (2) a boat; or (3) farm machinery or equipment. Sec. 163(j)(9).

[41] These rules were modified for taxable years beginning in 2019 or 2020 to permit certain taxpayers to deduct more business interest than would be allowed under the rules described herein. See sec. 163(j)(10).

[42] The business interest limitation does not apply in certain cases. The business interest limitation does not apply to any taxpayer (other than a tax shelter prohibited from using the cash method under section 448(a)(3)) that meets the $25 million gross receipts test of section 448(c). At a taxpayer's election, (1) any real property development, redevelopment, construction, reconstruction, acquisition, conversion, rental, operation, management, leasing, or brokerage trade or business (referred to as an "electing real property trade or business") or (2) any farming business or any business engaged in the trade or business of a specified agricultural or horticultural cooperative (referred to as an "electing farming business") is not treated as a trade or business for purposes of the limitation, with the result that the section 163(j) limitation does not apply to an electing real property trade or business or to an electing farming business. The limitation does not apply to certain regulated public utilities. See sec. 163(j)(7).

[43] See Treas. Reg. sec. 1.163(j)–4(d) (providing that a consolidated group has a single sec. 163(j) limitation and generally treating all members of the consolidated group as a single taxpayer for sec. 163(j) purposes).

[44] Sec. 163(j)(2). With respect to corporations, any carryforward of disallowed business interest of a corporation is an item taken into account in the case of certain corporate acquisitions described in section 381 and is subject to limitation under section 382. Secs. 381(c)(20) and 382(d)(3).

Application to passthrough entities

In general

In the case of a partnership, the section 163(j) interest limitation is generally applied at the partnership level.[45] A partner generally must apply 163(j) separately to any business interest expense it incurs. To prevent double counting, the business interest income and adjusted taxable income of each partner are generally determined without regard to the partner's distributive share of any items of income, gain, deduction, or loss of the partnership.[46] However, in cases in which the partnership has an excess amount of business interest income, an excess amount of adjusted taxable income, or both, section 163(j) partnership items generally may to support additional business interest expense deductions by the partnership's partners. Specifically, a partner's business interest deduction limitation is increased by the sum of the partner's distributive share of the partnership's excess business interest income and 30 percent of the partner's distributive share of the partnership's excess taxable income.[47]

Similar rules apply to an S corporation and its shareholders.[48]

Carryforward rules for partnerships

Special rules for the carryforward of disallowed business interest expense apply only to partnerships and their partners.[49] In the case of a partnership, the general taxpayer-level carryforward rule does not apply. Instead, any business interest expense that is not allowed as a deduction to the partnership for the taxable year (referred to as "excess business interest expense") is allocated to the partners.[50] A partner may not deduct excess business interest expense in the year in which it is allocated to a partner. A partner may deduct its share of the partnership's excess business interest expense in any future year, but only in an amount that is based on the partner's distributive share of excess business interest income and excess taxable income of the partnership the activities of which gave rise to the disallowed business interest expense carryforward.[51] Any amount that is not allowed as a deduction generally continues to be carried forward.[52]

When excess business interest expense is allocated to a partner, the partner's basis in its partnership interest is reduced (but not below zero) by the amount of the allocation, even though the excess business interest expense does not give rise to a deduction in the year of the basis reduction.[53] The partner's deduction in a subsequent year for excess business interest expense does not reduce the partner's basis in its partnership interest. If the partner disposes of a partnership interest the basis of which has been reduced by an allocation of excess business interest expense, the partner's

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[45] Sec. 163(j)(4)(A)(i).
[46] Sec. 163(j)(4)(A)(ii)(I); Treas. Reg. sec. 1.163(j)–6(e)(1).
[47] Sec. 163(j)(4)(A)(ii)(II); Treas. Reg. sec. 1.163(j)–6(e)(1).
[48] Sec. 163(j)(4)(D).
[49] Sec. 163(j)(4)(B).
[50] Sec. 163(j)(4)(B)(i)(II).
[51] Sec. 163(j)(4)(B)(ii)(I); Treas. Reg. sec. 1.163(j)-6(g)(2). See also Joint Committee on Taxation, *General Explanation of Public Law 115–97* (JCS–1–18), December 2018, pp. 175 178 (describing section 163(j)(4) as it was intended to work).
[52] Sec. 163(j)(4)(B)(ii)(II).
[53] Sec. 163(j)(4)(B)(iii)(I); Treas. Reg. sec. 1.163(j)–6(h)(2).

basis in the interest is increased immediately before the disposition by the amount by which the basis reduction exceeds any amount of excess business interest expense that has been treated as business interest expense paid or accrued by the partner as a result of an allocation of excess business interest income or excess taxable income by the same partnership.[54] This rule applies to both total and (on a proportionate basis) partial dispositions of a partnership interest.[55]

The special carryforward rules do not apply to S corporations or their shareholders.[56] Rather, any disallowed business interest expense is carried forward by the S corporation (as opposed to the shareholder) to the succeeding taxable year.[57]

Adjusted taxable income

For purposes of the section 163(j) interest limitation, adjusted taxable income means the taxable income of the taxpayer computed without regard to: (1) any item of income, gain, deduction, or loss that is not properly allocable to a trade or business; (2) any business interest or business interest income; (3) the amount of any net operating loss deduction; or (4) the amount of any deduction allowed under section 199A.

For taxable years beginning before January 1, 2022, adjusted taxable income also is computed without regard to any deduction allowable for depreciation, amortization, or depletion.[58] This definition of adjusted taxable income generally corresponds with the financial accounting concept of earnings before interest, taxes, depreciation, and amortization, or "EBITDA" (hereinafter referred to as the "EBITDA limitation").

For taxable years beginning after December 31, 2021, adjusted taxable income is computed with regard to deductions allowable for depreciation, amortization, or depletion. This definition of adjusted taxable income generally corresponds with the financial accounting concept of earnings before interest and taxes, or "EBIT" (hereinafter referred to as the "EBIT limitation").

REASON FOR CHANGE

The Committee believes that a combination of rising interest rates and increased restrictions on interest deductions under current law will harm business expansion and job growth. The EBIT limitation is a tax on investment that impairs the ability of businesses to finance new equipment and expand operations. Increasing the cost of critical machinery and equipment for businesses discourages domestic investment, reduces wages, and costs jobs. The Committee believes that reinstating the EBITDA limitation will alleviate the burden on businesses and reduce barriers to domestic investment.

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[54] Sec. 163(j)(4)(B)(iii)(II); Treas. Reg. sec. 1.163(j)–6(h)(3). The special rule for dispositions also applies to transfers of a partnership interest (including by reason of death) in transactions in which gain is not recognized in whole or in part. *Id.* No deduction is allowed to the transferor or transferee for any disallowed business interest resulting in a basis increase under this rule. *Id.*

[55] *Ibid.*

[56] Sec. 163(j)(4)(D).

[57] Treas. Reg. sec. 1.163(j)–6(l)(5).

[58] Sec. 163(j)(8)(A). Treasury regulations provide other adjustments to the definition of adjusted taxable income. Sec. 163(j)(8)(B); Treas. Reg. sec. 1.163(j)–1(b)(1).

EXPLANATION OF PROVISION

The provision temporarily extends the EBITDA limitation under section 163(j) to apply to taxable years beginning before January 1, 2026. Thus, under the provision, adjusted taxable income is computed without regard to the deduction for depreciation, amortization, or depletion for taxable years beginning before January 1, 2026.[59]

EFFECTIVE DATE

The provision is generally effective for taxable years beginning after December 31, 2022.

The provision provides an elective transition rule that allows a taxpayer to elect to apply the extension of the EBITDA limitation under section 163(j) to taxable years beginning after December 31, 2021.

3. Extension of 100 Percent Bonus Depreciation (Sec. 103 of the Bill and Sec. 168(k) of the Code)

PRESENT LAW

A taxpayer generally must capitalize the cost of property used in a trade or business or held for the production of income and recover the cost over time through annual deductions for depreciation or amortization.[60] The period for depreciation or amortization generally begins when the asset is placed in service by the taxpayer.[61] Tangible property generally is depreciated under the modified accelerated cost recovery system ("MACRS"), which determines depreciation for different types of property based on an assigned applicable depreciation method, recovery period, and convention.[62]

Bonus depreciation

An additional first-year depreciation deduction equal to 100 percent of the adjusted basis of qualified property is allowed for property acquired after September 27, 2017,[63] and placed in service before January 1, 2023 (January 1, 2024, for certain property with a recovery period of at least 10 years or certain transportation prop-

[59] A partnership that has already filed Form 1065, *U.S. Return of Partnership Income*, for a taxable year beginning in 2022 may have to either supercede or amend its return, or file an administrative adjustment request ("AAR") if it is subject to the Bipartisan Budget Act ("BBA") centralized partnership audit regime of sections 6221 through 6241. In general, only partnerships that are not subject to the BBA centralized partnership audit regime are able to file a superceding or amended Form 1065. Partnerships subject to those rules must instead file an AAR. See secs. 6221 and 6227. However, at times the IRS has exercised its authority under section 6031(b) and allowed BBA partnerships to instead file superceding or amended returns (while still being subject to the BBA centralized partnership audit regime). See, *e.g.*, Rev. Proc. 2021–50, 2021–49 I.R.B. 844; Rev. Proc. 2021–29, 2021–27 I.R.B. 12; Rev. Proc. 2020–23, 2020–18 I.R.B. 749; and Rev. Proc. 2019–32, 2019–33 I.R.B. 659.

[60] See secs. 263(a) and 167. In general, only the tax owner of property (*i.e.*, the taxpayer with the benefits and burdens of ownership) is entitled to claim tax benefits such as cost recovery deductions with respect to the property. In addition, where property is not used exclusively in a taxpayer's business, the amount eligible for a deduction must be reduced by the amount related to personal use. See, *e.g.*, sec. 280A.

[61] See Treas. Reg. secs. 1.167(a)–10(b), –3, –14, and 1.197–2(f). See also Treas. Reg. sec. 1.167(a)–11(e)(1)(i).

[62] Sec. 168.

[63] For a description of section 168(k) as it applies to qualified property acquired before September 28, 2017, as well as a transition rule that permits a taxpayer to elect to apply a 50-percent allowance instead of the 100-percent allowance for a taxable year that includes September 28, 2017, see Joint Committee on Taxation, *General Explanation of Public Law No. 115–97* (JCS–1–18), December 2018, pp. 115–128. This document can be found on the Joint Committee on Taxation website at www.jct.gov.

erty,[64] and certain aircraft).[65] [66] The 100-percent allowance is phased down by 20 percentage points per calendar year for property acquired after September 27, 2017, and placed in service after December 31, 2022 (after December 31, 2023, for longer production period property and certain aircraft).[67] This additional first-year depreciation is commonly referred to as "bonus depreciation." The bonus depreciation applicable percentages for qualified property acquired and placed in service after September 27, 2017 (as well as for specified plants which are planted or grafted after September 27, 2017 (described below)) are as follows.

Placed in Service Year[68]	Bonus Depreciation Applicable Percentage	
	Qualified Property in General/Specified Plants	Longer Production Period Property and Certain Aircraft
Sept. 28, 2017–Dec. 31, 2022	100 percent	100 percent
2023	80 percent	100 percent
2024	60 percent	80 percent
2025	40 percent	60 percent
2026	20 percent	40 percent
2027	None	20 percent[69]
2028 and thereafter	None	None

The bonus depreciation deduction is allowed for both regular tax and alternative minimum tax purposes, but is not allowed in computing earnings and profits.[70] The basis of the property and the depreciation allowances in the placed in service year and later years are adjusted to reflect the bonus depreciation deduction.[71] The amount of the bonus depreciation deduction is not affected by a short taxable year.[72] A taxpayer may elect out of bonus depreciation for any class of property for any taxable year.[73] An election out of bonus depreciation may be revoked only with the consent of the Secretary.[74]

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[64] Property qualifying for the extended placed-in-service date must have a recovery period of at least 10 years or constitute transportation property, have an estimated production period exceeding one year, and have a cost exceeding $1 million. Transportation property generally is defined as tangible personal property used in the trade or business of transporting persons or property. Sec. 168(k)(2)(B). Property defined in section 168(k)(2)(B) is hereinafter collectively referred to as "longer production period property."

[65] Certain aircraft which is not transportation property, other than for agricultural or firefighting uses, also qualifies for the extended placed-in-service date, if at the time of the contract for purchase, the purchaser made a nonrefundable deposit of the lesser of 10 percent of the cost or $100,000, and which has an estimated production period exceeding four months and a cost exceeding $200,000. Sec. 168(k)(2)(C).

[66] Sec. 168(k). The bonus depreciation deduction is generally subject to the rules regarding whether a cost must be capitalized under section 263A. For a description of section 263A, see Joint Committee on Taxation, *Present Law and Background Regarding the Federal Income Taxation of Small Businesses* (JCX–10–23), June 5, 2023, pp. 15–17. This document can be found on the Joint Committee on Taxation website at www.jct.gov.

[67] Sec. 168(k)(6)(A) and (B).

[68] In the case of specified plants, this is the year of planting or grafting, as discussed below.

[69] Twenty percent applies to the adjusted basis attributable to manufacture, construction, or production before January 1, 2027, and the remaining adjusted basis does not qualify for bonus depreciation. Twenty percent applies to the entire adjusted basis of certain aircraft described in section 168(k)(2)(C) and placed in service in 2027.

[70] Secs. 56A(c)(13), 168(k)(2)(G) and 312(k)(3).

[71] Sec. 168(k)(1).

[72] Treas. Reg. sec. 1.168(k)–2(e)(1)(ii).

[73] For the definition of a class of property, see Treas. Reg. sec. 1.168(k)–2(f)(1)(ii). Treas. Reg. sec. 1.168(k)–2(f)(1) provides the procedures for making an election not to deduct bonus depreciation.

[74] Sec. 168(k)(7). See also Treas. Reg. sec. 1.168(k)–2(f)(5).

Qualified property

Property qualifying for the bonus depreciation deduction must meet all of the following requirements:

- The property must be:
  1. property to which MACRS applies with an applicable recovery period of 20 years or less,
  2. computer software other than computer software required to be amortized under section 197,
  3. water utility property,[75] or
  4. a qualified film, television, or live theatrical production,[76] for which a deduction otherwise would have been allowable under section 181 without regard to the dollar limitation or termination of that section; [77]
- Either (i) the original use of the property must commence with the taxpayer,[78] or (ii) the property must not have been used by the taxpayer at any time before acquisition and the acquisition must meet the requirements of section 179(d)(2)(A)–(C) and (3);[79] and
- The property must be placed in service before January 1, 2027.[80]

The bonus depreciation deduction is not allowed for any property that is required to be depreciated under the alternative depreciation system ("ADS"),[81] or for listed property in respect of which the business use is not greater than 50 percent (as determined under section 280F(b)).[82]

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[75] As defined in section 168(e)(5).

[76] As defined in section 181(d) and (e).

[77] Under section 181, a taxpayer may generally elect to deduct up to $15 million of the aggregate production costs ($20 million in the case of productions in certain areas) of any qualified film, television, or live theatrical production, commencing prior to January 1, 2026, in the year the costs are paid or incurred by the taxpayer, in lieu of capitalizing the costs and recovering them through depreciation allowances once the production is placed in service. The costs of the production in excess of the applicable dollar limitation are capitalized and recovered under the taxpayer's method of accounting for the recovery of such property once placed in service (e.g., under section 168(k) if eligible). For a description of section 181, see Joint Committee on Taxation, General Explanation of Certain Tax Legislation Enacted in the 116th Congress (JCS 1 22), February 2022, pp. 480 482. This document can be found on the Joint Committee on Taxation website at www.jct.gov.

[78] See Treas. Reg. sec. 1.168(k)–2(b)(3)(ii).

[79] Thus, used property must be purchased in an arm's length transaction. The property must not be acquired (i) from a member of the taxpayer's family, including a spouse, ancestors, and lineal descendants, or from another related entity as defined in section 267, (ii) from a person who controls, is controlled by, or is under common control with, the taxpayer, nor (iii) in a nontaxable exchange such as a reorganization. The property must not be received as a gift or from a decedent. In the case of trade-ins, like-kind exchanges, or involuntary conversions, bonus depreciation applies only to any money paid in addition to the traded-in property or in excess of the adjusted basis of the replaced property. See sec. 179(d)(2)(A)–(C) and (3); Treas. Reg. secs. 1.168(k)–2(b)(3)(iii) and 1.179–4(c) and (d). A special rule applies in the case of a syndication transaction. See sec. 168(k)(2)(E)(iii); Treas. Reg. sec. 1.168(k)–2(b)(3)(vi).

[80] A qualified production is considered placed in service, and thus eligible for the bonus depreciation allowance, at the time of initial release, broadcast, or live staged performance. Sec. 168(k)(2)(H); Treas. Reg. sec. 1.168(k)–2(b)(4)(iii).

[81] See sec. 168(g) (determined without regard to an election to use ADS under section 168(g)(7)). See also Treas. Reg. sec. 1.168(k) 2(b)(2)(ii)(B). ADS is required to be used for tangible property used predominantly outside the United States, certain tax-exempt use property, tax-exempt bond financed property, certain imported property covered by an Executive order, and certain property held by either a real property trade or business or a farming business electing out of the business interest limitation under section 163(j). In addition, an election to use ADS is available to taxpayers for any class of property for any taxable year. Under ADS, all property is depreciated using the straight line method and the applicable convention over recovery periods which generally are equal to the class life of the property, with certain exceptions.

[82] Sec. 168(k)(2)(D). For a description of section 280F, see Joint Committee on Taxation, *General Explanation of Public Law No. 115–97* (JCS–1– 18), December 2018, pp. 128–130. This document can be found on the Joint Committee on Taxation website at www.jct.gov.

In the case of longer production period property and certain aircraft, the property must also be acquired (or acquired pursuant to a written binding contract entered into) before January 1, 2027, and placed in service before January 1, 2028.[83] With respect to such property that is manufactured, constructed, or produced by the taxpayer for use by the taxpayer, the taxpayer must begin the manufacture, construction, or production of the property before January 1, 2027.[84] Additionally, a special rule limits the amount of costs of longer production period property eligible for bonus depreciation. With respect to this property, only the portion of the basis that is properly attributable to the costs incurred before January 1, 2027 ("progress expenditures") is eligible for the bonus depreciation deduction.[85]

Exception for certain businesses not subject to the limitation on interest expense

Qualified property eligible for the bonus depreciation deduction does not include any property which is primarily used in the trade or business of the furnishing or sale of (1) electrical energy, water, or sewage disposal services, (2) gas or steam through a local distribution system, or (3) transportation of gas or steam by pipeline, if the rates for such furnishing or sale, as the case may be, have been established or approved by a State or political subdivision thereof, by any agency or instrumentality of the United States, by a public service or public utility commission or other similar body of any State or political subdivision thereof, or by the governing or ratemaking body of an electric cooperative.[86]

Qualified property also does not include any property used in a trade or business that has had floor plan financing indebtedness[87] if the floor plan financing interest related to the indebtedness was taken into account to increase the taxpayer's section 163(j) interest limitation under section 163(j)(1)(C).[88]

Special rules

Passenger automobiles

The limitation under section 280F on the amount of depreciation deductions allowed with respect to certain passenger automobiles is increased in the first year by $8,000 for automobiles that qualify for (and for which the taxpayer does not elect out of) bonus depreciation.[89] While the underlying section 280F limitation is indexed for inflation,[90] the section 280F increase amount is not indexed for inflation.

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[83] Secs. 168(k)(2)(B)(i)(II) and (III).
[84] Sec. 168(k)(2)(E)(i).
[85] Sec. 168(k)(2)(B)(ii). See also Treas. Reg. sec. 1.168(k)–2(e)(1)(iii).
[86] Secs. 168(k)(9)(A) and 163(j)(7)(A)(iv). See also Treas. Reg. sec. 1.168(k)–2(b)(2)(ii)(F).
[87] As defined in section 163(j)(9).
[88] Sec. 168(k)(9)(B). See also Treas. Reg. sec. 1.168(k)–2(b)(2)(ii)(G).
[89] Sec. 168(k)(2)(F). See Rev. Proc. 2019 13, 2019 09 I.R.B. 744, for a safe harbor method of accounting for determining depreciation deductions for passenger automobiles that qualify for bonus depreciation and are subject to the section 280F depreciation limitations.
[90] Sec. 280F(d)(7). See Rev. Proc. 2023–14, 2023–6 I.R.B. 466, for the section 280F limitations that apply to passenger automobiles placed in service during calendar year 2023.

Certain plants bearing fruits and nuts

A farming business[91] is allowed a special election in respect of certain costs of planting or grafting certain plants bearing fruits and nuts.[92] Under the election, the applicable percentage of the adjusted basis of a specified plant which is planted or grafted after September 27, 2017, and before January 1, 2027, is deductible for regular tax and AMT purposes in the year planted or grafted by the taxpayer in the ordinary course of the taxpayer's farming business (rather than in the year the specified plant is placed in service by the taxpayer[93]), and the adjusted basis is reduced by the amount of the deduction.[94] The applicable percentage is 100 percent for specified plants planted or grafted after September 27, 2017, and before January 1, 2023, and then is phased down by 20 percentage points per calendar year beginning in 2023.[95] Thus, the applicable percentage is 80 percent for 2023, 60 percent for 2024, 40 percent for 2025, and 20 percent for 2026.

A specified plant is (i) any tree or vine that bears fruits or nuts, and (ii) any other plant that will have more than one crop or yield of fruits or nuts and which generally has a preproductive period of more than two years from the time of planting or grafting to the time it begins bearing a marketable crop or yield of fruits or nuts.[96] A specified plant does not include any property that is planted or grafted outside of the United States. If the election is made with respect to any specified plant, the plant is not treated as qualified property eligible for bonus depreciation in the subsequent taxable year in which it is placed in service.[97] Once made, the election is revocable only with the consent of the Secretary.[98]

LONG-TERM CONTRACTS

In general, in the case of a long-term contract, the taxable income from the contract is determined under the percentage-of-completion method.[99] Solely for purposes of determining the percentage of completion under section 460(b)(1)(A), the cost of qualified property with a MACRS recovery period of seven years or less is taken into account as a cost allocated to the contract as if bonus depreciation had not been enacted for property placed in service before January 1, 2027 (January 1, 2028, in the case of longer production period property).[100]

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[91] For this purpose, the term "farming business" means the trade or business of farming, including the trade or business of operating a nursery or sod farm, the raising or harvesting of trees bearing fruit, nuts, or other crops, or ornamental trees (other than evergreen trees that are more than six years old at the time they are severed from their roots). Sec. 263A(e)(4).

[92] Sec. 168(k)(5). Treas. Reg. sec. 1.168(k)–2(f)(2) provides the procedures for making a section 168(k)(5) election.

[93] In the case of any tree or vine bearing fruits or nuts, the placed in service date generally does not occur until the tree or vine first reaches an income-producing stage. See Treas. Reg. sec. 1.46–3(d)(2). See also Rev. Rul. 80 25, 1980–1 C.B. 65; and Rev. Rul. 69–249, 1969–1 C.B. 31.

[94] Any amount deducted under this election is not subject to capitalization under section 263A. Sec. 263A(c)(7).

[95] Sec. 168(k)(6)(C).

[96] Sec. 168(k)(5)(B).

[97] Sec. 168(k)(5)(D). However, when placed in service, the remaining adjusted basis of the specified plant may be eligible for expensing under section 179.

[98] Sec. 168(k)(5)(C). See also Treas. Reg. sec. 1.168(k)–2(f)(5).

[99] Sec. 460.

[100] Sec. 460(c)(6). businesses. Hotels, restaurants, catering companies, equipment rental facilities, transportation vendors, and many others benefit from these productions.

REASONS FOR CHANGE

The Committee believes that providing full expensing for certain business assets will accelerate purchases of equipment and other assets, and promote capital investment, modernization, and growth. The Committee also believes that full expensing under section 168(k) for certain business assets is important for small businesses that qualify for section 179 expensing because a business may only expense costs under section 179 to the extent of its taxable income for the year. Thus, increased expensing under section 168(k) will provide additional flexibility and accelerated cost recovery for most businesses.

In addition, the Committee believes that providing full expensing for certain production costs of qualified film, television and live theatrical products (as defined in section 181) once placed in service will encourage investment in and financing of these types of domestic productions, and will help to prevent the production of American projects abroad. The Committee also believes that these productions create broader economic effects in cities and towns across the United States, with revenues and jobs generated in a variety of other local

The Committee further believes that allowing growers of certain plants bearing fruit or nuts to elect to claim full expensing in the year of planting or grafting, rather than having to wait until the year in which the plant produces a commercially viable or harvestable crop of fruits or nuts, encourages farmers to invest in long-term crop businesses.

EXPLANATION OF PROVISION

The provision extends the allowance of a 100-percent bonus depreciation deduction for property placed in service after December 31, 2022, and before January 1, 2026 (January 1, 2027, for longer production period property and certain aircraft), as well as for specified plants planted or grafted after December 31, 2022, and before January 1, 2026. The provision retains the present law 20-percent bonus depreciation deduction that is allowed for property placed in service after December 31, 2025, and before January 1, 2027 (after December 31, 2026, and before January 1, 2028, for longer production period property and certain aircraft), as well as for specified plants planted or grafted after December 31, 2025, and before January 1, 2027.

Under the provision, the bonus depreciation percentage rates are as follows.

Placed in Service Calendar Year [101]	Bonus Depreciation Applicable Percentage	
	Qualified Property in General/Specified Plants	Longer Production Period Property and Certain Aircraft
2023–2025	100 percent	100 percent
2026	20 percent	100 percent
2027	None	20 percent [102]
2028 and thereafter	None	None

EFFECTIVE DATE

The provision applies to property placed in service after December 31, 2022, and to specified plants planted or grafted after that date.

TITLE II—SUPPLY CHAIN SECURITY

1. TERMINATION OF HAZARDOUS SUBSTANCE SUPERFUND FINANCING RATE (SEC. 201 OF THE BILL AND SEC. 4611 OF THE CODE)

PRESENT

Law The Superfund program addresses cleanup activity of hazardous substances at contaminated sites. Before January 1, 1996, an excise tax on domestic crude oil and imported petroleum products (the "Hazardous Substance Superfund financing rate") was imposed at the rate of 9.7 cents per barrel. The Hazardous Substance Superfund financing rate ceased to apply after December 31, 1995.

As of January 1, 2023, the Inflation Reduction Act reinstated the Hazardous Substance Superfund financing rate at an increased rate of 16.4 cents per barrel.[103] The tax is annually indexed for inflation beginning with calendar year 2023. The Inflation Reduction Act also authorized borrowing for the Hazardous Substance Superfund Trust Fund through repayable advances from the General Fund until the end of 2032. The full amount borrowed plus interest is required to be repaid to the General Fund by December 31, 2032.

REASONS FOR CHANGE

The Committee notes, in general, that excise taxes on goods are ultimately passed on to the consumer. Therefore, a repeal of the Inflation Reduction Act's additional tax on oil, along with other factors, may reduce the cost of gasoline. The Committee believes that repealing the Superfund tax on petroleum will encourage more domestic energy production, reduce America's reliance on foreign sources of energy, and lower the price of gasoline and other petroleum product for consumers.

EXPLANATION OF PROVISION

The provision repeals the Hazardous Substance Superfund financing rate. The provision also terminates the authority of the Hazardous Substance Superfund Trust Fund to borrow from the General Fund. All outstanding repayable advances are to be repaid as soon as practicable after the date of enactment.

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[101] In the case of specified plants, this is the year of planting or grafting.

[102] Twenty percent applies to the adjusted basis attributable to manufacture, construction, or production before January 1, 2027, and the remaining adjusted basis does not qualify for bonus depreciation. Twenty percent applies to the entire adjusted basis of certain aircraft described in section 168(k)(2)(C) and placed in service in 2027.

[103] Sec. 4611(c)(2)(A). Section 4611(b) imposes a tax on certain uses or exports of domestic crude oil. This tax, in turn, partially funds the Oil Spill Liability Trust Fund and the Hazardous Substance Superfund Trust Fund at specified rates. The Fifth Circuit in *Trafigura Trading LLC v. United States*, 29 F.4th 286 (5th Cir. 2022), held that the tax on exports is unconstitutional. On March 6, 2023, the IRS announced it will no longer seek to collect the tax imposed by section 4611(b)(1)(A) on domestic crude oil that is exported. Internal Revenue Service, *Action on Decision: Trafigura Trading LLC v. United States*, 29 F.4th 286 (5th Cir. 2022), IRB 2023–10 (March 6, 2023) available at https://www.irs.gov/pub/irs-aod/aod-2023 01.pdf.

EFFECTIVE DATE

The provision terminating the financing rate is effective on January 1, 2023. The termination of borrowing authority is effective on the date of enactment.

2. Election To Determine Foreign Income Taxes Paid or Accrued to Certain Western Hemisphere Countries Without Regard to Certain Regulations (Sec. 202 of the Bill)

PRESENT LAW

In general

Subject to certain limitations, U.S. citizens, resident individuals, and domestic corporations are allowed a credit for foreign income taxes they pay. In addition, a domestic corporation is allowed a credit for foreign income taxes paid or accrued by a controlled foreign corporation ("CFC") with respect to income included by the domestic corporation as subpart F income or as global intangible low-taxed income ("GILTI"); the taxes paid by the CFC are deemed to have been paid by the domestic corporation for purposes of calculating the foreign tax credit.[104]

The foreign tax credit generally is limited to a taxpayer's U.S. tax liability on its foreign-source taxable income. The limit is intended to ensure that the credit mitigates double taxation of foreign-source income without offsetting U.S. tax on U.S.-source income.[105] The limit for each year is computed by multiplying a taxpayer's total pre-credit U.S. tax liability for the year by the ratio of the taxpayer's foreign-source taxable income for the year to the taxpayer's total taxable income for the year. If the total amount of foreign income taxes paid and deemed paid for the year exceeds the taxpayer's foreign tax credit limitation for the year, the taxpayer may (in certain cases) carry back the excess foreign taxes to the previous year or carry forward the excess to one of the 10 succeeding taxable years (and for purposes of applying the foreign tax credit limitation, the foreign income taxes generally are treated as paid in the year to which they are carried).[106] No carryback or carryover of excess foreign tax credits are allowed in the GILTI foreign tax credit limitation category.

Deemed-paid taxes

For any subpart F income included in the gross income of a domestic corporation, the corporation is deemed to have paid foreign taxes equal to the aggregate foreign income taxes paid or accrued with respect to such income by the CFC.

For any GILTI included in the gross income of a domestic corporation, the corporation is deemed to have paid foreign taxes equal to 80 percent of the corporation's inclusion percentage multiplied by the aggregate foreign income taxes paid or accrued with respect to tested income (but not tested loss) by each CFC with respect to which the domestic corporation is a U.S. shareholder.[107]

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[104] Secs. 901, 903, and 960; see also secs. 1291(g) and 1293(f) (providing, in the passive foreign investment company ("PFIC") context, coordination with foreign tax credit rules).

[105] Secs. 901 and 904.

[106] Sec. 904(c).

[107] Sec. 960(d)(1). The inclusion percentage means, with respect to any domestic corporation, the ratio of such corporation's GILTI divided by the aggregate amount of its pro rata share of

Allocation and apportionment of expenses

To determine its foreign tax credit limitation, a taxpayer must first determine its taxable income from foreign sources by allocating and apportioning deductions between U.S.-source gross income and foreign-source gross income in each limitation category. In general, deductions are allocated and apportioned to the gross income to which the deductions factually relate.[108] However, subject to certain exceptions, deductions for interest expense, stewardship expenses, and research and experimental expenditures are apportioned based on certain ratios.[109] For example, interest expense is apportioned based on the ratio of the corporation's foreign or domestic (as applicable) assets to its worldwide assets.[110]

Limitation categories ("baskets")

The foreign tax credit limitation is applied separately to GILTI, foreign branch income,[111] passive category income, and general category income.[112] For this purpose, GILTI and foreign branch income include only income that is not passive category income. Passive category income means any income which is of a kind which would be foreign personal holding company income (as defined in section 954(c)), such as portfolio interest and dividend income.[113] All other income is in the general category. Passive income is treated as general category income if earned by a qualifying financial services entity or if highly taxed (i.e., if the foreign tax rate is determined to exceed the highest tax rate specified in section 1 or 11, as applicable).[114] Dividends (and subpart F inclusions), interest, rents, and royalties received by a U.S. shareholder from a CFC are assigned to the passive category to the extent the payments or inclusions are allocable to passive category income of the CFC.[115] Dividends received by a 10-percent corporate shareholder of a foreign corporation that is not a CFC are also categorized on a look-through basis.[116]

Foreign income taxes are allocated and apportioned to a limitation category or "grouping" in a three-step process that: (1) assigns items of foreign gross income to groupings, (2) allocates and apportions deductions allowed under foreign law to foreign gross income in those groupings, and (3) allocates and apportions foreign income tax by reference to the foreign taxable income in those groupings.[117]

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the tested income (but not tested loss) of each CFC with respect to which it is a U.S. shareholder. Tested foreign income taxes do not include any foreign income tax paid or accrued by a CFC that is properly attributable to the CFC's tested loss (if any).

[108] Treas. Reg. sec. 1.861–8(b) and (c) and Temp. Treas. Reg. sec. 1.861–8T(c).

[109] Treas. Reg. sec. 1.861–8 through Temp. Treas. Reg. sec. 1.861–14T and Treas. Reg. sec. 1.861–17 set forth detailed rules relating to the allocation and apportionment of expenses.

[110] Sec. 864(e)(2).

[111] Foreign branch income is defined for this purpose as "the business profits of [the U.S. taxpayer] which are attributable to 1 or more qualified business units (as defined in section 989(a)) in 1 or more foreign countries." Sec. 904(d)(2)(J).

[112] Sec. 904(d); Treas. Reg. sec. 1.904–4(a). The foreign tax credit limitation is also applied separately to certain additional separate categories. See Treas. Reg. sec. 1.904–4(m).

[113] Sec. 904(d)(2)(A)(i) and (B).

[114] Sec. 904(d)(2)(B).

[115] Sec. 904(d)(3).

[116] Sec. 904(d)(4).

[117] Treas. Reg. sec. 1.861–20(c).

Special rules apply to the allocation of income and losses from foreign and U.S. sources within each category of income.[118] Foreign losses from one category first offset foreign-source income from other categories. Any remaining overall foreign loss offsets U.S.-source income. The same principle applies to losses from U.S. sources. In subsequent years, any losses deducted against another category or source of income are recaptured. That is, an equal amount of income from the same category or source that generated a loss in a prior year is recharacterized as income from the other category or source against which the loss was deducted. Foreign-source income in a particular category may be fully recharacterized as income in another category, whereas only up to 50 percent of income from one source in any subsequent year may be recharacterized as income from the other source.

A matching rule intended to prevent the separation of creditable foreign taxes from the associated foreign income may delay (in some cases, indefinitely) the creditability of some foreign tax. Under this rule, a foreign tax generally is not taken into account for U.S. tax purposes, and thus no foreign tax credit is available with respect to that foreign tax, until the taxable year in which the related income is taken into account for U.S. tax purposes.[119]

Recent Treasury regulations On January 4, 2022, the Treasury Department published in the Federal Register final regulations (the "FTC Final Regulations") relating to the foreign tax credit, including modifications to the requirements for determining whether a foreign levy qualifies as a foreign income tax for purposes of section 901 or a tax in lieu of an income tax for purposes of section 903.[120]

The FTC Final Regulations also include rules for allocating and apportioning foreign income taxes with respect to certain remittances [121] made by a taxable unit, which includes an entity that is disregarded for U.S. federal income tax purposes (such entity, a "disregarded entity payor"), to another taxable unit, which includes its regarded CFC owner.[122]

These rules assign the item of foreign gross income that arises from such remittance to a category out of which the disregarded entity payor made the remittance, which is considered to be made ratably out of the accumulated after-tax income of the payor.[123] Accumulated after-tax income is in turn deemed to have arisen in the categories in the proportions in which the tax book value of the assets of the disregarded entity payor are assigned for purposes of apportioning interest expense under the asset method in Treasury regulation section 1.861–9 in the taxable year in which the remittance is made (such assignment, "the tax book value method").[124] Foreign income taxes withheld on such remittance are allocated

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[118] Sec. 904(f) and (g).
[119] Sec. 909.
[120] T.D. 9959, 87 F.R. 276 (Jan. 4, 2022); see also Treas. Reg. secs. 1.901–2 and 1.903–1.
[121] Treas. Reg. sec. 1.861–20(d)(3)(v)(E)(8).
[122] Treas. Reg. sec. 1.861–20(d)(3)(v)(A). In the case of a taxpayer that is a foreign corporation, the term taxable unit is defined to mean a tested unit, as defined in Treas. Reg. sec. 1.951A–2(c)(7)(iv)(A) to include a CFC, an interest held directly or indirectly by a CFC in a pass-through entity that is a tax resident of a foreign country or that is not treated as fiscally transparent for foreign tax purposes, and a branch the activities of which are carried on directly or indirectly by a CFC.
[123] Treas. Reg. sec. 1.861–20(d)(3)(v)(C)(1)(i).
[124] *Ibid.*

and apportioned to a category based on the relative amounts of foreign taxable income in each category.[125]

REASONS FOR CHANGE

The Committee believes the FTC Final Regulations risk subjecting U.S. multinational corporations to double taxation and risk discouraging investment in crucial supply chain markets and were put forward on a timeline that did not allow taxpayers and foreign tax laws to adjust to the new standards. The Committee believes that the FTC Final Regulations are more burdensome in countries with which the U.S. does not have a tax treaty. The provision's elections out of the FTC Final Regulations would encourage multinationals to invest in Western Hemisphere countries, which is critical for global competitiveness, national security and trade.

EXPLANATION OF PROVISION

The provision allows taxpayers two separate elections with respect to the application of certain Treasury regulations relating to the determination of foreign income taxes paid or accrued to certain Western Hemisphere countries. The first election relates to the determination of whether any Western Hemisphere tax paid or accrued by a taxpayer is an income, war profits, or excess profits tax. The second election relates to the allocation and apportionment of foreign income taxes relating to disregarded payments from certain disregarded entities. Each election is described below.

ELECTION TO DEFER THE APPLICATION OF A SPECIFIED REGULATION

The first election under the provision provides that a taxpayer may make an election to determine whether any Western Hemisphere tax paid or accrued by the taxpayer is an income, war profits, or excess profits tax for purposes of any provision of the Code without regard to any specified regulation. The election shall be made at such time and in such manner as the Secretary may provide.

Western Hemisphere tax includes any tax which is paid or accrued for a taxable year which is in the applicable period to (A) any possession of the United States, or (B) any foreign country (other than Cuba and Venezuela) which is located in North, Central, or South America (including the West Indies).

SEPARATE ELECTION WITH RESPECT TO ALLOCATION AND APPORTIONMENT OF FOREIGN INCOME TAXES RELATING TO DISREGARDED PAYMENTS FROM CERTAIN DISREGARDED ENTITIES

The second, separate election under the provision provides that the owner of any specified disregarded entity may separately elect, for purposes of allocating and apportioning any foreign income taxes paid or accrued by reason of any remittance made by such entity to such owner during the applicable period, to assign any items of foreign gross income included by reason of the receipt of such remittance to a category based on current and accumulated earnings and profits of such entity (instead of being assigned on the basis of the tax book value method described in a specified reg-

[125] Treas. Reg. sec. 1.861 20(f).

ulation). The election shall be made at such time and in such manner as the Secretary may provide. Foreign income taxes are defined in section 986(a)(4) and determined after the application of the election to defer the application of a specified regulation (as discussed above).

The term "specified disregarded entity" means any entity (including any trade or business) if (i) such entity is disregarded as an entity separate from its owner for purposes of applying Chapter 1 of the Code (or is a trade or business); (ii) such entity is created or organized in (A) any possession of the United States, or (B) any foreign country identified above for purposes of determining a Western Hemisphere tax; (iii) at all times after December 31, 2019 (or, if later, the date on which such entity is created or organized), substantially all of the income of the entity is derived from trades or businesses conducted in the possession or country referred to in (A) or (B); and (iv) at all times after the date on which the entity is created or organized, the entity maintains separate books and records. The definition of specified disregarded entity is intended to include a branch as defined under 1.951A–2(c)(7)(iv)(A)(3) of the Treasury regulations.

TAXPAYER ELECTION, SPECIFIED REGULATION, AND APPLICABLE PERIOD

In the case of any tax paid or accrued by a CFC and deemed to have been paid by a U.S. shareholder under section 960, any election shall be made by such CFC and shall be binding on all U.S. shareholders of such CFC, and the applicable period shall be determined with respect to the taxable years of such CFC rather than the U.S. shareholder.

Specified regulation is defined to include Treasury regulations relating to "Guidance Related to the Foreign Tax Credit; Clarification of Foreign-Derived Intangible Income";[126] proposed Treasury regulations relating to "Guidance Related to the Foreign Tax Credit";[127] and any regulation or other guidance published after January 4, 2022 to the extent that the regulation or other guidance is substantially similar to, or predicated upon, any portion of the aforementioned regulations. In the case of any regulation or other guidance which is published after the date of the enactment of this Act and any portion of which is described immediately above, the Secretary shall identify such regulation or guidance (or portion thereof) as not applying with respect to taxpayers which have elected the application of either election described above, as the case may be. For purposes of the provision, Secretary means the Secretary of the Treasury or the Secretary's delegate.

Applicable period means (1) with respect to the first election described above, all taxable years beginning after December 31, 2021, and before January 1, 2027, and (2) with respect to the second election described above, all taxable years beginning after December 31, 2019, and before January 1, 2027. The determination of the taxable year for which any tax is paid or accrued, for purposes of determining whether a foreign tax is paid or accrued for a taxable year which is in the applicable period, shall be made without re-

[126] 87 Fed. Reg. 276; January 4, 2022.
[127] 87 Fed. Reg. 71271; November 22, 2022

gard to any taxable year with respect to which such tax is deemed to have been paid under section 904(c) or 960.[128]

EFFECTIVE DATE

The provision is effective on the date of enactment.

3. IMPOSITION OF TAX ON THE ACQUISITION OF UNITED STATES AGRICULTURAL INTERESTS BY DISQUALIFIED PERSONS (SEC. 203 OF THE BILL AND SEC. 897 AND NEW SEC. 5000E OF THE CODE)

PRESENT LAW

In general

A foreign person is subject to U.S. net-basis taxation on income effectively connected with the conduct of a trade or business within the United States ("ECI"). ECI generally is subject to tax on a net basis under the same U.S. tax rules and rates that apply to business income earned by U.S. persons.[129]

FIRPTA[130]

A foreign person's gain or loss from the disposition of a U.S. real property interest ("USRPI") is treated as ECI.[131] A foreign person subject to tax on such a disposition is required to file a U.S. tax return. In the case of a foreign corporation, the gain from the disposition of a USRPI may also be subject to the branch profits tax at a 30-percent rate (or lower treaty rate).

The payor of income that FIRPTA treats as ECI is generally required to withhold U.S. tax from the payment.[132] The foreign person may request a refund with its U.S. tax return, if appropriate, based on that person's overall tax liability for the taxable year.

USRPI generally means an interest in real property (including an interest in a mine, well, or other natural deposit) located in the United States or the Virgin Islands, and any interest (other than an interest solely as a creditor) in any domestic corporation unless the taxpayer establishes (at such time and in such manner as the Secretary by regulations prescribes) that the corporation was at no time a United States real property holding corporation ("USRPHC") during the shorter of (1) the period after June 18, 1980, during which the taxpayer held the interest, or (2) the five-year period ending on the date of the disposition of the interest (the "USRPHC test").[133] A USRPHC is any corporation if (A) the fair market value of its USRPIs equals or exceeds 50 percent of (B)

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[128] Several Code sections provide that a foreign tax is deemed to have been paid in a year other than the year in which the tax is paid or accrued. The domestic corporation is deemed to have paid the foreign income taxes of the CFC in the domestic corporation's tax year that includes the date on which the CFC's tax year ends. See sec. 905(a) (providing that the credit for foreign taxes may be taken in the year in which the foreign income taxes accrued, which is a year in which all events have occurred which establish the fact of liability, generally the end of the foreign tax year). See also sec. 960 and Treas. Reg. sec. 1.960–1(a). Foreign taxes that give rise to excess foreign tax credits are deemed to have been paid in the first preceding taxable year and in any of the first 10 succeeding taxable years, in that order. See sec. 904(c). For purposes of the applicable period, these deemed tax years are disregarded and the tax year of the foreign corporation is the year that is taken into account.

[129] Secs. 871(b) and 882.

[130] Sections 897 and 1445 were enacted in the Foreign Investment in Real Property Tax Act of 1980 ("FIRPTA"), part of Public Law 96–499.

[131] Sec. 897(a).

[132] Sec. 1445 and the regulations thereunder.

[133] Sec. 897(c)(1)(A).

the fair market value of (i) its USRPIs, (ii) its interests in real property located outside the United States, plus (iii) any other of its assets which are used or held for use in a trade or business.[134]

If any class of stock of a corporation is regularly traded on an established securities market, stock of that class is treated as a USRPI only in the case of a person who, at some time during the shorter of the periods described above, held more than five percent of that class of stock (the "publicly traded test").[135] For real estate investment trusts ("REITs"), the threshold is 10 percent instead of five percent.[136]

Penalties for failure to file certain returns

Standard penalties apply for failure to file certain information returns or payee statements.[137] The penalty is imposed with respect to each return or statement with respect to which a failure occurs and varies depending on whether the error is timely remedied or whether the failure was due to intentional disregard of rules and regulations. The penalties may be waived under certain circumstances, including a showing of reasonable cause. The penalty amounts are indexed for inflation.[138]

REASONS FOR CHANGE

Congress first acted to require disclosure of foreign ownership of U.S. farmland forty-five years ago in the Agricultural Foreign Investment Disclosure Act of 1978, but the means used by foreign buyers to obtain U.S. farmland have changed since then. Today it is far more common for foreign buyers to acquire land through a business entity that obscures the nationality of its owners, or for an interest in a U.S. business entity that owns U.S. farmland to be acquired by a foreign buyer indirectly. The acreage of U.S. farmland held by citizens countries that are engaged in conduct significantly adverse to the national security of the United States (Countries of Concern) has increased substantially in the past several years; a large portion of this increase is attributable to the purchase of U.S. food processing companies by Country of Concern buyers.

The Committee believes that the attestation and notification requirements developed to ensure compliance with the Foreign Investment in Real Property Act (FIRPTA) can be used to better detect potential acquisitions of U.S. farm and ranch land by buyers who are citizens of a Country of Concern or companies owned directly, or indirectly, by a citizen or company domiciled within a Country of Concern before such acquisitions take place. The Committee also believes that an excise tax should be imposed at a level to ensure a thorough search of the direct and indirect ownership

[134] Sec. 897(c)(2).
[135] Sec. 897(c)(3).
[136] Sec. 897(k)(1)(A).
[137] These penalties are generally assessable penalties for failure to comply, or to correct errors timely, such as failure to file correct information returns (sec. 6721), failure to furnish correct payee statements (sec. 6722), and failure to comply with other information reporting requirements (secs. 6723 and 6725). Whether a statement or return is within the scope of these penalties is determined by whether the statement or return is identified in section 6724.
[138] For information returns or statements due in calendar year 2023, the applicable rates are $50 per statement or return if no more than 30 days late; $110 if more than 30 days late but filed on or before August 1; $290 if filed after August 1 or not filed; and $580 if the failure to file is due to intentional disregard of rules or regulations.

records of each potential buyer and to strongly deter or effectively prevent acquisitions that are not in the interest of United States national security.

EXPLANATION OF PROVISION

In general

The provision creates a new tax under a new section 5000E.

If a disqualified person acquires a U.S. agricultural interest ("USAI"), the disqualified person must pay a tax equal to 60 percent of the amount paid for the USAI.

For this purpose, USAI has the meaning which would be given USRPI by section 897(c) if that provision applied generally with respect only to interests in agricultural land. In addition, the USRPHC test and the publicly traded test do not apply by looking backward; instead, each test is applied only at the time of acquisition. An interest in a domestic corporation is treated as a USAI only if the taxpayer fails to establish that the corporation was not a USRPHC at the time of acquisition. With respect to any class of stock of a corporation regularly traded on an establish securities market, the stock is treated as a USAI only if held by a person that holds more than five percent of the class of stock (10 percent in the case of a REIT) at the time of acquisition.

For this purpose, agricultural land means any land used for agricultural, forestry, or timber production purposes, and land used for livestock production purposes, as determined by the Secretary of Agriculture under regulations to be prescribed by the Secretary of Agriculture.

Disqualified persons

For purposes of the provision, disqualified person means: (A) any citizen of a country of concern (other than a citizen, or lawful permanent resident, of the United States and other than an individual domiciled in Taiwan possessing a valid identification card or number issued by the government of Taiwan); (B) any entity domiciled in a country of concern (other than an entity domiciled in Taiwan); (C) any country of concern and any political subdivision, agency, or instrumentality thereof; and (D) any entity (other than a specified publicly traded corporation or an entity controlled by specified publicly traded corporations) if persons described in subparagraph (A), (B), or (C) (in the aggregate) 10-percent control the entity.[139]

For this purpose, 10-percent control means control as defined under section 954(d)(3) (generally, among other rules, ownership of more than 50 percent of the stock of a corporation by vote or value), determined by treating the rules of section 958(a)(2) as applying to both foreign and domestic corporations, partnerships, trusts, and entities, and determined by substituting "10 percent" for "50 percent" in both places it appears in section 954(d)(3).

For this purpose, country of concern means any country the government of which is engaged in a long-term pattern or serious instances of conduct significantly adverse to the national security of the United States or the security and safety of U.S. persons, includ-

[139] For this purpose, control has the meaning given such term under section 954(d)(3), determined by treating the rules of section 958(a)(2) as applying to both foreign and domestic corporations, partnerships, trusts, and estates.

ing the People's Republic of China, the Russian Federation, Iran, North Korea, Cuba, and the regime of Nicolas Maduro in Venezuela.

Also for this purpose, specified publicly traded corporation means any corporation if (1) the stock of the corporation is regularly traded on an established securities market located in the United States, and (2) specified disqualified persons do not (in the aggregate) control the corporation. Specified disqualified persons are, with respect to any corporation, any person described in (A), (B), or (C) above and has 10-percent control of the corporation.

PRORATED TAX ON ACQUISITIONS BY CERTAIN ENTITIES

In the case of any entity (other than a specified publicly traded corporation or an entity controlled by specified publicly traded corporations) controlled more than 10 percent but less than 50 percent by disqualified persons described in (A), (B), or (C) above, the tax is prorated and only the applicable percentage of the 60-percent tax is due. Applicable percentage means the highest percentage which could be substituted for "50 percent" in both places it appears in section 954(d)(3) without causing disqualified persons described in (A), (B), or (C) above (in the aggregate) to control (determined by taking into account the substitution) the entity.

REPORTING

Under the provision, the required reporting person, with respect to any acquisition of any USAI by a presumptively disqualified person to which the proposed tax described above applies, must make a return at the time as the Secretary may provide setting forth (1) the name, address, and TIN of the presumptively disqualified person, (2) a description of the USAI (including the street address, if applicable), and (3) the amount paid for the USAI.

Every person required to make a return described above must furnish, at the time as the Secretary may provide, to each presumptively disqualified person whose name is required to be set forth in the return a written statement showing (1) the name and address of the information contact of the required reporting person, and (2) the return information described above which relates to the disqualified person.

For this purpose, required reporting person means, with respect to any acquisition of any USAI, (1) the person (including any attorney or title company) responsible for closing the transaction in which the USAI is acquired, or (2) if no one is responsible for closing the transaction (or in such other cases as the Secretary may provide), the transferor of the USAI.

Also for this purpose, presumptively disqualified person means any person unless the person furnishes to the required reporting person an affidavit by the person stating, under penalty of perjury, that the person is not a disqualified person (as defined above).

If the required reporting person, with respect to any acquisition of any USAI, has not (as of the time of the acquisition) been furnished the affidavit described above by the acquirer of the interest, the required reporting person must furnish to the acquirer (at such time) a written statement informing the acquirer of the required reporting person's obligation to make the return described above

with respect to the acquisition and including such other information as the Secretary may require.

The standard penalties apply for failure to file the return and the two written statements described above.

EFFECTIVE DATE

The provision applies to acquisitions after the date of enactment.

TITLE III—REPEAL OF SPECIAL INTEREST TAX PROVISIONS

1. REPEAL OF CLEAN ELECTRICITY PRODUCTION CREDIT (SEC. 301 OF THE BILL AND SEC. 45Y OF THE CODE)

PRESENT LAW

Renewable electricity production credit

In general

An income tax credit is available for electricity produced from qualified energy resources at qualified facilities (the "renewable electricity production credit") and sold to an unrelated person.[140] Qualified energy resources comprise wind, solar, closed-loop biomass, open-loop biomass, geothermal energy, municipal solid waste, qualified hydropower production, and marine and hydrokinetic renewable energy. Qualified facilities are, generally, facilities that generate electricity using qualified energy resources.

The base credit rate is 0.3 cents per kilowatt-hour of electricity produced. The credit rate is increased to 1.5 cents per kilowatt-hour for facilities with a maximum output of less than one megawatt and for larger facilities that meet certain wage and apprenticeship requirements. These credit rates are adjusted annually for inflation using 1992 as the base year and rounded to the nearest twentieth of a cent. In 2022, for facilities placed in service after December 31, 2021, the inflation adjustment factor is 1.7593, making the base credit rate 0.55 cents per kilowatt-hour and the enhanced credit rate 2.75 cents per kilowatt-hour.[141]

The credit expires for facilities the construction of which begins after December 31, 2024.

Election to claim energy credit in lieu of renewable electricity production credit

A taxpayer may make an irrevocable election to have certain property which is part of a qualified renewable electricity production facility treated as energy property eligible for an investment credit under section 48. The base credit rate is 6 percent. This rate is increased to 30 percent if the wage and apprenticeship requirements are met. For purposes of the investment credit, qualified facilities are facilities otherwise eligible for the renewable electricity production credit with respect to which no credit under section 45 has been allowed. A taxpayer electing to treat a facility as energy property may not claim the renewable electricity production credit. The eligible basis for the investment credit for taxpayers making

[140] Sec. 45. A number of changes to this Code section were made in August 2022 by Public Law 117–169 (the Inflation Reduction Act). This summary reflects those changes. Different rules continue to apply for certain older renewable electricity production facilities.

[141] Announcement 2022–23, 2022–48 I.R.B. 499, November 28, 2022.

this election is the basis of the depreciable (or amortizable) property that is part of a facility capable of generating electricity eligible for the renewable electricity production credit.

Prevailing wages

A taxpayer can meet the prevailing wage requirements if it ensures that prevailing wages are paid to any laborers and mechanics employed by the taxpayer or any contractor or subcontractor in the construction of a qualified facility, and for the repair of such facility during the 10-year credit-eligible production period. Prevailing wages are wages paid at rates not less than the prevailing wage rates for construction, alteration, or repair of a similar character in the locality as determined by the Secretary of Labor, in accordance with subchapter IV of chapter 31, of title 40, United States Code.

A taxpayer that fails to pay prevailing wages may bring a facility into compliance with the prevailing wage requirement, and thus remain eligible for the increased credit rate, by paying any affected workers the difference between the actual compensation paid to such workers and the wages required to be paid to those workers to meet prevailing wage requirements, plus any applicable interest. This amount is multiplied by three in the case of intentional disregard of the requirements. In addition, such taxpayer must pay a penalty to the IRS equal to $5,000 per affected worker. The penalty is increased to $10,000 per affected worker in the case of intentional disregard of the requirements. The deficiency procedures do not apply with respect to the assessment or collection of these penalties, and payment must be made within 180 days of the penalty's determination.

Apprenticeship requirements

To be eligible for the enhanced credit, a taxpayer must also ensure that certain qualified apprenticeship requirements are satisfied by ensuring that not less than 15 percent (10 percent for projects the construction of which begins before calendar year 2023 and 12.5 percent for projects beginning in calendar year 2023) of the total labor hours of construction, alteration, or repair work on any applicable project are performed by qualified apprentices (including such work performed by any contractor or subcontractor). Labor hours are the total number of hours devoted to construction, alteration, or repair work by employees of the contractor or subcontractor and excludes certain hours worked by managers, owners, or certain other bona fide executives, administrators, or professionals. A qualified apprentice is an employee of the contractor or subcontractor who is participating in a registered apprenticeship program. In addition, the ratio of apprentice-to-journeyworker must meet the standard set by the Department of Labor or applicable State apprenticeship agency.

Each taxpayer, contractor, or subcontractor who employs four or more individuals to perform construction, alteration, or repair work with respect to the construction of a qualified facility must employ one or more qualified apprentices to perform such work. Exceptions from these requirements are provided for taxpayers that make a good faith effort to comply with the requirements by requesting qualified apprentices from a registered apprenticeship program but where such request is denied or where the registered apprentice-

ship program fails to respond to a request within five business days.

A taxpayer that fails to satisfy the apprenticeship requirements can come into compliance and thus remain eligible for the increased rate by paying a penalty in the amount of $50 per missing apprenticeship labor hour. In the case of intentional disregard of the apprenticeship rules, this amount is increased to $500 per labor hour.

Domestic content bonus

The credit rate is increased by 10 percent (calculated without regard to the application of the energy communities bonus described below) with respect to facilities that meet certain domestic content requirements. To meet these requirements, a taxpayer must certify to the Secretary that any steel, iron, or manufactured product which is a component of a qualified facility (upon completion of construction) was produced in the United States. For purposes of steel and iron, this requirement shall be applied consistent with section 661.5 of title 49, Code of Federal Regulations. Manufactured products which are components of a qualified facilities are deemed to have been produced in the United States if not less than 40 percent (20 percent in the case of offshore wind facilities) of the total costs of all manufactured products of such facility are attributable to manufactured products (including components) which are mined, produced, or manufactured in the United States.

Reduction of elective payment if domestic content rules are not satisfied

Certain taxpayers may elect to have the credit paid directly to the extent there is insufficient income tax liability to absorb the credit.[142] The amount of this direct payment is reduced by 10 percent if the domestic content requirements described above for the domestic content bonus are not satisfied. This rule applies only to facilities having a maximum net output of at least one megawatt (as measured in alternating current) whose construction begins after December 31, 2023. An exception to the rule applies if the Secretary determines that the inclusion of steel, iron, or manufactured products which are produced in the United States increases the overall costs of construction of qualified facilities by more than 25 percent, or if the relevant steel, iron, or manufactured products are not produced in the United States in sufficient and reasonably available quantities or of a satisfactory quality. This waiver does not apply for purposes of determining the availability of the domestic content bonus described above.

Energy communities bonus

The credit rate is increased by 10 percent (calculated without regard to the domestic content bonus described above) with respect to facilities located in an "energy community." An energy community is defined as: (1) a brownfield site; (2) a metropolitan statistical area or non-metropolitan area with an unemployment rate at or above the national average for the previous year which has (or had after 2009) 0.17 percent or greater direct employment or 25

[142] Sec. 6417.

percent or greater local tax revenues related to the extraction, processing, transport, or storage of coal, oil, or natural gas; or (3) a census tract (or directly adjoining tract) in which, in the period since 1999, a coal mine has closed, or, in the period since 2009, a coal-fueled power plant has been retired.

Credit reduced for tax-exempt bonds

The credit is reduced for facilities financed with tax-exempt bonds. With respect to such bond-financed facilities, the credit is reduced by the lesser of 15 percent or a percentage calculated using as the numerator the amount of tax-exempt financing with respect to a facility (for the taxable year and all prior years) and as the denominator the aggregate amount of additions to the capital account for such facility (for the taxable year and all prior years). For purposes of this calculation, the numerator includes bond proceeds that are used for capital expenditures of qualified facilities but does not include proceeds that are used for other purposes, such as reserve funds.

Clean electricity production credit

In general

For facilities placed in service after December 31, 2024, the renewable electricity production credit described above is replaced by the clean electricity production credit.[143]

The clean electricity production credit is available with respect to electricity produced by the taxpayer at a qualified facility and sold to an unrelated person during the taxable year. The credit is also available where such electricity is consumed or stored by the taxpayer during the taxable year and there is no third-party sale, but only if the qualified facility is equipped with a metering device owned and operated by an unrelated person. The credit is available for electricity produced during the 10-year period beginning when the qualified facility is originally placed in service. Consumption, sales, or storage are only taken into account with respect to electricity produced within the United States or a possession of the United States.

Like the renewable electricity production credit, the clean electricity base credit rate is 0.3 cents per kilowatt-hour. This amount is increased to 1.5 cents per kilowatt-hour for facilities with a maximum output of less than one megawatt of electricity (as measured in alternating current) and for facilities that meet certain prevailing wage and apprenticeship requirements These amounts are adjusted for inflation in a manner similar to the inflation adjustments for the clean electricity production credit, with the credit adjusted using 1992 as the base year and increased in increments of one-twentieth of a cent for the base credit and one-tenth of a cent for the enhanced credit. The inflation adjustments must be published annually by the Secretary no later than April 1 of each calendar year.

A qualified facility is an electricity generation facility owned by the taxpayer that is placed in service after December 31, 2024, and for which the greenhouse gas emissions rate is not greater than zero. With respect to a facility placed in service before January 1,

[143] Sec. 45Y.

2025, a qualified facility includes new units and additions to capacity placed in service after December 31, 2024. A qualified facility does not include any facility for which a credit is allowed under sections 45, 45J, 45Q, 45U, 48, 48A, or 48E for the taxable year or any prior taxable year.

The greenhouse gas emissions rate means the amount of greenhouse gases emitted into the atmosphere by a facility in the production of electricity, expressed as grams of carbon dioxide equivalents per kilowatt-hour ("CO2e per KWh"; see definitions below for how this is measured). In the case of a facility which produces electricity through combustion or gasification, the greenhouse gas emissions rate for such facility shall be equal to the net rate of greenhouse gases emitted into the atmosphere by such facility (taking into account lifecycle greenhouse gas emissions, as described in section 211(o)(1)(H) of the Clean Air Act) in the production of electricity, expressed as grams of CO2e per KWh.

The Secretary must publish annually greenhouse gas emissions rates for types or categories of facilities, for use by taxpayers to determine whether a facility qualifies. In the case of any facility for which an emissions rate has not been established by the Secretary, a taxpayer which owns such a facility may file a petition with the Secretary for a determination of the emissions rate with respect to such facility.

The amount of greenhouse gases emitted into the atmosphere by a facility in the production of electricity does not include any qualified carbon dioxide that is captured by the taxpayer and sequestered in secure geological storage under rules similar to the rules applicable under section 45Q(f) or utilized by the taxpayer in a manner described in section 45Q(f)(5).[144]

The credit is part of the general business credit.

Phaseout of credit

The credit begins to phase out in the "applicable year," which is defined as the later of 2032 or the calendar year in which the Secretary determines that the annual greenhouse gas emissions from the production of electricity in the United States are equal to or less than 25 percent of the annual greenhouse gas emissions from the production of electricity in the United States for calendar year 2022. The credit is reduced by 25 percent for a facility the construction of which begins during the second calendar year following the applicable year, by 50 percent for a facility the construction of which begins during the third calendar year following the applicable year, and by 100 percent for a facility the construction of which begins during any subsequent calendar year.

Wage and apprenticeship requirements

The prevailing wage and apprenticeship requirements follow a structure similar to those required by the renewable electricity production credit. Generally, the prevailing wage rules require that the taxpayer ensure that any laborers and mechanics employed by the taxpayer or any contractor or subcontractor in the construction,

[144] Thus, in addition to zero emission facilities that generate electricity from solar, wind, geothermal, and nuclear energy, facilities that generate electricity using a combustion technology could also theoretically qualify if sufficient carbon oxides are captured and sequestered or utilized.

alteration, or repair of a project are paid wages at a rate not less than the prevailing wage rates for construction, alteration, or repair of a similar character in the locality where the project is located as determined by the Secretary of Labor, in accordance with subchapter IV of chapter 31, of title 40, United States Code. The apprenticeship requirements require that, generally, not less than a certain percentage of total labor hours of the construction, alteration, or repair work (including work performed by any contractor of subcontractor) on a project must be performed by qualified apprentices.[145]

Definitions and guidance

CO2e per KWh means, with respect to any greenhouse gas, the equivalent carbon dioxide (as determined based on global warming potential) per kilowatt hour of electricity produced. The term greenhouse gas has the same meaning given such term under section 211(o)(1)(G) of the Clean Air Act. Qualified carbon dioxide means carbon dioxide captured from an industrial source which (1) would otherwise be released into the atmosphere as industrial emission of greenhouse gas, (2) is measured at the source of capture and verified at the point of disposal or utilization, and (3) is captured and disposed or utilized within the United States or a possession of the United States.

The Secretary is required to issue implementation guidance no later than January 1, 2025, including guidance on the calculation of greenhouse gas emission rates for qualified facilities and the determination of clean electricity production credits.

Combined heat and power system property

For purposes of determining the clean electricity production credit, the kilowatt hours of electricity produced by a taxpayer at a qualified facility include any production in the form of useful thermal energy by any combined heat and power system property within such facility, and the amount of greenhouse gases emitted into the atmosphere by such facility in the production of such useful thermal energy is included for purposes of determining the greenhouse gas emissions rate for such facility. For this purpose, the term combined heat and power system property has the same meaning given such term for purposes of the section 48 energy credit, without regard to the sunset date, capacity limitations, or special biomass rule. The amount of kilowatt-hours of electricity produced in the form of useful thermal energy equals the total useful thermal energy produced by the combined heat and power system property within the qualified facility divided by the heat rate for such facility. For this purpose, the heat rate means the amount of energy used by the qualified facility to generate one kilowatt-hour of electricity, expressed as British thermal units per net kilowatt-hour generated.

[145] See the description of the renewable electricity production credit, above, for a more detailed explanation of these requirements, including procedural rules and penalties.

Energy communities bonus

As with the renewable electricity production credit, in the case of any qualified facility which is located in an energy community the credit amount is increased by 10 percent.

Credit reduced for tax-exempt bonds

The credit is reduced for tax-exempt bonds under rules similar to the rules of section 45(b)(3).

Domestic content bonus

The credit is increased by 10 percent (calculated without regard to the energy communities bonus) if certain domestic content requirements are met. The domestic content requirements are generally the same as those set forth in section 45(b)(9), except that the percentage of content that must be domestically produced with respect to manufactured products is different. For the clean electricity production credit, except with respect to offshore wind facilities, the percentage is 40 percent for a facility the construction of which begins before January 1, 2025, 45 percent for a facility the construction of which begins in calendar year 2025, 50 percent for a facility the construction of which begins in calendar year 2026, and 55 percent for a facility the construction of which begins after December 31, 2026. For offshore wind facilities, the percentage is 20 percent for a facility the construction of which begins before January 1, 2025, 27.5 percent for a facility the construction of which begins in calendar year 2025, 35 percent for a facility the construction of which begins in calendar year 2026, and 45 percent for a facility the construction of which begins in calendar year 2027, and 55 percent for a facility the construction of which begins after December 31, 2027.

Reduction of elective payment if domestic content rules are not satisfied

Like the renewable electricity production credit, certain taxpayers may elect to have the credit paid directly to the extent there is insufficient tax liability to absorb the credit. This direct payment is reduced if the domestic content requirements are not satisfied. This rule is similar to that provided in section 45(b)(10), except that the payment is reduced by 10 percent if construction of the facility begins in calendar year 2024, by 15 percent if construction the facility begins in calendar year 2025, and by 100 percent if the construction of the facility begins after December 31, 2025.

As with the rule set forth in section 45(b)(10), an exception applies if the Secretary determines that the inclusion of steel, iron, or manufactured products which are produced in the United States increases the overall costs of construction of qualified facilities by more than 25 percent, or if the relevant steel, iron, or manufactured products are not produced in the United States in sufficient and reasonably available quantities or of a satisfactory quality.

Special rules

In the case of a qualified facility in which more than one person has an ownership interest, except to the extent provided in regulations prescribed by the Secretary, production from the facility shall

be allocated among such persons in proportion to their respective ownership interests in the gross sales from such facility.

Persons shall be treated as related to each other if such persons would be treated as a single employer under the regulations prescribed under section 52(b). In the case of a corporation which is a member of an affiliated group of corporations filing a consolidated return, such corporation shall be treated as selling electricity to an unrelated person if such electricity is sold to such a person by another member of such group.

With respect to trusts and estates, under rules prescribed by the Secretary, rules similar to the rules of section 52(d) apply, which for any taxable year apportion the amount of a credit between an estate or trust and its beneficiaries on the basis of the income of the estate or trust allocable to each.

In the case of agricultural cooperatives, rules similar to the rules of section 45(e)(11) apply, which allocate credits to patrons of such cooperatives.

REASONS FOR CHANGE

The Committee believes that certain changes made by Public Law 117–169 (the Inflation Reduction Act) provide an unneeded tax benefit for certain favored corporations and high-income individuals. Given this and the size of the Federal debt, the Committee believes that certain future energy-related tax incentives are projected to be too costly and therefore should be repealed before they take effect.

EXPLANATION OF PROVISION

The provision repeals the clean electricity production credit (section 45Y). The renewable electricity production credit (section 45) remains unchanged under the provision.

EFFECTIVE DATE

The provision is effective as if included in section 13701 of Public Law 117–169 (the Inflation Reduction Act).

2. Repeal of Clean Electricity Investment Credit (Sec. 302 of the Bill and Sec. 48E of the Code)

PRESENT LAW

Energy credit

In general

An investment credit is available for qualified energy property originally placed in service by the taxpayer.[146] The base credit rate is 6 percent. This rate is increased to 30 percent if certain wage and apprenticeship requirements are met. The credit is generally available for property placed in service before January 1, 2025, except for geothermal heat pump property, which must be placed in service before January 1, 2035.[147]

[146] Sec. 48. A number of changes to this Code section were made in August 2022 by Public Law 117–169 (the Inflation Reduction Act). This summary reflects those changes.

[147] The credit rate for geothermal heat pump property is subject to certain phase-down rules in calendar years 2033 and 2034.

Qualified property

• The following types of property qualify for the energy credit.
  • Solar energy property
  • Fuel cell property
  • Geothermal power property
  • Fiber optic solar and electrochromic glass property
  • Small wind property
  • Waste energy recovery property
  • Energy storage technology property
  • Biogas property
  • Microgrid controller property
  • Combined heat and power system property, and
  • Geothermal heat pump property

A taxpayer may also make an irrevocable election to have certain property which is part of a qualified renewable electricity production facility treated as energy property eligible for an investment credit under section 48. For purposes of the investment credit, qualified facilities are facilities otherwise eligible for the renewable electricity production credit with respect to which no credit under section 45 has been allowed. A taxpayer electing to treat a facility as energy property may not claim the renewable electricity production credit.

Domestic content bonus

Where certain domestic content requirements are satisfied, the energy credit rate is increased by two percentage points (ten percentage points where the wage and apprenticeship requirements are met). The domestic content requirements are similar to those provided for in section 45(b)(9).

Reduction of elective payment if domestic content rules are not satisfied

Certain taxpayers may elect to have the credit paid directly to the extent there is insufficient income tax liability to absorb the credit.[148] The amount of this direct payment is reduced by 10 percent if the domestic content requirements described above for the domestic content bonus are not satisfied. This rule is similar to those provided in section 45(b)(10).

Credit reduced for tax-exempt bonds

The energy credit is reduced when the qualified property is financed using tax-exempt bonds. The rules governing this reduction are similar to those provided in section 45(b)(3).

Energy communities bonus

If energy property is placed in service in an "energy community," the energy credit rate increases by two percentage points (10 percentage points where the wage and apprenticeship requirements are met). The definition of energy community is the same as that set forth in section 45(b)(11).

[148] Sec. 6417.

Low-income communities bonus for certain wind and solar facilities

A credit rate bonus is available for certain qualified solar and wind facilities placed in service in connection with low-income communities. Qualified solar and wind facilities are facilities that generate electricity solely from solar or wind property,[149] have a maximum net output of less than five megawatts (as measured in alternating current), and are either (1) located in a low-income community (as defined in section 45D(e)) or on Indian land (as defined in section 2601(2) of the Energy Policy Act of 1992 (25 U.S.C. sec. 3501(2))) or (2) part of a qualified low-income residential building project or a qualified low-income economic benefit project. In the case of facilities located in a low-income community or on Indian land, the bonus credit rate is 10 percentage points. In the case of facilities that are part of a qualified low-income residential building project or a qualified low-income economic benefit project, the bonus credit rate is 20 percentage points.

A facility is treated as part of a qualified low-income residential building project if the facility is installed on a residential rental building[150] which participates in a covered housing program (as defined in section 41411(a) of the Violence Against Women Act of 1994 (34 U.S.C. 12491(a)(3)), a housing assistance program administered by the Department of Agriculture under title V of the Housing Act of 1949, a housing program administered by a tribally designated housing entity (as defined in section 4(22) of the Native American Housing Assistance and Self-Determination Act of 1996 (25 U.S.C. 4103(22))) or such other affordable housing programs as the Secretary may provide, and the financial benefits of the electricity produced by such facility are allocated equitably among the occupants of the dwelling units of such building.

A facility is treated as part of a qualified low-income economic benefit project if at least 50 percent of the financial benefits of the electricity produced by such facility are provided to households with income of (1) less than 200 percent of the poverty line (as defined in section 36B(d)(3)(A)) applicable to a family of the size involved or (2) less than 80 percent of area median gross income (as determined under section 142(d)(2)(B)). For purposes of determining whether a facility is part of a qualified low-income residential building project or a qualified low-income economic benefit project, electricity acquired at a below-market rate shall be taken into account as a financial benefit.

The bonus is subject to an annual capacity limitation of 1.8 gigawatts for each of calendar years 2023 and 2024 and zero thereafter. The Secretary is required to establish a program to allocate the capacity limitation to qualified solar and wind facilities. In establishing such program, the Secretary must provide procedures to allow for an efficient allocation process, including, when appropriate, consideration of multiple projects in a single application if such projects will be placed in service by a single taxpayer.

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[149] Eligible property includes energy storage technology installed in connection with such energy property. In the case of wind facilities, either the facilities must be small wind facilities under section 48(a)(3)(A)(vi) or an election for an investment credit in lieu of a production credit must have been made under section 48(a)(5).

[150] For this purpose, a facility installed next to a building or in a building complex's common area may be treated as installed on a residential building.

Facilities that have been awarded credits must be placed in service within four years of the date such facilities have been allocated electricity generation capacity by the Secretary. If a facility is not placed in service within this four-year period, the electric generation capacity allocated to such facility may be reallocated by the Secretary. In addition, if the annual capacity limitation for 2023 is not fully allocated, the unallocated portion is added to the amount available in calendar year 2024.

The bonus credit is subject to recapture if the property to which it relates ceases to meet the applicable requirements, notwithstanding the fact such property still qualifies for the energy credit under section 50(a).

Clean electricity investment credit

In general

The clean electricity investment credit is equal to the applicable percentage of qualified investment for any taxable year with respect to any qualified facility and any energy storage technology. The base rate is 6 percent. This base rate is increased to 30 percent (the "alternative rate") for facilities with a maximum output of less than one megawatt of electricity (as measured in alternating current) and for facilities that meet certain prevailing wage and apprenticeship requirements (or for which construction began more than 60 days before the Secretary publishes guidance with respect to such prevailing wage and apprenticeship requirements).

The clean electricity investment credit is allowable for property placed in service after December 31, 2024. The credit is part of the general business credit.

Qualified investment with respect to a qualified facility

For purposes of determining the amount of the credit, a qualified investment with respect to any qualified facility for the taxable year is the sum of the basis of any qualified property placed in service by the taxpayer during such taxable year which is part of a qualified facility, plus the amount of any expenditures that are paid or incurred by the taxpayer for qualified interconnection property (as defined in section 48(a)(8)).

Qualified property is tangible personal property or other tangible property (not including a building or its structural components), but only if such property is used as an integral part of a qualified facility. In addition, such property must consist of depreciable or amortizable property that is either built by the taxpayer or the original use of which begins with the taxpayer.

A qualified facility is an electricity generation facility owned by the taxpayer that is placed in service after December 31, 2024, and for which the greenhouse gas emissions rate is not greater than zero. With respect to a facility placed in service before January 1, 2025, a qualified facility includes new units and additions to capacity placed in service after December 31, 2024. The greenhouse gas emissions rate is determined using rules similar to the rules set forth in section 45Y(b)(2) and the terms "greenhouse gas," "greenhouse gas emissions rate," and "CO2e per KWh" have the same meaning given such terms under section 45Y.

A qualified facility does not include any facility for which a credit is allowed under sections 45, 45J, 45Q, 45U, 45Y, 48, or 48A for the taxable year or any prior taxable year. The qualified investment with respect to any qualified facility for any taxable year does not include that portion of the basis of any property which is attributable to qualified rehabilitation expenditures (as defined in section 47(c)(2)).

Qualified investment with respect to energy storage technology

The qualified investment with respect to energy storage technology for any taxable year is the basis of any energy storage technology placed in service by the taxpayer during such taxable year. The term "energy storage technology" has the meaning given such term in section 48(c)(6) (except that subparagraph (D) of such section shall not apply).

Wage and apprenticeship requirements

The prevailing wage and apprenticeship requirements follow the structure established in sections 48(a)(10) and 45(b)(8), respectively. Generally, the prevailing wage rules require that the taxpayer ensure that any laborers and mechanics employed by the taxpayer or any contractor or subcontractor in the construction, alteration, or repair of a project are paid wages at a rate not less than the prevailing wage rates for construction, alteration, or repair of a similar character in the locality where the project is located as determined by the Secretary of Labor, in accordance with subchapter IV of chapter 31, of title 40, United States Code. The apprenticeship requirements require that, generally, not less than a certain percentage of total labor hours of the construction, alteration, or repair work (including work performed by any contractor of subcontractor) on a project must be performed by qualified apprentices, similar to the rules of section 45(b)(8).

Certain progress expenditure rules made applicable

Rules similar to the rules of subsections (c)(4) and (d) of section 46 (as in effect on the day before the date of the enactment of the Revenue Reconciliation Act of 1990) apply.

Credit reduced for tax-exempt bonds

The credit is reduced for tax-exempt bonds under rules similar to the rules of section 45(b)(3).

Phaseout of credit

The credit phases out under rules similar to the rules set forth in section 45Y(d)(3).

Recapture of the credit

If the Secretary determines that the greenhouse gas emissions rate for a qualified facility is greater than 10 grams of CO2e per KWh, any property for which a credit was allowed under this section with respect to such facility ceases to be investment credit property in the taxable year in which the determination is made and such credit is subject to recapture under the rules of section 50.

Energy communities bonus

If energy property is placed in service in an "energy community," the base rate is increased by two percentage points and the alternative rate by ten percentage points. The definition of energy community is the same as that set forth in section 45(b)(11)(B).

Domestic content bonus

An additional credit amount is available for property that meets certain domestic content requirements similar to those used in section 48 but applying the adjusted percentage set forth in section 45Y(g)(11)(C).[151]

Reduction of elective payment if domestic content rules are not satisfied

In the case of a taxpayer making an election under section 6417 with respect to a credit under this section, rules similar to the rules of section 45Y(g)(12) apply.

Special rules for certain facilities placed in service in connection with low-income communities

A bonus credit amount applies for certain qualified facilities placed in service in connection with low-income communities. The bonus credit amount is an allocated credit and follows rules similar to the rules set forth in section 48(e). Under the clean electricity investment credit, the annual capacity limitation is 1.8 gigawatts of direct current capacity for each calendar year beginning on January 1, 2025, and ending on December 31 of the applicable year (as defined by section 45Y(d)(3)), and zero thereafter. Certain carryover rules apply with respect to unused limitation amounts.

REASONS FOR CHANGE

The Committee believes that certain changes made by Public Law 117–169 (the Inflation Reduction Act) provide an unneeded tax benefit for certain favored corporations and high-income individuals. Given this and the size of the Federal debt, the Committee believes that certain future energy-related tax incentives are projected to be too costly and therefore should be repealed before they take effect.

EXPLANATION OF PROVISION

The provision repeals the clean electricity investment credit (section 48E). The energy credit (section 48) remains unchanged under the provision.

EFFECTIVE DATE

The provision is effective as if included in section 13702 of Public Law 117–169 (the Inflation Reduction Act).

[151] A technical correction may be necessary to reflect this intent.

3. MODIFICATION OF CLEAN VEHICLE CREDIT (SEC. 303 OF THE BILL AND SEC. 30D OF THE CODE)

PRESENT LAW

In general

A credit is available for each new clean vehicle placed in service (the "CV credit").[152] A new clean vehicle is a motor vehicle the original use of which commences with the taxpayer, is acquired for use or lease and not for resale, is made by a qualified manufacturer,[153] has a gross vehicle weight rating of less than 14,000 pounds, is treated as a motor vehicle for purposes of title II of the Clean Air Act, and is propelled to a significant extent by an electric motor drawing electricity from a battery (1) with at least seven kilowatt-hours of capacity and (2) which is capable of being recharged from an external source of electricity.[154] The person who sells the vehicle must provide a report to the taxpayer and the Secretary that includes the name and taxpayer identification number of the taxpayer, the vehicle identification number of the vehicle, the battery capacity of the vehicle, verification that original use of the vehicle commences with the taxpayer, and the maximum credit allowable to the taxpayer with respect to the vehicle.[155] A new clean vehicle must have final assembly occur within North America.[156]

New qualified fuel cell motor vehicles [157] which have final assembly within North America and for which sellers provide a report, as described above, are new clean vehicles for purposes of the credit.[158]

Vehicles with any applicable critical minerals in the battery that are extracted, processed, or recycled by a foreign entity of concern that are placed in service after December 31, 2024, or vehicles with any components contained in the battery of the vehicle that are manufactured or assembled by a foreign entity of concern that are placed in service after December 31, 2023, do not qualify for the credit.[159]

CV credit amount

A new clean vehicle is eligible for two $3,750 amounts for satisfying certain criteria. One $3,750 amount is allowed if certain critical minerals requirements for the battery are met.[160] Another $3,750 amount is allowed if certain battery components requirements are met.[161] Therefore, a new clean vehicle is eligible for a maximum credit of $7,500 if both critical minerals and battery components requirements are met.

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[152] Sec. 30D.

[153] A qualified manufacturer must be a manufacturer as defined in regulations prescribed by the Administrator of the Environmental Protection Agency for purposes of the administration of title II of the Clean Air Act (42 U.S.C. 7521 *et seq.*) and must provide periodic written reports to the Secretary which include vehicle identification numbers. Sec. 30D(d)(3).

[154] Sec. 30D(d)(1).

[155] Sec. 30D(d)(1)(H).

[156] Sec. 30D(d)(1)(G).

[157] As defined in section 30B(b)(3).

[158] Sec. 30D(d)(6).

[159] Sec. 30(d)(7).

[160] Sec. 30D(b)(2).

[161] Sec. 30D(b)(3).

Critical minerals requirement

To satisfy the critical minerals requirement, a new clean vehicle's battery (from which the electric motor draws electricity) must have a percentage of the value of applicable critical minerals[162] that were (1) extracted or processed in the United States or a country that has a free trade agreement with the United States or (2) recycled in North America equal to or greater than an applicable percentage.[163]

For this purpose, the applicable percentage is 40 percent for a vehicle placed in service before January 1, 2024. The applicable percentage is 50 percent for a vehicle placed in service during calendar year 2024, 60 percent for 2025, 70 percent for 2026, and 80 percent after 2026.[164]

Battery components requirement

To satisfy the battery components requirement, a new clean vehicle's battery (from which the electric motor draws electricity) must have a percentage of the value of the components that were manufactured or assembled in North America equal to or greater than an applicable percentage.[165]

For this purpose, the applicable percentage is 50 percent for a vehicle placed in service before January 1, 2024. The applicable percentage is 60 percent for a vehicle placed in service during calendar year 2024 or 2025, 70 percent for 2026, 80 percent for 2027, 90 percent for 2028, and 100 percent after 2028.[166]

Regulations and guidance

The Secretary is directed to issue regulations or other guidance to carry out the critical mineral and battery component requirements and must issue proposed guidance no later than December 31, 2022.[167]

Vehicle price and AGI limitations

The manufacturer's suggested retail price ("MSRP") of a new clean vehicle purchased by the taxpayer may not exceed certain limitations. That is, the credit amount is $0 if the MSRP for the vehicle exceeds the applicable limitation. This limitation is $80,000 in the case of a van, sport utility vehicle, or pickup truck, and $55,000 in the case of any other vehicle. The Secretary is directed to release regulations or guidance to characterize vehicles into the appropriate category by applying rules similar to those employed by the Environmental Protection Agency ("EPA") and the Department of Energy to determine vehicle class and size.[168]

Additionally, no credit is allowed if the taxpayer's income exceeds $300,000 in the case of a joint return or surviving spouse, $225,000 in the case of a head of household, or $150,000 in the case of any other taxpayer.[169] For purposes of this limitation, the taxpayer's

[162] Critical minerals as defined in sec. 45X(c)(6).
[163] Sec. 30D(e)(1)(A).
[164] Sec. 30D(e)(1)(B).
[165] Sec. 30D(e)(2)(A).
[166] Sec. 30D(e)(2)(B).
[167] Sec. 30D(e)(3).
[168] Sec. 30D(f)(11).
[169] Sec. 30D(f)(10).

income is the lesser of modified AGI of the current taxable year or modified AGI of the preceding taxable year.[170]

Transfer of credit

For vehicles placed in service after December 31, 2023, a taxpayer who has purchased or leased a vehicle may elect to transfer the credit to an eligible entity, subject to regulations or guidance the Secretary deems necessary. The eligible entity is then treated as the taxpayer with respect to the credit.[171] The Secretary is directed to establish a program to provide advance payments of these credit amounts to eligible entities.[172] An election to transfer the credit must be made on or before the date of vehicle purchase.[173]

An eligible entity is a dealer[174] which meets the following requirements: First, the dealer must be registered with the Secretary. Second, prior to the election of transfer, the dealer must disclose information to the buyer on the MSRP of the vehicle, value of the credit and other incentives available, and the amount provided by the dealer as a condition of an election to transfer. Third, the dealer must pay the taxpayer for the amount of the credit allowable. Finally, the dealer must ensure that the availability or use of any other available manufacturer or dealer incentive does not limit the ability of the taxpayer to make an election and that the election will not limit the value or use of any such incentive.[175] The Secretary may revoke the registration of dealers that fail to comply with these requirements.[176]

The payment made by dealers to buyers in connection with a credit transfer election is not includable in the gross income of the taxpayer and is not deductible to the dealer.[177]

The tax liability of a taxpayer that does not meet the AGI requirements for the credit, that elects to transfer a credit, and that receives a payment in connection with such credit transfer, is increased by the amount of such payment.[178]

Other rules

A vehicle that is predominantly used outside the United States does not qualify for the credit.[179] A vehicle must meet certain emissions and safety standards in order to qualify for the credit.[180]

The basis of any qualified vehicle is reduced by the amount of the credit.[181] The portion of the credit attributable to vehicles of a character subject to an allowance for depreciation is treated as part of the general business credit; the nonbusiness portion of the credit is allowable to the extent of the excess of the regular tax and the

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[170] Modified AGI is AGI increased by any amount excluded from gross income under section 911, 931, or 933. Sec. 30D(f)(10)(C).
[171] Sec. 30D(g)(1).
[172] Sec. 30D(g)(7).
[173] Sec. 30D(g)(3).
[174] A dealer is a person licensed by a State, territory of the United States, Indian tribal government, or Alaska Native Corporation to engage in the sale of vehicles. Sec. 30D(g)(8).
[175] Sec. 30D(g)(2).
[176] Sec. 30D(g)(4).
[177] Sec. 30D(g)(5).
[178] Sec. 30D(g)(10).
[179] Sec. 30D(f)(4).
[180] Sec. 30D(f)(7).
[181] Sec. 30D(f)(1).

alternative minimum tax (reduced by certain other credits) for the taxable year.[182]

A taxpayer must include the vehicle identification number of the vehicle on a tax return to claim the credit.[183]

Expiration

No credit is allowed for any vehicle placed in service after December 31, 2032.[184]

REASONS FOR CHANGE

The Committee believes the modification to the section 30D credit enacted by Public Law 117–169 (the Inflation Reduction Act) provides an unneeded tax benefit for certain favored corporations and high-income individuals. The Committee wishes to reverse many of these changes but still provide limitations to ensure high-income taxpayers cannot use the credit to buy expensive luxury electric vehicles. The Committee also wishes to ensure that batteries for credit-eligible vehicles will be comprised of materials sourced in the United States. The Committee believes that the reinstatement of the manufacturer limitation will prevent companies with established electric vehicle production from receiving tax subsidy windfalls. Finally, the Committee believes that the Federal debt is too large and the pool of potential beneficiaries insufficient to justify the revenue loss from this subsidy.

EXPLANATION OF PROVISION

In general

The provision generally reverts the clean vehicle credit to how it appeared immediately prior to the enactment of Public Law 117–169 (the Inflation Reduction Act), providing a credit for "new qualified plug-in electric drive motor vehicles." The provision retains limitations based on modified AGI and MSRP and continues to impose modified critical mineral and battery component requirements. The provision does not apply with respect to any vehicle which is acquired by the taxpayer pursuant to a written binding contract that was in effect on June 9, 2023, and which is placed in service before June 9, 2024.

The provision allows a credit for each new qualified plug-in electric drive motor vehicle placed in service (the "EV credit"). A"new qualified plug-in electric drive motor vehicle" is a motor vehicle the original use of which commences with the taxpayer, is acquired for use or lease and not for resale, is made by a manufacturer,[185] has a gross vehicle weight rating of less than 14,000 pounds, is treated as a motor vehicle for purposes of title II of the Clean Air Act, and is propelled to a significant extent by an electric motor drawing electricity from a battery (1) with at least four kilowatt-hours of ca-

[182] Sec. 30D(c).
[183] Sec. 30D(f)(9).
[184] Sec. 30D(h).
[185] Manufacturer is defined in regulations prescribed by the Administrator of the Environmental Protection Agency for purposes of the administration of title II of the Clean Air Act (42 U.S.C. 7521 et seq.). Sec. 30D(d)(3).

pacity and (2) which is capable of being recharged from an external source of electricity.[186]

EV credit amount

The base amount of the EV credit is $2,500 and the credit is increased by $417 for each kilowatt-hour of battery capacity in excess of four kilowatt-hours. The maximum credit for a qualified vehicle is $7,500.[187]

Vehicle price and AGI limitations

The requirements for vehicle price and taxpayer AGI under present law, described above, are not modified by the provision. No credit is allowed for vehicles and taxpayers that do not meet these limitations.

Critical minerals and battery component requirement

Under the provision no credit is allowed for a new clean vehicle unless such vehicle satisfies three sourcing requirements.

First, 80 percent or more of the value of applicable critical minerals[188] that are contained in a new clean vehicle's battery (from which the electric motor draws electricity) must come from applicable critical minerals that were (1) extracted or processed in the United States or a country that has a free trade agreement with the United States or (2) recycled in North America.[189]

Second, all the components contained in a new clean vehicle's battery (from which the electric motor draws electricity) must have been manufactured or assembled in North America.[190]

Finally, vehicles placed in service after December 31, 2024, may not have any applicable critical minerals in the battery that were extracted, processed, or recycled by a foreign entity of concern.[191]

Manufacturer limitation and phaseout

For each manufacturer, once a total of 200,000 new plug-in electric drive motor vehicles have been manufactured and sold by such manufacturer for use in the United States after December 31, 2009, the credit phases out over four calendar quarters.[192] The phaseout period begins in the second calendar quarter following the quarter during which the vehicle cap has been reached. Taxpayers may claim one-half of the otherwise allowable credit during the first two calendar quarters of the phaseout period and twenty-five percent of the otherwise allowable credit during the next two quarters. After this, no credit is available.[193]

Other rules

In general, the credit is available to the vehicle owner, including the lessor of a vehicle subject to lease. If the qualified vehicle is used by certain tax-exempt organizations, governments, or foreign persons and is not subject to a lease, the seller of the vehicle may

[186] Sec. 30D(d)(1).
[187] Sec. 30D(b).
[188] Critical minerals as defined in sec. 45X(c)(6).
[189] Sec. 30D(e)(1).
[190] Sec. 30D(e)(2).
[191] Sec. 30D(e)(3).
[192] This includes vehicles sold during the period in which the changes made to section 30D by Public Law 117–169 (the Inflation Reduction Act) are in effect.
[193] Sec. 30D(g).

claim the credit so long as the seller clearly discloses to the user in a document the amount that is allowable as a credit.[194] Generally, the other rules described in the present law description above continue to apply.

EFFECTIVE DATE

The provision is generally effective for vehicles placed in service after June 9, 2023. The final assembly changes and per manufacturer limitations are effective for vehicles sold after June 9, 2023. However, the per manufacturer phase out period is determined taking into account all vehicles described in section 30D(g), as amended by the provision.

4. Repeal of Credit for Previously-Owned Clean Vehicles (Sec. 304 of the Bill and Sec. 25E of the Code)

PRESENT LAW

In general

A credit is available for previously-owned clean vehicles (the "previously-owned CV credit") placed in service by a qualified buyer. A "previously-owned clean vehicle" is a motor vehicle with a model year at least two years earlier than the calendar year in which the taxpayer acquires the vehicle, the original use of which commences with a person other than the taxpayer, which has a gross vehicle weight rating of less than 14,000 pounds,[195] which is acquired by the taxpayer in a qualified sale, and that meets certain emissions standards.[196]

A qualified sale is a sale by a dealer[197] that is the first transfer since the date of enactment of this section to a qualified buyer other than the person with whom the original use of such vehicle commenced.[198] A qualified sale does not include transfers to qualified buyers made after the vehicle has been used and owned by a person other than the person with whom the original use of such vehicle commenced, even if such use and ownership was not by a qualified buyer.[199]

Additionally, a previously-owned clean vehicle must be an electric vehicle or a fuel-cell vehicle that satisfies certain criteria. Specifically, a previously-owned clean vehicle must either (1) be propelled to a significant extent by an electric motor drawing electricity from a battery (a) with at least seven kilowatt-hours of capacity and (b) which is capable of being recharged from an external source of electricity, made by a qualified manufacturer, and with respect to which the person who sells the vehicle provides a report to the taxpayer and Secretary that includes the name and taxpayer identification number of the taxpayer, the vehicle identification number of the vehicle, the battery capacity of the vehicle, and the maximum credit allowable to the taxpayer with respect to the vehi-

[194] Sec. 30D(f)(3).
[195] Sec. 25E(c)(1).
[196] Sec. 25E(e).
[197] A dealer is a person licensed by a State, territory of the United States, Indian tribal government, or Alaska Native Corporation to engage in the sale of vehicles. Sec. 30D(g)(8).
[198] Sec. 25E(c)(2).
[199] A technical correction may be needed to reflect this intent.

cle,[200] or (2) be propelled by power derived from one or more cells which convert chemical energy directly into electricity by combining oxygen with hydrogen fuel stored on board the vehicle and have received certain emissions-standard certification.[201]

A taxpayer must include the vehicle identification number of the vehicle on a tax return to claim the credit.[202]

A qualified buyer is an individual who purchases a vehicle for use and not resale, who cannot be claimed as a dependent, and during the three-year period prior to such purchase, has not made any purchases for which a previously-owned CV credit was claimed.

Previously-owned CV credit amount

The amount of the credit is the lesser of (1) $4,000 or (2) 30 percent of the sale price of the vehicle.[203]

The sale price of a previously-owned clean vehicle purchased by the taxpayer may not exceed $25,000.[204] That is, the credit amount is $0 if the sale price for the vehicle exceeds this amount.

Additionally, no credit is allowed if the taxpayer's income exceeds $150,000 in the case of a joint return or surviving spouse, $112,500 in the case of a head of household, or $75,000 in the case of any other taxpayer.[205] For purposes of this limitation, the taxpayer's income is the lesser of modified AGI of the current taxable year or modified AGI of the preceding taxable [206] year.

Other rules

In general, the credit is available to the vehicle owner, including the lessor of a vehicle subject to lease. A vehicle must be used predominantly in the United States to qualify for the credit and the basis of any qualified vehicle is reduced by the amount of the credit.[207]

Transfer of credit

For vehicles acquired after December 31, 2023, a taxpayer may elect to transfer the credit to an eligible entity under rules similar to those for the transfer of the clean vehicle credit.[208] These rules are explained in the description of section 303 of the bill, modification of clean vehicle credit.

Expiration

No credit is allowed for any vehicle acquired after December 31, 2032.[209]

REASONS FOR CHANGE

The Committee believes that the previously-owned CV credit provides an unneeded tax benefit for certain favored corporations and

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[200] Sec. 25E(c)(1)(D)(i).
[201] Sec. 25E(c)(1)(D)(ii). Fuel cell vehicles must satisfy the requirements of section 30B(b)(3)(A) and (B).
[202] Sec. 25E(d).
[203] Sec. 25E(a).
[204] Sec. 25E(c)(2)(B).
[205] Sec. 25E(b).
[206] Modified AGI is AGI increased by any amount excluded from gross income under section 911, 931, or 933. Sec. 25E(b)(3).
[207] Secs. 25E(e) and 30D(f).
[208] Sec. 25E(f).
[209] Sec. 25E(g).

individuals. The Committee believes that the Federal debt is too large and the pool of potential beneficiaries insufficient to justify the revenue loss from this subsidy.

EXPLANATION OF PROVISION

The provision repeals the previously-owned CV credit. The provision does not apply with respect to any vehicle which is acquired by the taxpayer pursuant to a written binding contract that was in effect on June 9, 2023, and which is placed in service before June 9, 2024.

EFFECTIVE DATE

The provision is effective for vehicles acquired after June 9, 2023.

5. Repeal of Credit for Qualified Commercial Clean Vehicles (Sec. 305 of the Bill and Sec. 45W of the Code)

PRESENT LAW

Present law allows for a credit for qualified commercial clean vehicles originally[210] placed in service by a taxpayer. A qualified commercial clean vehicle is a vehicle made by a qualified manufacturer,[211] acquired for use or lease by the taxpayer and not for resale, that either (1) is manufactured primarily for use on public streets, roads, and highways,[212] or (2) is mobile machinery,[213] and of a character subject to the allowance of depreciation.[214]

Additionally, a qualified commercial clean vehicle must be an electric vehicle or a fuel-cell vehicle that satisfies certain criteria. Specifically, a qualified commercial clean vehicle must either (1) be propelled to a significant extent by an electric motor drawing electricity from a battery (a) with at least 15 kilowatt-hours of capacity (or seven kilowatt-hours for a vehicle with a gross vehicle weight rating of less than 14,000 pounds) and (b) which is capable of being recharged from an external source of electricity[215] or (2) be propelled by power derived from one or more cells which convert chemical energy directly into electricity by combining oxygen with hydrogen fuel stored on board the vehicle and have received certain emissions-standard certification.[216]

A taxpayer must include the vehicle identification number of the vehicle on a tax return to claim the credit.[217] Only one credit is allowed per vehicle, determined by such vehicle identification number.[218]

A qualified commercial clean vehicle must also meet certain emissions standards to be eligible for a credit.[219]

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[210] A technical correction may be necessary to reflect this intent.
[211] Qualified manufacturer has the same meaning as in section 30D. For more detail see the description of section 303 of the bill, modification of clean vehicle credit.
[212] Vehicles operated exclusively on a rail or rails are excluded.
[213] This is mobile machinery as defined in section 4053(8) and includes vehicles not designed to perform a function of transporting a load over public highways.
[214] Sec. 45W(c).
[215] Sec. 45W(c)(3)(A).
[216] Sec. 45W(c)(3)(B). Fuel cell vehicles must satisfy the requirements of sections 30B(b)(3)(A) and (B).
[217] Sec. 45W(e).
[218] Secs. 45W(d)(1) and 30D(f)(8).
[219] Sec. 45W(d)(1).

Qualified commercial clean vehicle credit amount

A qualified commercial clean vehicle qualifies for a credit equal to the lesser of (1) 15 percent of the basis of such vehicle (30 percent if the vehicle is not powered by a gasoline or diesel internal combustion engine) or (2) the incremental cost of the vehicle.[220] The credit is limited to $40,000 ($7,500 for a vehicle with a gross vehicle weight rating of less than 14,000 pounds).[221]

The incremental cost of the vehicle is the amount by which the purchase price of the vehicle exceeds the purchase price of a comparable vehicle (one powered solely by gasoline or a diesel internal combustion engine which is comparable in size and use).[222]

Other rules

The basis of any qualified vehicle is reduced by the amount of the credit.[223] No credit is allowed for any vehicle for which a new clean vehicle credit is allowed.[224]

The requirement that a qualified clean commercial vehicle is of a character subject to the allowance of depreciation does not apply to vehicles that are not subject to a lease and which are placed in service by certain tax-exempt entities.[225]

A vehicle must be used predominantly in the United States to qualify for the credit.[226]

Regulations and guidance

The Secretary is directed to issue regulations or other guidance relating to determining the incremental cost of any qualified commercial clean vehicle in addition to those necessary to carry out this provision.[227]

Expiration

No credit is allowed for any vehicle placed in service after December 31, 2032.[228]

REASONS FOR CHANGE

The Committee believes that the commercial clean vehicle credit provides an unneeded tax benefit for certain favored corporations and individuals. The Committee believes that the Federal debt is too large and the pool of potential beneficiaries insufficient to justify the revenue loss from this subsidy.

EXPLANATION OF PROVISION

The provision repeals the credit for qualified commercial clean vehicles. The provision does not apply with respect to any vehicle which is acquired by the taxpayer pursuant to a written binding contract that was in effect on June 9, 2023, and which is placed in service before June 9, 2024.

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[220] Sec. 45W(b)(1).
[221] Sec. 45W(b)(4).
[222] Secs. 45W(b)(2) and (3).
[223] Secs. 45W(d)(1) and 30D(f)(1).
[224] Sec. 45W(d)(3).
[225] Sec. 45W(d)(2).
[226] Secs. 45W(d)(1) and 30D(f)(4).
[227] Sec. 45W(f).
[228] Sec. 45W(g).

EFFECTIVE DATE

The provision is effective for vehicles acquired after June 9, 2023.

III. VOTES OF THE COMMITTEE

In compliance with the Rules of the House of Representatives, the following statement is made concerning the vote of the Committee on Ways and Means during the markup consideration of H.R. 3938, the "Build It in America Act," on June 13, 2023.

The vote on the amendment offered by Mr. Neal to the amendment in the nature of a substitute to H.R. 3938, which complicate the tax code by requiring allocation and separate amortization of research expenses depending on the location of the research activity was not agreed to by a roll call vote of 18 yeas to 25 nays (with a quorum being present). The vote was as follows:

Representative	Yea	Nay	Present	Representative	Yea	Nay	Present
Mr. Smith (MO)		X		Mr. Neal	X		
Mr. Buchanan		X		Mr. Doggett	X		
Mr. Smith (NE)		X		Mr. Thompson	X		
Mr. Kelly		X		Mr. Larson	X		
Mr. Schweikert		X		Mr. Blumenauer	X		
Mr. LaHood		X		Mr. Pascrell	X		
Dr. Wenstrup		X		Mr. Davis	X		
Mr. Arrington		X		Ms. Sánchez	X		
Dr. Ferguson		X		Mr. Higgins	X		
Mr. Estes		X		Ms. Sewell	X		
Mr. Smucker		X		Ms. DelBene	X		
Mr. Hern		X		Ms. Chu	X		
Ms. Miller		X		Ms. Moore	X		
Dr. Murphy		X		Mr. Kildee	X		
Mr. Kustoff		X		Mr. Beyer	X		
Mr. Fitzpatrick		X		Mr. Evans	X		
Mr. Steube		X		Mr. Schneider	X		
Ms. Tenney		X		Mr. Panetta	X		
Mrs. Fischbach		X					
Mr. Moore		X					
Mrs. Steel		X					
Ms. Van Duyne		X					
Mr. Feenstra		X					
Ms. Malliotakis		X					
Mr. Carey		X					

In compliance with the Rules of the House of Representatives, the following statement is made concerning the vote of the Committee on Ways and Means during the markup consideration of H.R. 3938, the "Build It in America Act," on June 13, 2023.

The vote on the amendment offered by Ms. Sánchez to the amendment in the nature of a substitute to H.R. 3938, which would create tax uncertainty for American businesses and disallow certain ordinary and necessary tax deductions was not agreed to by a roll call vote of 18 yeas to 24 nays (with a quorum being present). The vote was as follows:

Representative	Yea	Nay	Present	Representative	Yea	Nay	Present
Mr. Smith (MO)		X		Mr. Neal	X		
Mr. Buchanan		X		Mr. Doggett	X		
Mr. Smith (NE)		X		Mr. Thompson	X		
Mr. Kelly		X		Mr. Larson	X		
Mr. Schweikert		X		Mr. Blumenauer	X		
Mr. LaHood		X		Mr. Pascrell	X		

Representative	Yea	Nay	Present	Representative	Yea	Nay	Present
Dr. Wenstrup		X		Mr. Davis	X		
Mr. Arrington		X		Ms. Sánchez	X		
Dr. Ferguson		X		Mr. Higgins	X		
Mr. Estes		X		Ms. Sewell	X		
Mr. Smucker		X		Ms. DelBene	X		
Mr. Hern		X		Ms. Chu	X		
Ms. Miller		X		Ms. Moore	X		
Dr. Murphy		X		Mr. Kildee	X		
Mr. Kustoff		X		Mr. Beyer	X		
Mr. Fitzpatrick				Mr. Evans	X		
Mr. Steube		X		Mr. Schneider	X		
Ms. Tenney		X		Mr. Panetta	X		
Mrs. Fischbach		X					
Mr. Moore		X					
Mrs. Steel		X					
Ms. Van Duyne		X					
Mr. Feenstra		X					
Ms. Malliotakis		X					
Mr. Carey		X					

In compliance with the Rules of the House of Representatives, the following statement is made concerning the vote of the Committee on Ways and Means during the markup consideration of H.R. 3938, the "Build It in America Act," on June 13, 2023. The vote on the amendment offered by Mr. Kildee to the amendment in the nature of a substitute to H.R. 3938, which would expand the availability of tax benefits to high income households that purchase electric vehicles was not agreed to by a roll call vote of 17 yeas to 25 nays (with a quorum being present). The vote was as follows:

Representative	Yea	Nay	Present	Representative	Yea	Nay	Present
Mr. Smith (MO)		X		Mr. Neal	X		
Mr. Buchanan		X		Mr. Doggett	X		
Mr. Smith (NE)		X		Mr. Thompson	X		
Mr. Kelly		X		Mr. Larson	X		
Mr. Schweikert		X		Mr. Blumenauer	X		
Mr. LaHood		X		Mr. Pascrell	X		
Dr. Wenstrup		X		Mr. Davis	X		
Mr. Arrington		X		Ms. Sánchez	X		
Dr. Ferguson		X		Mr. Higgins	X		
Mr. Estes		X		Ms. Sewell			
Mr. Smucker		X		Ms. DelBene	X		
Mr. Hern		X		Ms. Chu	X		
Ms. Miller		X		Ms. Moore	X		
Dr. Murphy		X		Mr. Kildee	X		
Mr. Kustoff		X		Mr. Beyer	X		
Mr. Fitzpatrick		X		Mr. Evans	X		
Mr. Steube		X		Mr. Schneider	X		
Ms. Tenney		X		Mr. Panetta	X		
Mrs. Fischbach		X					
Mr. Moore		X					
Mrs. Steel		X					
Ms. Van Duyne		X					
Mr. Feenstra		X					
Ms. Malliotakis		X					
Mr. Carey		X					

In compliance with the Rules of the House of Representatives, the following statement is made concerning the vote of the Committee on Ways and Means during the markup consideration of H.R. 3938, the "Build It in America Act," on June 13, 2023.

The vote on the amendment offered by Ms. Sewell to the amendment in the nature of a substitute to H.R. 3938, which would im-

pose a complicated set of conditions on deductibility of research expenditures that would result in higher taxes for hospitality businesses was not agreed to by a roll call vote of 18 yeas to 25 nays (with a quorum being present). The vote was as follows:

Representative	Yea	Nay	Present	Representative	Yea	Nay	Present
Mr. Smith (MO)		X		Mr. Neal	X		
Mr. Buchanan		X		Mr. Doggett	X		
Mr. Smith (NE)		X		Mr. Thompson	X		
Mr. Kelly		X		Mr. Larson	X		
Mr. Schweikert		X		Mr. Blumenauer	X		
Mr. LaHood		X		Mr. Pascrell	X		
Dr. Wenstrup		X		Mr. Davis	X		
Mr. Arrington		X		Ms. Sánchez	X		
Dr. Ferguson		X		Mr. Higgins	X		
Mr. Estes		X		Ms. Sewell	X		
Mr. Smucker		X		Ms. DelBene	X		
Mr. Hern		X		Ms. Chu	X		
Ms. Miller		X		Ms. Moore	X		
Dr. Murphy		X		Mr. Kildee	X		
Mr. Kustoff		X		Mr. Beyer	X		
Mr. Fitzpatrick		X		Mr. Evans	X		
Mr. Steube		X		Mr. Schneider	X		
Ms. Tenney		X		Mr. Panetta	X		
Mrs. Fischbach		X					
Mr. Moore		X					
Mrs. Steel		X					
Ms. Van Duyne		X					
Mr. Feenstra		X					
Ms. Malliotakis		X					
Mr. Carey		X					

In compliance with the Rules of the House of Representatives, the following statement is made concerning the vote of the Committee on Ways and Means during the markup consideration of H.R. 3938, the "Build It in America Act," on June 13, 2023.

The vote on the amendment offered by Mr. Blumenauer to the amendment in the nature of a substitute to H.R. 3938, which would increase prices Americans pay at the pump by reinstating the superfund excise tax was not agreed to by a roll call vote of 18 yeas to 24 nays (with a quorum being present). The vote was as follows:

Representative	Yea	Nay	Present	Representative	Yea	Nay	Present
Mr. Smith (MO)		X		Mr. Neal	X		
Mr. Buchanan		X		Mr. Doggett	X		
Mr. Smith (NE)		X		Mr. Thompson	X		
Mr. Kelly		X		Mr. Larson	X		
Mr. Schweikert		X		Mr. Blumenauer	X		
Mr. LaHood		X		Mr. Pascrell	X		
Dr. Wenstrup		X		Mr. Davis	X		
Mr. Arrington		X		Ms. Sánchez	X		
Dr. Ferguson		X		Mr. Higgins	X		
Mr. Estes		X		Ms. Sewell	X		
Mr. Smucker		X		Ms. DelBene	X		
Mr. Hern		X		Ms. Chu	X		
Ms. Miller		X		Ms. Moore	X		
Dr. Murphy				Mr. Kildee	X		
Mr. Kustoff		X		Mr. Beyer	X		
Mr. Fitzpatrick		X		Mr. Evans	X		
Mr. Steube		X		Mr. Schneider	X		
Ms. Tenney		X		Mr. Panetta	X		
Mrs. Fischbach		X					
Mr. Moore		X					
Mrs. Steel		X					

Representative	Yea	Nay	Present	Representative	Yea	Nay	Present
Ms. Van Duyne		X					
Mr. Feenstra		X					
Ms. Malliotakis		X					
Mr. Carey		X					

In compliance with the Rules of the House of Representatives, the following statement is made concerning the vote of the Committee on Ways and Means during the markup consideration of H.R. 3938, the "Build It in America Act," on June 13, 2023.

The vote on the amendment offered by Mr. Doggett to the amendment in the nature of a substitute to H.R. 3938, which would complicate the tax code and encourage more American businesses to expatriate by imposing burdensome new rules on relief from double taxation of foreign income was not agreed to by a roll call vote of 18 yeas to 25 nays (with a quorum being present). The vote was as follows:

Representative	Yea	Nay	Present	Representative	Yea	Nay	Present
Mr. Smith (MO)		X		Mr. Neal	X		
Mr. Buchanan		X		Mr. Doggett	X		
Mr. Smith (NE)		X		Mr. Thompson	X		
Mr. Kelly		X		Mr. Larson	X		
Mr. Schweikert		X		Mr. Blumenauer	X		
Mr. LaHood		X		Mr. Pascrell	X		
Dr. Wenstrup		X		Mr. Davis	X		
Mr. Arrington		X		Ms. Sánchez	X		
Dr. Ferguson		X		Mr. Higgins	X		
Mr. Estes		X		Ms. Sewell	X		
Mr. Smucker		X		Ms. DelBene	X		
Mr. Hern		X		Ms. Chu	X		
Ms. Miller		X		Ms. Moore	X		
Dr. Murphy		X		Mr. Kildee	X		
Mr. Kustoff		X		Mr. Beyer	X		
Mr. Fitzpatrick		X		Mr. Evans	X		
Mr. Steube				Mr. Schneider	X		
Ms. Tenney		X		Mr. Panetta	X		
Mrs. Fischbach		X					
Mr. Moore		X					
Mrs. Steel		X					
Ms. Van Duyne		X					
Mr. Feenstra		X					
Ms. Malliotakis		X					
Mr. Carey		X					

In compliance with the Rules of the House of Representatives, the following statement is made concerning the vote of the Committee on Ways and Means during the markup consideration of H.R. 3938, the "Build It in America Act," on June 13, 2023.

The vote on the amendment offered by Mr. Thompson to the amendment in the nature of a substitute to H.R. 3938, which would add a new section that would upend the tax treatment of professional sports leagues was not agreed to by a roll call vote of 18 yeas to 24 nays (with a quorum being present). The vote was as follows:

Representative	Yea	Nay	Present	Representative	Yea	Nay	Present
Mr. Smith (MO)		X		Mr. Neal	X		
Mr. Buchanan		X		Mr. Doggett	X		
Mr. Smith (NE)		X		Mr. Thompson	X		
Mr. Kelly		X		Mr. Larson	X		
Mr. Schweikert		X		Mr. Blumenauer	X		
Mr. LaHood		X		Mr. Pascrell	X		

Representative	Yea	Nay	Present	Representative	Yea	Nay	Present
Dr. Wenstrup		X		Mr. Davis	X		
Mr. Arrington		X		Ms. Sánchez	X		
Dr. Ferguson		X		Mr. Higgins	X		
Mr. Estes		X		Ms. Sewell	X		
Mr. Smucker		X		Ms. DelBene	X		
Mr. Hern		X		Ms. Chu	X		
Ms. Miller		X		Ms. Moore	X		
Dr. Murphy		X		Mr. Kildee	X		
Mr. Kustoff		X		Mr. Beyer	X		
Mr. Fitzpatrick		X		Mr. Evans	X		
Mr. Steube				Mr. Schneider	X		
Ms. Tenney		X		Mr. Panetta	X		
Mrs. Fischbach		X					
Mr. Moore		X					
Mrs. Steel		X					
Ms. Van Duyne		X					
Mr. Feenstra		X					
Ms. Malliotakis		X					
Mr. Carey		X					

In compliance with the Rules of the House of Representatives, the following statement is made concerning the vote of the Committee on Ways and Means during the markup consideration of H.R. 3938, the "Build It in America Act" on June 13, 2023.

H.R. 3938 was ordered favorably reported to the House of Representatives as amended by a roll call vote of 24 yeas to 18 nays (with a quorum being present). The vote was as follows:

Representative	Yea	Nay	Present	Representative	Yea	Nay	Present
Mr. Smith (MO)	X			Mr. Neal		X	
Mr. Buchanan	X			Mr. Doggett		X	
Mr. Smith (NE)	X			Mr. Thompson		X	
Mr. Kelly	X			Mr. Larson		X	
Mr. Schweikert	X			Mr. Blumenauer		X	
Mr. LaHood	X			Mr. Pascrell		X	
Dr. Wenstrup	X			Mr. Davis		X	
Mr. Arrington	X			Ms. Sánchez		X	
Dr. Ferguson	X			Mr. Higgins		X	
Mr. Estes	X			Ms. Sewell		X	
Mr. Smucker	X			Ms. DelBene		X	
Mr. Hern	X			Ms. Chu		X	
Ms. Miller	X			Ms. Moore		X	
Dr. Murphy	X			Mr. Kildee		X	
Mr. Kustoff	X			Mr. Beyer		X	
Mr. Fitzpatrick	X			Mr. Evans		X	
Mr. Steube				Mr. Schneider		X	
Ms. Tenney	X			Mr. Panetta		X	
Mrs. Fischbach	X						
Mr. Moore	X						
Mrs. Steel	X						
Ms. Van Duyne	X						
Mr. Feenstra	X						
Ms. Malliotakis	X						
Mr. Carey	X						

IV. BUDGET EFFECTS OF THE BILL

A. Committee Estimate of Budgetary Effects

In compliance with clause 3(d) of rule XIII of the Rules of the House of Representatives, the following statement is made concerning the effects on the budget of the bill, H.R. 3938, as reported.

ESTIMATED BUDGET EFFECTS OF H.R. 3938,
THE "BUILD IT IN AMERICA ACT,"
AS REPORTED BY THE COMMITTEE ON WAYS AND MEANS

Fiscal Years 2023 - 2033

[Millions of Dollars]

Provision	Effective	2023	2024	2025	2026	2027	2028	2029	2030	2031	2032	2033	2023-28	2023-33
Title I - Investment in America														
1. Deduction for research and experimental expenditures (sunset 12/31/25)	apoii tyba 12/31/21	-72,806	-36,020	-29,615	13,640	33,233	26,803	18,754	10,322	4,461	2,921	2,921	-64,765	-25,385
2. Extension of allowance for depreciation, amortization, or depletion in determining the limitation on business interest (sunset 12/31/25)	tyba 12/31/22 [1]	-5,051	-3,970	-4,710	-2,770	-494	-432	-344	-279	-253	-303	-342	-17,428	-18,948
3. Extension of 100 percent bonus depreciation (sunset 12/31/25)	ppisa 12/31/22 & sppoga 12/31/22	-4,470	-28,323	-35,465	-4,439	26,031	16,693	11,773	7,922	4,267	2,024	942	-29,973	-3,046
Total of Title I		**-82,327**	**-68,313**	**-69,790**	**6,431**	**58,770**	**43,064**	**30,183**	**17,965**	**8,475**	**4,642**	**3,521**	**-112,166**	**-47,379**
Title II - Supply Chain Security														
1. Termination of Hazardous Substance Superfund financing rate and repayable advance authority	1/1/23 & DOE	-616	-874	-916	-939	-958	-978	-999	-1,021	-1,045	-1,068	-1,093	-5,280	-10,506
2. Election to determine foreign income taxes paid or accrued to certain Western Hemisphere countries without regard to certain regulations	DOE [2]	-490	-492	-225	-240	-105	31	36	39	40	41	21	-1,522	-1,346
3. Imposition of tax on the acquisition of United States agricultural interests by disqualified persons	aa DOE	*Negligible Revenue Effect*												
Total of Title II		**-1,106**	**-1,366**	**-1,141**	**-1,179**	**-1,063**	**-947**	**-963**	**-982**	**-1,005**	**-1,027**	**-1,072**	**-6,802**	**-11,852**
Title III - Repeal of Special Interest Tax Provisions														
1. Repeal of clean electricity production credit [3]	fpisa 12/31/24	---	---	---	---	---	15	944	3,048	5,232	7,118	8,811	15	25,166
2. Repeal of clean electricity investment credit [3]	ppisa 12/31/24	---	---	---	80	14,699	17,631	14,587	12,806	11,893	11,534	7,299	32,410	90,529
3. Modification of clean vehicle credit [3]	vpisa 6/9/23	424	4,439	6,051	6,966	8,019	9,246	10,514	11,943	13,190	13,998	14,909	35,144	99,698
4. Repeal of credit for previously-owned clean vehicles [3]	vaa 6/9/23	---	31	50	56	62	70	78	88	99	110	97	269	741
5. Repeal of credit for qualified commercial clean vehicles	vaa 6/9/23	*Estimate Included in Item III.3. Above*												
Total of Title III		**424**	**4,470**	**6,101**	**7,101**	**22,780**	**26,962**	**26,123**	**27,885**	**30,413**	**32,759**	**31,115**	**67,838**	**216,134**
NET TOTAL		**-83,009**	**-65,209**	**-64,830**	**12,353**	**80,487**	**69,079**	**55,343**	**44,868**	**37,883**	**36,374**	**33,564**	**-51,130**	**156,903**

Joint Committee on Taxation

NOTE: Details may not add to totals due to rounding. The date of enactment is assumed to be July 1, 2023.

[Legend and Footnotes for the Table appear on the following page]

Legend and Footnotes for the Table:

Legend for "Effective" column:

aa = acquisitions after
apoii = amounts paid or incurred in
DOE = date of enactment
ema = expenditures made after
fpisa = facilities placed in service after
ppisa = property placed in service after
sppoga = specified plants planted or grafted after
tyba = taxable years beginning after
vaa = vehicles acquired after
vpisa = vehicles placed in service after

[1] Elective retroactive extension to taxable years beginning after December 31, 2021.

[2] In the case of an election under subsection (a), the applicable period is taxable years beginning after December 31, 2021 and before January 1, 2027, and in the case of an election under subsection (b), the applicable period is taxable years beginning after December 31, 2019 and before January 1, 2027.

[3] Estimate contains the following outlay effects:

	2023	2024	2025	2026	2027	2028	2029	2030	2031	2032	2033	2023-28	2023-33
Repeal of clean electricity production credit	---	---	---	---	---	---	-9	-30	-52	-71	-88	---	-252
Repeal of clean electricity investment credit	---	---	---	-1	-220	-264	-219	-192	-178	-173	-109	-486	-1,358
Modification of clean vehicle credit	-106	-1,110	-1,513	-1,741	-2,005	-2,311	-2,628	-2,986	-3,298	-3,499	-3,727	-8,786	-24,924
Repeal of credit for previously-owned clean vehicles	---	-13	-20	-22	-25	-28	-31	-35	-39	-44	-39	-108	-296

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 states further that the bill involves no new or 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, the cost estimate prepared by the Director of the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974 was not available.

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, the Committee made findings and recommendations that are reflected in this report.

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 does not authorize funding, so no statement of general performance goals and objectives is required.

C. Information Relating to Unfunded Mandates

This information is provided in accordance with section 423 of the Unfunded Mandates Reform Act of 1995 (Pub. L. No. 104–4). The Committee has determined that the bill does not contain Federal mandates on the private sector. The Committee has determined that the bill does not impose a Federal intergovernmental mandate on State, local, or tribal governments.

D. Applicability of House Rule XXI, Clause 5(b)

Rule XXI 5(b) of the Rules of the House of Representatives provides, in part, that "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 bill, and states that the bill does not provide such a Federal income tax rate increase.

E. Tax Complexity Analysis

Section 4022(b) of the Internal Revenue Service Reform and Restructuring Act of 1998 (the "IRS Reform Act") requires the staff of the Joint Committee on Taxation (in consultation with the Internal Revenue Service and the Treasury Department) 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 and has widespread applicability to individuals or small businesses.

Pursuant to clause 3(h)(1) of rule XIII of the Rules of the House of Representatives, for each such provision identified by the staff of the Joint Committee on Taxation, a summary description of the provision is provided below along with an estimate of the number and type of affected taxpayers, and a discussion regarding the relevant complexity and administrative issues.

Following the analysis of the staff of the Joint Committee on Taxation are the comments of the IRS and Treasury regarding the provision included in the complexity analysis.

List of Provisions in the Complexity Analysis

1. Extension of 100 Percent Bonus Depreciation (Sec. 3 of the Bill)

Summary description of provision

The provision extends the 100-percent additional first-year depreciation deduction for three years, generally through 2025 (through 2026 for longer production period property and certain aircraft).

The provision retains the 20-percent additional first-year depreciation deduction for qualified property placed in service, and specified plants planted or grafted, in 2026 (2027 for longer production period property and certain aircraft).

Number of affected taxpayers

It is estimated that the provision will affect over 10 percent of small business tax returns.

Discussion

The reporting requirements are unchanged by this provision. Capital assets purchased during the tax year will still need to be reported on Form 4562, *Depreciation and Amortization (Including Information on Listed Property)*; however, the current year tax deduction associated with such assets will increase.

Comments from IRS and Treasury

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, DC 20224

COMMISSIONER

June 16, 2023

Mr. Thomas A. Barthold
Chief of Staff
Joint Committee on Taxation
Washington, D.C. 20515

Dear Mr. Barthold:

I am responding to your letter dated June 13, 2023, in which you requested a complexity analysis related to the Committee Report for "H.R. 3936, Tax Cuts for Working Families Act, H.R. 3937, Small Business Jobs Act, H.R. 3938, Build It in America Act."

Enclosed are the combined comments of the Internal Revenue Service (IRS) and the Department of the Treasury for inclusion in the complexity analysis in the Committee Report for "H.R. 3936, Tax Cuts for Working Families Act, H.R. 3937, Small Business Jobs Act, H.R. 3938, Build It in America Act."

Our analysis covers the five provisions that you preliminarily identified in your letter: increase in standard deduction, increase in threshold for requiring information reporting with respect to certain payees, restoration of reporting rule for third party network transactions, increase in limitations on expensing of depreciable business assets, and extension of 100 percent bonus depreciation. Please note that for purposes of this complexity analysis, IRS staff assumed timely enactment of this legislation. If legislation is not enacted before the end of the year, there would be complexity for IRS and for taxpayers that is not addressed in this response.

Our comments are based on the description of the provision provided in your letter. This analysis does not include the administrative cost estimates for the changes that would be required. Due to the short turnaround time, our comments are provisional and subject to change upon a more complete and in-depth analysis of the provisions.

I hope this information is helpful. If you have any questions, please feel free to contact me, or your staff may contact Scott Landes, Chief, Legislation and Reports Branch, Office of Legislative Affairs, at 202-317-6985.

Sincerely,

Daniel I. Werfel
Commissioner

Enclosure

COMPLEXITY ANALYSIS OF H.R. 3936, TAX CUTS FOR WORKING FAMILIES ACT, H.R. 3937, SMALL BUSINESS JOBS ACT, H.R. 3938, BUILD IT IN AMERICA ACT

1. Increase in standard deduction

The bill renames the standard deduction as the guaranteed deduction and adds an additional bonus guaranteed deduction for 2024 and 2025. For taxable years beginning in 2024, the amount of the bonus guaranteed deduction is $2,000 for an unmarried individual (other than a head of household or a surviving spouse) and a married individual filing a separate return, $3,000 for a head of household, and $4,000 for married individuals filing a joint return and a surviving spouse. For taxable years beginning in 2025, these amounts are indexed for inflation.

The bonus guaranteed deduction is phased out at a five-percent rate for taxpayers with modified AGI above certain thresholds. This threshold is $200,000 for an unmarried individual (other than a head of household or a surviving spouse) and a married individual filing a separate return, $300,000 for a head of household, and $400,000 for married individuals filing a joint return and a surviving spouse.

IRS and Treasury Comments:

- Forms, instructions and publications would need to be updated, including computational worksheets for computing the phase out. Updates would be needed on an annual basis to index for inflation.
- IT programming for return processing would need to be updated, including additional programming to add the "bonus" deduction and check the phase out amount. Programming needed on an annual basis to index for inflation.
- Internal Revenue Manuals and employee training would need to be updated.
- Training materials for new employees would need to be updated.
- Internal communications would be shared with all employees.
- Communications would be needed for external stakeholders, including awareness of the increase in the standard deduction, phase out of the bonus based on modified AGI and effect on itemized deductions (less stakeholders will need to itemize).
- IRS.gov updates would need to be provided.

2. Increase in threshold for requiring information reporting with respect to certain payees

The bill increases the information reporting threshold under sections 6041 and 6041A to $5,000 in a calendar year, with the threshold amount (including the threshold for reporting of direct sales) to be indexed annually for inflation in calendar years after 2024. The bill also makes a conforming change to the dollar threshold in section 3406 with respect to information reporting required under sections 6041 and 6041A to align with the new $5,000 reporting threshold.

IRS and Treasury Comments:

- Potential for reducing payor recordkeeping and filing burden (for some payors, the reduction in burden could be significant).
- Forms, instructions and publications would need to be updated. Updates would be needed on an annual basis to index for inflation.
- IT programming, including penalty regimes, would need to be reviewed and updated to reflect the threshold increase.
- Internal Revenue Manuals and employee training would need to be updated.
- Training materials for new employees would need to be updated.
- Internal communications would be shared with all employees.
- External communications would be necessary to communicate changes. Communication would need to be considerable (due to significance of changes) and as early as possible for stakeholder planning purposes. Communication also would need to address perceptions that the change to the reporting threshold changes the tax consequences of any taxable amounts no longer reported to IRS.
- IRS.gov updates would need to be provided.
- IRS efforts to identify nonfilers could be affected, as IRS would receive less payor information reports.

3. Restoration of reporting rule for third party network transactions

The bill reverts to the previous de minimis reporting exception for third party settlement organizations. A third party settlement organization is not required to report unless the aggregate value of third party network transactions with respect to a participating payee for the year exceeds $20,000 and the aggregate number of such transactions with respect to a participating payee exceeds 200.

IRS and Treasury Comments:

- Potential for reducing payor recordkeeping and filing burden (for some payors, the reduction in burden could be significant).
- Forms, instructions and publications would need to be updated.
- IT programming would need to be reviewed and updated to reflect the return to previous reporting requirements.
- Internal Revenue Manuals and employee training would need to be updated.
- Training materials for new employees would need to be updated.
- Internal communications would be shared with all employees.

- External communications would be necessary to communicate changes. Communication would need to be considerable (due to significance of changes) and as early as possible for stakeholder planning purposes. Communication also would need to address perceptions that the change to the reporting requirements changes the tax consequences of any taxable amounts no longer reported to IRS.
- IRS.gov updates would need to be provided.
- IRS efforts to identify nonfilers could be affected, as IRS would receive less payor information reports.

4. Increase in limitations on expensing of depreciable business assets

The bill provides that the maximum amount a taxpayer may expense, for property placed in service in taxable years beginning after 2023, is $2,500,000 of the cost of qualifying property placed in service for the taxable year. The $2,500,000 amount is reduced (but not below zero) by the amount by which the cost of qualifying property placed in service during the taxable year exceeds $4,000,000. The $2,500,000 and $4,000,000 amounts are indexed for inflation for taxable years beginning after 2024.

IRS and Treasury Comments:

- The maximum amount a taxpayer may expense for a taxable year and the expansion of the definition of qualified real property qualifying for section 179 would have no significant impact on Form 4562 or any other tax forms. The Instructions for Form 4562, Publication 946, and other instructions and publications would be revised to reflect the extension.
- Internal Revenue Manuals and employee training would be updated.
- Internal communications would be shared with all employees.
- Programming changes would be required by this provision due to inflation adjustment to the limits.
- Guidance would be needed to address fiscal filers.

5. Extension of 100 percent bonus depreciation

The bill extends the 100-percent additional first-year depreciation deduction for three years, generally through 2025 (through 2026 for longer production period property and certain aircraft).

The bill retains the 20-percent additional first-year depreciation deduction for qualified property placed in service, and specified plants planted or grafted, in 2026 (2027 for longer production period property and certain aircraft).

IRS and Treasury Comments:

- The extension of the time period and modification for property eligible for additional first-year depreciation would have no significant impact on Form 4562 or any other tax forms. The Instructions for Form 4562, Publication 946, and other instructions and publications would be revised to reflect the extension and modification.
- Internal Revenue Manuals and employee training would be updated.
- Internal communications would be shared with all employees.
- No programming changes would be required by this provision.
- Guidance would be needed to address fiscal filers.

F. CONGRESSIONAL EARMARKS, LIMITED TAX BENEFITS, AND LIMITED TARIFF BENEFITS

With respect to clause 9 of rule XXI of the Rules of the House of Representatives, the Committee has carefully reviewed the provisions of the bill, and states that the provisions of the bill do not contain any congressional earmarks, limited tax benefits, or limited tariff benefits within the meaning of the rule.

G. DUPLICATION OF FEDERAL PROGRAMS

In compliance with clause 3(c)(5) of rule XIII of the Rules of the House of Representatives, the Committee states that no provision of the bill establishes or reauthorizes: (1) a program of the Federal Government known to be duplicative of another Federal program; (2) a program included in any report from the Government Accountability Office to Congress pursuant to section 21 of Public Law 111–139; or (3) a program related to a program identified in the most recent Catalog of Federal Domestic Assistance, published pursuant to the Federal Program Information Act (Pub. L. No. 95–220, as amended by Pub. L. No. 98–169).

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

With respect to the requirement of 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:

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 italics, and existing law in which no change is proposed is shown in roman):

INTERNAL REVENUE CODE OF 1986

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Subtitle A—Income Taxes

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CHAPTER 1—NORMAL TAXES AND SURTAXES

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Subchapter A—DETERMINATION OF TAX LIABILITY

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PART IV—CREDITS AGAINST TAX

* * * * * * *

Subpart A—NONREFUNDABLE PERSONAL CREDITS

Sec.
21. Expenses for household and dependent care services necessary for gainful employment.

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[25E. Previously-owned clean vehicles].

* * * * * * *

[SEC. 25E. PREVIOUSLY-OWNED CLEAN VEHICLES.

[(a) ALLOWANCE OF CREDIT.—In the case of a qualified buyer who during a taxable year places in service a previously-owned clean vehicle, there shall be allowed as a credit against the tax imposed by this chapter for the taxable year an amount equal to the lesser of—

[(1) $4,000, or

[(2) the amount equal to 30 percent of the sale price with respect to such vehicle.

[(b) LIMITATION BASED ON MODIFIED ADJUSTED GROSS INCOME.—

[(1) IN GENERAL.—No credit shall be allowed under subsection (a) for any taxable year if—

[(A) the lesser of—

[(i) the modified adjusted gross income of the taxpayer for such taxable year, or

[(ii) the modified adjusted gross income of the taxpayer for the preceding taxable year, exceeds

[(B) the threshold amount.

[(2) THRESHOLD AMOUNT.—For purposes of paragraph (1)(B), the threshold amount shall be—

[(A) in the case of a joint return or a surviving spouse (as defined in section 2(a)), $150,000,

[(B) in the case of a head of household (as defined in section 2(b)), $112,500, and

[(C) in the case of a taxpayer not described in subparagraph (A) or (B), $75,000.

[(3) MODIFIED ADJUSTED GROSS INCOME.—For purposes of this subsection, the term "modified adjusted gross income" means adjusted gross income increased by any amount excluded from gross income under section 911, 931, or 933.

[(c) DEFINITIONS.—For purposes of this section—

[(1) PREVIOUSLY-OWNED CLEAN VEHICLE.—The term "previously-owned clean vehicle" means, with respect to a taxpayer, a motor vehicle—

[(A) the model year of which is at least 2 years earlier than the calendar year in which the taxpayer acquires such vehicle,

[(B) the original use of which commences with a person other than the taxpayer,

[(C) which is acquired by the taxpayer in a qualified sale, and

[(D) which—

[(i) meets the requirements of subparagraphs (C), (D), (E), (F), and (H) (except for clause (iv) thereof) of section 30D(d)(1), or

[(ii) is a motor vehicle which—

[(I) satisfies the requirements under subparagraphs (A) and (B) of section 30B(b)(3), and

[(II) has a gross vehicle weight rating of less than 14,000 pounds.

[(2) QUALIFIED SALE.—The term "qualified sale" means a sale of a motor vehicle—

[(A) by a dealer (as defined in section 30D(g)(8)),

[(B) for a sale price which does not exceed $25,000, and

[(C) which is the first transfer since the date of the enactment of this section to a qualified buyer other than the person with whom the original use of such vehicle commenced.

[(3) QUALIFIED BUYER.—The term "qualified buyer" means, with respect to a sale of a motor vehicle, a taxpayer—

[(A) who is an individual,

[(B) who purchases such vehicle for use and not for resale,

[(C) with respect to whom no deduction is allowable with respect to another taxpayer under section 151, and

[(D) who has not been allowed a credit under this section for any sale during the 3-year period ending on the date of the sale of such vehicle.

[(4) MOTOR VEHICLE; CAPACITY.—The terms "motor vehicle" and "capacity" have the meaning given such terms in paragraphs (2) and (4) of section 30D(d), respectively.

[(d) VIN NUMBER REQUIREMENT.—No credit shall be allowed under subsection (a) with respect to any vehicle unless the taxpayer includes the vehicle identification number of such vehicle on the return of tax for the taxable year.

[(e) APPLICATION OF CERTAIN RULES.—For purposes of this section, rules similar to the rules of section 30D(f) (without regard to paragraph (10) or (11) thereof) shall apply for purposes of this section.

[(f) TRANSFER OF CREDIT.—Rules similar to the rules of section 30D(g) shall apply.

[(g) TERMINATION.—No credit shall be allowed under this section with respect to any vehicle acquired after December 31, 2032.]

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Subpart B—OTHER CREDITS

Sec.
27. Taxes of foreign countries and possessions of the United States.

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[30D. Clean vehicle credit.]
Sec. 30D. New qualified plug-in electric drive motor vehicles.

* * * * * * *

SEC. 30B. ALTERNATIVE MOTOR VEHICLE CREDIT.

(a) ALLOWANCE OF CREDIT.—There shall be allowed as a credit against the tax imposed by this chapter for the taxable year an amount equal to the sum of—

(1) the new qualified fuel cell motor vehicle credit determined under subsection (b),

(2) the new advanced lean burn technology motor vehicle credit determined under subsection (c),

(3) the new qualified hybrid motor vehicle credit determined under subsection (d),

(4) the new qualified alternative fuel motor vehicle credit determined under subsection (e), and

(5) the plug-in conversion credit determined under subsection (i).

(b) NEW QUALIFIED FUEL CELL MOTOR VEHICLE CREDIT.—

(1) IN GENERAL.—For purposes of subsection (a), the new qualified fuel cell motor vehicle credit determined under this subsection with respect to a new qualified fuel cell motor vehicle placed in service by the taxpayer during the taxable year is—

(A) $8,000 ($4,000 in the case of a vehicle placed in service after December 31, 2009), if such vehicle has a gross vehicle weight rating of not more than 8,500 pounds,

(B) $10,000, if such vehicle has a gross vehicle weight rating of more than 8,500 pounds but not more than 14,000 pounds,

(C) $20,000, if such vehicle has a gross vehicle weight rating of more than 14,000 pounds but not more than 26,000 pounds, and

(D) $40,000, if such vehicle has a gross vehicle weight rating of more than 26,000 pounds.

(2) INCREASE FOR FUEL EFFICIENCY.—

(A) IN GENERAL.—The amount determined under paragraph (1)(A) with respect to a new qualified fuel cell motor vehicle which is a passenger automobile or light truck shall be increased by—

(i) $1,000, if such vehicle achieves at least 150 percent but less than 175 percent of the 2002 model year city fuel economy,

(ii) $1,500, if such vehicle achieves at least 175 percent but less than 200 percent of the 2002 model year city fuel economy,

(iii) $2,000, if such vehicle achieves at least 200 percent but less than 225 percent of the 2002 model year city fuel economy,

(iv) $2,500, if such vehicle achieves at least 225 percent but less than 250 percent of the 2002 model year city fuel economy,

(v) $3,000, if such vehicle achieves at least 250 percent but less than 275 percent of the 2002 model year city fuel economy,

(vi) $3,500, if such vehicle achieves at least 275 percent but less than 300 percent of the 2002 model year city fuel economy, and

(vii) $4,000, if such vehicle achieves at least 300 percent of the 2002 model year city fuel economy.

(B) 2002 MODEL YEAR CITY FUEL ECONOMY.—For purposes of subparagraph (A), the 2002 model year city fuel economy with respect to a vehicle shall be determined in accordance with the following tables:

(i) In the case of a passenger automobile:

(ii) In the case of a light truck:

(C) VEHICLE INERTIA WEIGHT CLASS.—For purposes of subparagraph (B), the term "vehicle inertia weight class" has the same meaning as when defined in regulations prescribed by the Administrator of the Environmental Protection Agency for purposes of the administration of title II of the Clean Air Act (42 U.S.C. 7521 et seq.).

(3) NEW QUALIFIED FUEL CELL MOTOR VEHICLE.—For purposes of this subsection, the term "new qualified fuel cell motor vehicle" means a motor vehicle—

(A) which is propelled by power derived from 1 or more cells which convert chemical energy directly into electricity by combining oxygen with hydrogen fuel which is stored on board the vehicle in any form and may or may not require reformation prior to use,

(B) which, in the case of a passenger automobile or light truck, has received on or after the date of the enactment of this section a certificate that such vehicle meets or exceeds the Bin 5 Tier II emission level established in regulations prescribed by the Administrator of the Environmental Protection Agency under section 202(i) of the Clean Air Act for that make and model year vehicle,

(C) the original use of which commences with the taxpayer,

(D) which is acquired for use or lease by the taxpayer and not for resale, and

(E) which is made by a manufacturer.

(c) NEW ADVANCED LEAN BURN TECHNOLOGY MOTOR VEHICLE CREDIT.—

(1) IN GENERAL.—For purposes of subsection (a), the new advanced lean burn technology motor vehicle credit determined under this subsection for the taxable year is the credit amount determined under paragraph (2) with respect to a new advanced lean burn technology motor vehicle placed in service by the taxpayer during the taxable year.

(2) CREDIT AMOUNT.—

(A) FUEL ECONOMY.—

(i) IN GENERAL.—The credit amount determined under this paragraph shall be determined in accordance with the following table:

(ii) 2002 MODEL YEAR CITY FUEL ECONOMY.—For purposes of clause (i), the 2002 model year city fuel economy with respect to a vehicle shall be determined on a gasoline gallon equivalent basis as determined by the Administrator of the Environmental Protection Agency using the tables provided in subsection (b)(2)(B) with respect to such vehicle.

(B) CONSERVATION CREDIT.—The amount determined under subparagraph (A) with respect to a new advanced lean burn technology motor vehicle shall be increased by the conservation credit amount determined in accordance with the following table:

(3) NEW ADVANCED LEAN BURN TECHNOLOGY MOTOR VEHICLE.—For purposes of this subsection, the term "new advanced lean burn technology motor vehicle" means a passenger automobile or a light truck—

(A) with an internal combustion engine which—

(i) is designed to operate primarily using more air than is necessary for complete combustion of the fuel,

(ii) incorporates direct injection,

(iii) achieves at least 125 percent of the 2002 model year city fuel economy,

(iv) for 2004 and later model vehicles, has received a certificate that such vehicle meets or exceeds—

(I) in the case of a vehicle having a gross vehicle weight rating of 6,000 pounds or less, the Bin 5 Tier II emission standard established in regulations prescribed by the Administrator of the Environmental Protection Agency under section 202(i) of the Clean Air Act for that make and model year vehicle, and

(II) in the case of a vehicle having a gross vehicle weight rating of more than 6,000 pounds but not more than 8,500 pounds, the Bin 8 Tier II emission standard which is so established,

(B) the original use of which commences with the taxpayer,

(C) which is acquired for use or lease by the taxpayer and not for resale, and

(D) which is made by a manufacturer.

(4) LIFETIME FUEL SAVINGS.—For purposes of this subsection, the term "lifetime fuel savings" means, in the case of any new advanced lean burn technology motor vehicle, an amount equal to the excess (if any) of—

(A) 120,000 divided by the 2002 model year city fuel economy for the vehicle inertia weight class, over

(B) 120,000 divided by the city fuel economy for such vehicle.

(d) NEW QUALIFIED HYBRID MOTOR VEHICLE CREDIT.—

(1) IN GENERAL.—For purposes of subsection (a), the new qualified hybrid motor vehicle credit determined under this subsection for the taxable year is the credit amount determined under paragraph (2) with respect to a new qualified hybrid motor vehicle placed in service by the taxpayer during the taxable year.

(2) CREDIT AMOUNT.—

(A) CREDIT AMOUNT FOR PASSENGER AUTOMOBILES AND LIGHT TRUCKS.—In the case of a new qualified hybrid motor vehicle which is a passenger automobile or light truck and which has a gross vehicle weight rating of not more than 8,500 pounds, the amount determined under

this paragraph is the sum of the amounts determined under clauses (i) and (ii).

(i) FUEL ECONOMY.—The amount determined under this clause is the amount which would be determined under subsection (c)(2)(A) if such vehicle were a vehicle referred to in such subsection.

(ii) CONSERVATION CREDIT.—The amount determined under this clause is the amount which would be determined under subsection (c)(2)(B) if such vehicle were a vehicle referred to in such subsection.

(B) CREDIT AMOUNT FOR OTHER MOTOR VEHICLES.—

(i) IN GENERAL.—In the case of any new qualified hybrid motor vehicle to which subparagraph (A) does not apply, the amount determined under this paragraph is the amount equal to the applicable percentage of the qualified incremental hybrid cost of the vehicle as certified under clause (v).

(ii) APPLICABLE PERCENTAGE.—For purposes of clause (i), the applicable percentage is—

(I) 20 percent if the vehicle achieves an increase in city fuel economy relative to a comparable vehicle of at least 30 percent but less than 40 percent,

(II) 30 percent if the vehicle achieves such an increase of at least 40 percent but less than 50 percent, and

(III) 40 percent if the vehicle achieves such an increase of at least 50 percent.

(iii) QUALIFIED INCREMENTAL HYBRID COST.—For purposes of this subparagraph, the qualified incremental hybrid cost of any vehicle is equal to the amount of the excess of the manufacturer's suggested retail price for such vehicle over such price for a comparable vehicle, to the extent such amount does not exceed—

(I) $7,500, if such vehicle has a gross vehicle weight rating of not more than 14,000 pounds,

(II) $15,000, if such vehicle has a gross vehicle weight rating of more than 14,000 pounds but not more than 26,000 pounds, and

(III) $30,000, if such vehicle has a gross vehicle weight rating of more than 26,000 pounds.

(iv) COMPARABLE VEHICLE.—For purposes of this subparagraph, the term "comparable vehicle" means, with respect to any new qualified hybrid motor vehicle, any vehicle which is powered solely by a gasoline or diesel internal combustion engine and which is comparable in weight, size, and use to such vehicle.

(v) CERTIFICATION.—A certification described in clause (i) shall be made by the manufacturer and shall be determined in accordance with guidance prescribed by the Secretary. Such guidance shall specify procedures and methods for calculating fuel economy savings and incremental hybrid costs.

(3) NEW QUALIFIED HYBRID MOTOR VEHICLE.—For purposes of this subsection—

(A) IN GENERAL.—The term "new qualified hybrid motor vehicle" means a motor vehicle—

(i) which draws propulsion energy from onboard sources of stored energy which are both—

(I) an internal combustion or heat engine using consumable fuel, and

(II) a rechargeable energy storage system,

(ii) which, in the case of a vehicle to which paragraph (2)(A) applies, has received a certificate of conformity under the Clean Air Act and meets or exceeds the equivalent qualifying California low emission vehicle standard under section 243(e)(2) of the Clean Air Act for that make and model year, and

(I) in the case of a vehicle having a gross vehicle weight rating of 6,000 pounds or less, the Bin 5 Tier II emission standard established in regulations prescribed by the Administrator of the Environmental Protection Agency under section 202(i) of the Clean Air Act for that make and model year vehicle, and

(II) in the case of a vehicle having a gross vehicle weight rating of more than 6,000 pounds but not more than 8,500 pounds, the Bin 8 Tier II emission standard which is so established,

(iii) which has a maximum available power of at least—

(I) 4 percent in the case of a vehicle to which paragraph (2)(A) applies,

(II) 10 percent in the case of a vehicle which has a gross vehicle weight rating of more than 8,500 pounds and not more than 14,000 pounds, and

(III) 15 percent in the case of a vehicle in excess of 14,000 pounds,

(iv) which, in the case of a vehicle to which paragraph (2)(B) applies, has an internal combustion or heat engine which has received a certificate of conformity under the Clean Air Act as meeting the emission standards set in the regulations prescribed by the Administrator of the Environmental Protection Agency for 2004 through 2007 model year diesel heavy duty engines or ottocycle heavy duty engines, as applicable,

(v) the original use of which commences with the taxpayer,

(vi) which is acquired for use or lease by the taxpayer and not for resale, and

(vii) which is made by a manufacturer.

Such term shall not include any vehicle which is not a passenger automobile or light truck if such vehicle has a gross vehicle weight rating of less than 8,500 pounds.

(B) CONSUMABLE FUEL.—For purposes of subparagraph (A)(i)(I), the term "consumable fuel" means any solid, liquid, or gaseous matter which releases energy when consumed by an auxiliary power unit.

(C) MAXIMUM AVAILABLE POWER.—

(i) CERTAIN PASSENGER AUTOMOBILES AND LIGHT TRUCKS.—In the case of a vehicle to which paragraph (2)(A) applies, the term "maximum available power" means the maximum power available from the rechargeable energy storage system, during a standard 10 second pulse power or equivalent test, divided by such maximum power and the SAE net power of the heat engine.

(ii) OTHER MOTOR VEHICLES.—In the case of a vehicle to which paragraph (2)(B) applies, the term "maximum available power" means the maximum power available from the rechargeable energy storage system, during a standard 10 second pulse power or equivalent test, divided by the vehicle's total traction power. For purposes of the preceding sentence, the term "total traction power" means the sum of the peak power from the rechargeable energy storage system and the heat engine peak power of the vehicle, except that if such storage system is the sole means by which the vehicle can be driven, the total traction power is the peak power of such storage system.

(D) EXCLUSION OF PLUG-IN VEHICLES.—Any vehicle with respect to which a credit is allowable under section 30D (determined without regard to subsection (c) thereof) shall not be taken into account under this section.

(e) NEW QUALIFIED ALTERNATIVE FUEL MOTOR VEHICLE CREDIT.—

(1) ALLOWANCE OF CREDIT.—Except as provided in paragraph (5), the new qualified alternative fuel motor vehicle credit determined under this subsection is an amount equal to the applicable percentage of the incremental cost of any new qualified alternative fuel motor vehicle placed in service by the taxpayer during the taxable year.

(2) APPLICABLE PERCENTAGE.—For purposes of paragraph (1), the applicable percentage with respect to any new qualified alternative fuel motor vehicle is—

(A) 50 percent, plus

(B) 30 percent, if such vehicle—

(i) has received a certificate of conformity under the Clean Air Act and meets or exceeds the most stringent standard available for certification under the Clean Air Act for that make and model year vehicle (other than a zero emission standard), or

(ii) has received an order certifying the vehicle as meeting the same requirements as vehicles which may be sold or leased in California and meets or exceeds the most stringent standard available for certification under the State laws of California (enacted in accordance with a waiver granted under section 209(b) of the Clean Air Act) for that make and model year vehicle (other than a zero emission standard).

For purposes of the preceding sentence, in the case of any new qualified alternative fuel motor vehicle which weighs more than 14,000 pounds gross vehicle weight rating, the most stringent standard available shall be such standard available for

certification on the date of the enactment of the Energy Tax Incentives Act of 2005.

(3) INCREMENTAL COST.—For purposes of this subsection, the incremental cost of any new qualified alternative fuel motor vehicle is equal to the amount of the excess of the manufacturer's suggested retail price for such vehicle over such price for a gasoline or diesel fuel motor vehicle of the same model, to the extent such amount does not exceed—

(A) $5,000, if such vehicle has a gross vehicle weight rating of not more than 8,500 pounds,

(B) $10,000, if such vehicle has a gross vehicle weight rating of more than 8,500 pounds but not more than 14,000 pounds,

(C) $25,000, if such vehicle has a gross vehicle weight rating of more than 14,000 pounds but not more than 26,000 pounds, and

(D) $40,000, if such vehicle has a gross vehicle weight rating of more than 26,000 pounds.

(4) NEW QUALIFIED ALTERNATIVE FUEL MOTOR VEHICLE.—For purposes of this subsection—

(A) IN GENERAL.—The term "new qualified alternative fuel motor vehicle" means any motor vehicle—

(i) which is only capable of operating on an alternative fuel,

(ii) the original use of which commences with the taxpayer,

(iii) which is acquired by the taxpayer for use or lease, but not for resale, and

(iv) which is made by a manufacturer.

(B) ALTERNATIVE FUEL.—The term "alternative fuel" means compressed natural gas, liquefied natural gas, liquefied petroleum gas, hydrogen, and any liquid at least 85 percent of the volume of which consists of methanol.

(5) CREDIT FOR MIXED-FUEL VEHICLES.—

(A) IN GENERAL.—In the case of a mixed-fuel vehicle placed in service by the taxpayer during the taxable year, the credit determined under this subsection is an amount equal to—

(i) in the case of a 75/25 mixed-fuel vehicle, 70 percent of the credit which would have been allowed under this subsection if such vehicle was a qualified alternative fuel motor vehicle, and

(ii) in the case of a 90/10 mixed-fuel vehicle, 90 percent of the credit which would have been allowed under this subsection if such vehicle was a qualified alternative fuel motor vehicle.

(B) MIXED-FUEL VEHICLE.—For purposes of this subsection, the term "mixed-fuel vehicle" means any motor vehicle described in subparagraph (C) or (D) of paragraph (3), which—

(i) is certified by the manufacturer as being able to perform efficiently in normal operation on a combination of an alternative fuel and a petroleum-based fuel,

(ii) either—

(I) has received a certificate of conformity under the Clean Air Act, or

(II) has received an order certifying the vehicle as meeting the same requirements as vehicles which may be sold or leased in California and meets or exceeds the low emission vehicle standard under section 88.105–94 of title 40, Code of Federal Regulations, for that make and model year vehicle,

(iii) the original use of which commences with the taxpayer,

(iv) which is acquired by the taxpayer for use or lease, but not for resale, and

(v) which is made by a manufacturer.

(C) 75/25 MIXED-FUEL VEHICLE.—For purposes of this subsection, the term "75/25 mixed-fuel vehicle" means a mixed-fuel vehicle which operates using at least 75 percent alternative fuel and not more than 25 percent petroleum-based fuel.

(D) 90/10 MIXED-FUEL VEHICLE.—For purposes of this subsection, the term "90/10 mixed-fuel vehicle" means a mixed-fuel vehicle which operates using at least 90 percent alternative fuel and not more than 10 percent petroleum-based fuel.

(f) LIMITATION ON NUMBER OF NEW QUALIFIED HYBRID AND ADVANCED LEAN-BURN TECHNOLOGY VEHICLES ELIGIBLE FOR CREDIT.—

(1) IN GENERAL.—In the case of a qualified vehicle sold during the phaseout period, only the applicable percentage of the credit otherwise allowable under subsection (c) or (d) shall be allowed.

(2) PHASEOUT PERIOD.—For purposes of this subsection, the phaseout period is the period beginning with the second calendar quarter following the calendar quarter which includes the first date on which the number of qualified vehicles manufactured by the manufacturer of the vehicle referred to in paragraph (1) sold for use in the United States after December 31, 2005, is at least 60,000.

(3) APPLICABLE PERCENTAGE.—For purposes of paragraph (1), the applicable percentage is—

(A) 50 percent for the first 2 calendar quarters of the phaseout period,

(B) 25 percent for the 3d and 4th calendar quarters of the phaseout period, and

(C) 0 percent for each calendar quarter thereafter.

(4) CONTROLLED GROUPS.—

(A) IN GENERAL.—For purposes of this subsection, all persons treated as a single employer under subsection (a) or (b) of section 52 or subsection (m) or (*o*) of section 414 shall be treated as a single manufacturer.

(B) INCLUSION OF FOREIGN CORPORATIONS.—For purposes of subparagraph (A), in applying subsections (a) and (b) of section 52 to this section, section 1563 shall be applied without regard to subsection (b)(2)(C) thereof.

(5) QUALIFIED VEHICLE.—For purposes of this subsection, the term "qualified vehicle" means any new qualified hybrid motor

vehicle (described in subsection (d)(2)(A)) and any new advanced lean burn technology motor vehicle.

(g) APPLICATION WITH OTHER CREDITS.—

(1) BUSINESS CREDIT TREATED AS PART OF GENERAL BUSINESS CREDIT.—So much of the credit which would be allowed under subsection (a) for any taxable year (determined without regard to this subsection) that is attributable to property of a character subject to an allowance for depreciation shall be treated as a credit listed in section 38(b) for such taxable year (and not allowed under subsection (a)).

(2) PERSONAL CREDIT.—For purposes of this title, the credit allowed under subsection (a) for any taxable year (determined after application of paragraph (1)) shall be treated as a credit allowable under subpart A for such taxable year.

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

(1) MOTOR VEHICLE.—The term "motor vehicle" means any vehicle which is manufactured primarily for use on public streets, roads, and highways (not including a vehicle operated exclusively on a rail or rails) and which has at least 4 wheels.

(2) CITY FUEL ECONOMY.—The city fuel economy with respect to any vehicle shall be measured in a manner which is substantially similar to the manner city fuel economy is measured in accordance with procedures under part 600 of subchapter Q of chapter I of title 40, Code of Federal Regulations, as in effect on the date of the enactment of this section.

(3) OTHER TERMS.—The terms "automobile", "passenger automobile", "medium duty passenger vehicle", "light truck", and "manufacturer" have the meanings given such terms in regulations prescribed by the Administrator of the Environmental Protection Agency for purposes of the administration of title II of the Clean Air Act (42 U.S.C. 7521 et seq.).

(4) REDUCTION IN BASIS.—For purposes of this subtitle, the basis of any property for which a credit is allowable under subsection (a) shall be reduced by the amount of such credit so allowed (determined without regard to subsection (g)).

(5) NO DOUBLE BENEFIT.—The amount of any deduction or other credit allowable under this chapter—

(A) for any incremental cost taken into account in computing the amount of the credit determined under subsection (e) shall be reduced by the amount of such credit attributable to such cost, and

(B) with respect to a vehicle described under subsection (b) or (c), shall be reduced by the amount of credit allowed under subsection (a) for such vehicle for the taxable year (determined without regard to subsection (g)).

(6) PROPERTY USED BY TAX-EXEMPT ENTITY.—In the case of a vehicle whose use is described in paragraph (3) or (4) of section 50(b) and which is not subject to a lease, the person who sold such vehicle to the person or entity using such vehicle shall be treated as the taxpayer that placed such vehicle in service, but only if such person clearly discloses to such person or entity in a document the amount of any credit allowable under subsection (a) with respect to such vehicle (determined without regard to subsection (g)). For purposes of subsection (g), property

to which this paragraph applies shall be treated as of a character subject to an allowance for depreciation.

(7) PROPERTY USED OUTSIDE UNITED STATES, ETC., NOT QUALIFIED.—No credit shall be allowable under subsection (a) with respect to any property referred to in section 50(b)(1) or with respect to the portion of the cost of any property taken into account under section 179.

(8) RECAPTURE.—The Secretary shall, by regulations, provide for recapturing the benefit of any credit allowable under subsection (a) with respect to any property which ceases to be property eligible for such credit (including recapture in the case of a lease period of less than the economic life of a vehicle*), except that no benefit shall be recaptured if such property ceases to be eligible for such credit by reason of conversion to a qualified plug-in electric drive motor vehicle*.

(9) ELECTION TO NOT TAKE CREDIT.—No credit shall be allowed under subsection (a) for any vehicle if the taxpayer elects to not have this section apply to such vehicle.

(10) INTERACTION WITH AIR QUALITY AND MOTOR VEHICLE SAFETY STANDARDS.—Unless otherwise provided in this section, a motor vehicle shall not be considered eligible for a credit under this section unless such vehicle is in compliance with—

(A) the applicable provisions of the Clean Air Act for the applicable make and model year of the vehicle (or applicable air quality provisions of State law in the case of a State which has adopted such provision under a waiver under section 209(b) of the Clean Air Act), and

(B) the motor vehicle safety provisions of sections 30101 through 30169 of title 49, United States Code..

(j) REGULATIONS.—

(1) IN GENERAL.—Except as provided in paragraph (2), the Secretary shall promulgate such regulations as necessary to carry out the provisions of this section.

(2) COORDINATION IN PRESCRIPTION OF CERTAIN REGULATIONS.—The Secretary of the Treasury, in coordination with the Secretary of Transportation and the Administrator of the Environmental Protection Agency, shall prescribe such regulations as necessary to determine whether a motor vehicle meets the requirements to be eligible for a credit under this section.

(k) TERMINATION.—This section shall not apply to any property purchased after—

(1) in the case of a new qualified fuel cell motor vehicle (as described in subsection (b)), December 31, 2021,

(2) in the case of a new advanced lean burn technology motor vehicle (as described in subsection (c)) or a new qualified hybrid motor vehicle (as described in subsection (d)(2)(A)), December 31, 2010,

(3) in the case of a new qualified hybrid motor vehicle (as described in subsection (d)(2)(B)), December 31, 2009, and

(4) in the case of a new qualified alternative fuel vehicle (as described in subsection (e)), December 31, 2010.

* * * * * * *

SEC. 30D. [CLEAN VEHICLE CREDIT] *NEW QUALIFIED PLUG-IN ELECTRIC DRIVE MOTOR VEHICLES.*

(a) ALLOWANCE OF CREDIT.—There shall be allowed as a credit against the tax imposed by this chapter for the taxable year an amount equal to the sum of the credit amounts determined under subsection (b) with respect to each [new clean vehicle] *new qualified plug-in electric drive motor vehicle* placed in service by the taxpayer during the taxable year.

(b) PER VEHICLE DOLLAR LIMITATION.—

(1) IN GENERAL.—The amount determined under this subsection with respect to any [new clean vehicle] *new qualified plug-in electric drive motor vehicle* is the sum of the amounts determined under paragraphs (2) and (3) with respect to such vehicle.

[(2) CRITICAL MINERALS.—In the case of a vehicle with respect to which the requirement described in subsection (e)(1)(A) is satisfied, the amount determined under this paragraph is $3,750.

[(3) BATTERY COMPONENTS.—In the case of a vehicle with respect to which the requirement described in subsection (e)(2)(A) is satisfied, the amount determined under this paragraph is $3,750.]

(2) BASE AMOUNT.—The amount determined under this paragraph is $2,500.

(3) BATTERY CAPACITY.—In the case of a vehicle which draws propulsion energy from a battery with not less than 5 kilowatt hours of capacity, the amount determined under this paragraph is $417, plus $417 for each kilowatt hour of capacity in excess of 5 kilowatt hours. The amount determined under this paragraph shall not exceed $5,000.

(c) APPLICATION WITH OTHER CREDITS.—

(1) BUSINESS CREDIT TREATED AS PART OF GENERAL BUSINESS CREDIT.—So much of the credit which would be allowed under subsection (a) for any taxable year (determined without regard to this subsection) that is attributable to property of a character subject to an allowance for depreciation shall be treated as a credit listed in section 38(b) for such taxable year (and not allowed under subsection (a)).

(2) PERSONAL CREDIT.—For purposes of this title, the credit allowed under subsection (a) for any taxable year (determined after application of paragraph (1)) shall be treated as a credit allowable under subpart A for such taxable year.

(d) NEW [CLEAN] *QUALIFIED PLUG-IN ELECTRIC DRIVE MOTOR* VEHICLE.—For purposes of this section—

(1) IN GENERAL.—The term "new [clean] *qualified plug-in electric drive motor* vehicle" means a motor vehicle—

(A) the original use of which commences with the taxpayer,

(B) which is acquired for use or lease by the taxpayer and not for resale,

(C) which is made by a [qualified] manufacturer,

(D) which is treated as a motor vehicle for purposes of title II of the Clean Air Act,

(E) which has a gross vehicle weight rating of less than 14,000 pounds, *and*

(F) which is propelled to a significant extent by an electric motor which draws electricity from a battery which—

(i) has a capacity of not less than [7] *4* kilowatt hours, and

(ii) is capable of being recharged from an external source of electricity[,].

[(G) the final assembly of which occurs within North America, and

[(H) for which the person who sells any vehicle to the taxpayer furnishes a report to the taxpayer and to the Secretary, at such time and in such manner as the Secretary shall provide, containing—

[(i) the name and taxpayer identification number of the taxpayer,

[(ii) the vehicle identification number of the vehicle, unless, in accordance with any applicable rules promulgated by the Secretary of Transportation, the vehicle is not assigned such a number,

[(iii) the battery capacity of the vehicle,

[(iv) verification that original use of the vehicle commences with the taxpayer,

[(v) the maximum credit under this section allowable to the taxpayer with respect to the vehicle, and

[(vi) in the case of a taxpayer who makes an election under subsection (g)(1), any amount described in subsection (g)(2)(C) which has been provided to such taxpayer.]

(2) MOTOR VEHICLE.—The term "motor vehicle" means any vehicle which is manufactured primarily for use on public streets, roads, and highways (not including a vehicle operated exclusively on a rail or rails) and which has at least 4 wheels.

(3) [QUALIFIED MANUFACTURER] *MANUFACTURER*.—[The term "qualified manufacturer" means any manufacturer (within the meaning of the regulations prescribed by the Administrator of the Environmental Protection Agency for purposes of the administration of title II of the Clean Air Act (42 U.S.C. 7521 et seq.)) which enters into a written agreement with the Secretary under which such manufacturer agrees to make periodic written reports to the Secretary (at such times and in such manner as the Secretary may provide) providing vehicle identification numbers and such other information related to each vehicle manufactured by such manufacturer as the Secretary may require.] *The term "manufacturer" has the meaning given such term in regulations prescribed by the Administrator of the Environmental Protection Agency for purposes of the administration of title II of the Clean Air Act (42 U.S.C. 7521 et seq.).*

(4) BATTERY CAPACITY.—The term "capacity" means, with respect to any battery, the quantity of electricity which the battery is capable of storing, expressed in kilowatt hours, as measured from a 100 percent state of charge to a 0 percent state of charge.

[(5) FINAL ASSEMBLY.—For purposes of paragraph (1)(G), the term "final assembly" means the process by which a manufacturer produces a new clean vehicle at, or through the use of, a plant, factory, or other place from which the vehicle is deliv-

ered to a dealer or importer with all component parts necessary for the mechanical operation of the vehicle included with the vehicle, whether or not the component parts are permanently installed in or on the vehicle.

[(6) NEW QUALIFIED FUEL CELL MOTOR VEHICLE.—For purposes of this section, the term "new clean vehicle" shall include any new qualified fuel cell motor vehicle (as defined in section 30B(b)(3)) which meets the requirements under subparagraphs (G) and (H) of paragraph (1).

[(7) EXCLUDED ENTITIES.—For purposes of this section, the term "new clean vehicle" shall not include—

[(A) any vehicle placed in service after December 31, 2024, with respect to which any of the applicable critical minerals contained in the battery of such vehicle (as described in subsection (e)(1)(A)) were extracted, processed, or recycled by a foreign entity of concern (as defined in section 40207(a)(5) of the Infrastructure Investment and Jobs Act (42 U.S.C. 18741(a)(5))), or

[(B) any vehicle placed in service after December 31, 2023, with respect to which any of the components contained in the battery of such vehicle (as described in subsection (e)(2)(A)) were manufactured or assembled by a foreign entity of concern (as so defined).]

(e) CRITICAL MINERAL AND BATTERY COMPONENT REQUIREMENTS.—

[(1) CRITICAL MINERALS REQUIREMENT.—

[(A) IN GENERAL.—The requirement described in this subparagraph with respect to a vehicle is that, with respect to the battery from which the electric motor of such vehicle draws electricity, the percentage of the value of the applicable critical minerals (as defined in section 45X(c)(6)) contained in such battery that were—

[(i) extracted or processed—

[(I) in the United States, or

[(II) in any country with which the United States has a free trade agreement in effect, or

[(ii) recycled in North America,

is equal to or greater than the applicable percentage (as certified by the qualified manufacturer, in such form or manner as prescribed by the Secretary).

[(B) APPLICABLE PERCENTAGE.—For purposes of subparagraph (A), the applicable percentage shall be—

[(i) in the case of a vehicle placed in service after the date on which the proposed guidance described in paragraph (3)(B) is issued by the Secretary and before January 1, 2024, 40 percent,

[(ii) in the case of a vehicle placed in service during calendar year 2024, 50 percent,

[(iii) in the case of a vehicle placed in service during calendar year 2025, 60 percent,

[(iv) in the case of a vehicle placed in service during calendar year 2026, 70 percent, and

[(v) in the case of a vehicle placed in service after December 31, 2026, 80 percent.

[(2) BATTERY COMPONENTS.—

[(A) IN GENERAL.—The requirement described in this subparagraph with respect to a vehicle is that, with respect to the battery from which the electric motor of such vehicle draws electricity, the percentage of the value of the components contained in such battery that were manufactured or assembled in North America is equal to or greater than the applicable percentage (as certified by the qualified manufacturer, in such form or manner as prescribed by the Secretary).

[(B) APPLICABLE PERCENTAGE.—For purposes of subparagraph (A), the applicable percentage shall be—

[(i) in the case of a vehicle placed in service after the date on which the proposed guidance described in paragraph (3)(B) is issued by the Secretary and before January 1, 2024, 50 percent,

[(ii) in the case of a vehicle placed in service during calendar year 2024 or 2025, 60 percent,

[(iii) in the case of a vehicle placed in service during calendar year 2026, 70 percent,

[(iv) in the case of a vehicle placed in service during calendar year 2027, 80 percent,

[(v) in the case of a vehicle placed in service during calendar year 2028, 90 percent,

[(vi) in the case of a vehicle placed in service after December 31, 2028, 100 percent.]

(1) CRITICAL MINERALS REQUIREMENT.—No credit shall be allowed under this section with respect to any vehicle unless, with respect to the battery from which the electric motor of such vehicle draws electricity, the percentage of the value of the applicable critical minerals (as defined in section 45X(c)(6)) contained in such battery that were—

(A) extracted or processed—

(i) in the United States, or

(ii) in any country with which the United States has a free trade agreement in effect, or

(B) recycled in North America,

is equal to or greater than 80 percent (as certified by the manufacturer, in such form or manner as prescribed by the Secretary). For purposes of subparagraph (A)(ii), the term "free trade agreement" means an international agreement approved by Congress that eliminates duties and other restrictive regulations of commerce on substantially all the trade between the United States and one or more other countries.

(2) BATTERY COMPONENTS.—No credit shall be allowed under this section with respect to any vehicle unless, with respect to the battery from which the electric motor of such vehicle draws electricity, all of the components contained in such battery were manufactured or assembled in North America (as certified by the manufacturer, in such form or manner as prescribed by the Secretary).

(3) RESTRICTION ON FOREIGN ENTITIES OF CONCERN.—No credit shall be allowed under this section which respect to any vehicle placed in service after December 31, 2024, if any of the applicable critical minerals contained in the battery of such vehicle (as described in paragraph (1)) were extracted, processed,

or recycled by a foreign entity of concern (as defined in section 40207(a)(5) of the Infrastructure Investment and Jobs Act (42 U.S.C. 18741(a)(5))).

[(3)] *(4)* REGULATIONS AND GUIDANCE.—

(A) IN GENERAL.—The Secretary shall issue such regulations or other guidance as the Secretary determines necessary to carry out the purposes of this subsection, including regulations or other guidance which provides for requirements for recordkeeping or information reporting for purposes of administering the requirements of this subsection.

(B) DEADLINE FOR PROPOSED GUIDANCE.—Not later than December 31, 2022, the Secretary shall issue proposed guidance with respect to the requirements under this subsection.

(f) SPECIAL RULES.—

(1) BASIS REDUCTION.—For purposes of this subtitle, the basis of any property for which a credit is allowable under subsection (a) shall be reduced by the amount of such credit so allowed (determined without regard to subsection (c)).

(2) NO DOUBLE BENEFIT.—The amount of any deduction or other credit allowable under this chapter for a vehicle for which a credit is allowable under subsection (a) shall be reduced by the amount of credit allowed under such subsection for such vehicle (determined without regard to subsection (c)).

(3) PROPERTY USED BY TAX-EXEMPT ENTITY.— In the case of a vehicle the use of which is described in paragraph (3) or (4) of section 50(b) and which is not subject to a lease, the person who sold such vehicle to the person or entity using such vehicle shall be treated as the taxpayer that placed such vehicle in service, but only if such person clearly discloses to such person or entity in a document the amount of any credit allowable under subsection (a) with respect to such vehicle (determined without regard to subsection (c)). For purposes of subsection (c), property to which this paragraph applies shall be treated as of a character subject to an allowance for depreciation.

(4) PROPERTY USED OUTSIDE UNITED STATES NOT QUALIFIED.—No credit shall be allowable under subsection (a) with respect to any property referred to in section 50(b)(1).

(5) RECAPTURE.—The Secretary shall, by regulations, provide for recapturing the benefit of any credit allowable under subsection (a) with respect to any property which ceases to be property eligible for such credit.

(6) ELECTION NOT TO TAKE CREDIT.—No credit shall be allowed under subsection (a) for any vehicle if the taxpayer elects to not have this section apply to such vehicle.

(7) INTERACTION WITH AIR QUALITY AND MOTOR VEHICLE SAFETY STANDARDS.—A vehicle shall not be considered eligible for a credit under this section unless such vehicle is in compliance with—

(A) the applicable provisions of the Clean Air Act for the applicable make and model year of the vehicle (or applicable air quality provisions of State law in the case of a State which has adopted such provision under a waiver under section 209(b) of the Clean Air Act), and

(B) the motor vehicle safety provisions of sections 30101 through 30169 of title 49, United States Code.

(8) ONE CREDIT PER VEHICLE.—In the case of any vehicle, the credit described in subsection (a) shall only be allowed once with respect to such vehicle, as determined based upon the vehicle identification number of such vehicle**[**, including any vehicle with respect to which the taxpayer elects the application of subsection (g)**]**.

(9) VIN REQUIREMENT.—No credit shall be allowed under this section with respect to any vehicle unless the taxpayer includes the vehicle identification number of such vehicle on the return of tax for the taxable year.

(10) LIMITATION BASED ON MODIFIED ADJUSTED GROSS INCOME.—

(A) IN GENERAL.—No credit shall be allowed under subsection (a) for any taxable year if—

(i) the lesser of—

(I) the modified adjusted gross income of the taxpayer for such taxable year, or

(II) the modified adjusted gross income of the taxpayer for the preceding taxable year, exceeds

(ii) the threshold amount.

(B) THRESHOLD AMOUNT.—For purposes of subparagraph (A)(ii), the threshold amount shall be—

(i) in the case of a joint return or a surviving spouse (as defined in section 2(a)), $300,000,

(ii) in the case of a head of household (as defined in section 2(b)), $225,000, and

(iii) in the case of a taxpayer not described in clause (i) or (ii), $150,000.

(C) MODIFIED ADJUSTED GROSS INCOME.—For purposes of this paragraph, the term "modified adjusted gross income" means adjusted gross income increased by any amount excluded from gross income under section 911, 931, or 933.

(11) MANUFACTURER'S SUGGESTED RETAIL PRICE LIMITATION.—

(A) IN GENERAL.—No credit shall be allowed under subsection (a) for a vehicle with a manufacturer's suggested retail price in excess of the applicable limitation.

(B) APPLICABLE LIMITATION.—For purposes of subparagraph (A), the applicable limitation for each vehicle classification is as follows:

(i) VANS.—In the case of a van, $80,000.

(ii) SPORT UTILITY VEHICLES.—In the case of a sport utility vehicle, $80,000.

(iii) PICKUP TRUCKS.—In the case of a pickup truck, $80,000.

(iv) OTHER.—In the case of any other vehicle, $55,000.

(C) REGULATIONS AND GUIDANCE.—For purposes of this paragraph, the Secretary shall prescribe such regulations or other guidance as the Secretary determines necessary for determining vehicle classifications using criteria similar to that employed by the Environmental Protection

Agency and the Department of the Energy to determine size and class of vehicles.

[(g) TRANSFER OF CREDIT.—

[(1) IN GENERAL.—Subject to such regulations or other guidance as the Secretary determines necessary, if the taxpayer who acquires a new clean vehicle elects the application of this subsection with respect to such vehicle, the credit which would (but for this subsection) be allowed to such taxpayer with respect to such vehicle shall be allowed to the eligible entity specified in such election (and not to such taxpayer).

[(2) ELIGIBLE ENTITY.—For purposes of this subsection, the term "eligible entity" means, with respect to the vehicle for which the credit is allowed under subsection (a), the dealer which sold such vehicle to the taxpayer and has—

[(A) subject to paragraph (4), registered with the Secretary for purposes of this paragraph, at such time, and in such form and manner, as the Secretary may prescribe,

[(B) prior to the election described in paragraph (1) and not later than at the time of such sale, disclosed to the taxpayer purchasing such vehicle—

[(i) the manufacturer's suggested retail price,

[(ii) the value of the credit allowed and any other incentive available for the purchase of such vehicle, and

[(iii) the amount provided by the dealer to such taxpayer as a condition of the election described in paragraph (1),

[(C) not later than at the time of such sale, made payment to such taxpayer (whether in cash or in the form of a partial payment or down payment for the purchase of such vehicle) in an amount equal to the credit otherwise allowable to such taxpayer, and

[(D) with respect to any incentive otherwise available for the purchase of a vehicle for which a credit is allowed under this section, including any incentive in the form of a rebate or discount provided by the dealer or manufacturer, ensured that—

[(i) the availability or use of such incentive shall not limit the ability of a taxpayer to make an election described in paragraph (1), and

[(ii) such election shall not limit the value or use of such incentive.

[(3) TIMING.—An election described in paragraph (1) shall be made by the taxpayer not later than the date on which the vehicle for which the credit is allowed under subsection (a) is purchased.

[(4) REVOCATION OF REGISTRATION.—Upon determination by the Secretary that a dealer has failed to comply with the requirements described in paragraph (2), the Secretary may revoke the registration (as described in subparagraph (A) of such paragraph) of such dealer.

[(5) TAX TREATMENT OF PAYMENTS.—With respect to any payment described in paragraph (2)(C), such payment—

[(A) shall not be includible in the gross income of the taxpayer, and

[(B) with respect to the dealer, shall not be deductible under this title.

[(6) APPLICATION OF CERTAIN OTHER REQUIREMENTS.—In the case of any election under paragraph (1) with respect to any vehicle—

[(A) the requirements of paragraphs (1) and (2) of subsection (f) shall apply to the taxpayer who acquired the vehicle in the same manner as if the credit determined under this section with respect to such vehicle were allowed to such taxpayer,

[(B) paragraph (6) of such subsection shall not apply, and

[(C) the requirement of paragraph (9) of such subsection (f) shall be treated as satisfied if the eligible entity provides the vehicle identification number of such vehicle to the Secretary in such manner as the Secretary may provide.

[(7) ADVANCE PAYMENT TO REGISTERED DEALERS.—

[(A) IN GENERAL.—The Secretary shall establish a program to make advance payments to any eligible entity in an amount equal to the cumulative amount of the credits allowed under subsection (a) with respect to any vehicles sold by such entity for which an election described in paragraph (1) has been made.

[(B) EXCESSIVE PAYMENTS.—Rules similar to the rules of section 6417(d)(6) shall apply for purposes of this paragraph.

[(C) TREATMENT OF ADVANCE PAYMENTS.—For purposes of section 1324 of title 31, United States Code, the payments under subparagraph (A) shall be treated in the same manner as a refund due from a credit provision referred to in subsection (b)(2) of such section.

[(8) DEALER.—For purposes of this subsection, the term "dealer" means a person licensed by a State, the District of Columbia, the Commonwealth of Puerto Rico, any other territory or possession of the United States, an Indian tribal government, or any Alaska Native Corporation (as defined in section 3 of the Alaska Native Claims Settlement Act (43 U.S.C. 1602(m)) to engage in the sale of vehicles.

[(9) INDIAN TRIBAL GOVERNMENT.—For purposes of this subsection, the term "Indian tribal government" means the recognized governing body of any Indian or Alaska Native tribe, band, nation, pueblo, village, community, component band, or component reservation, individually identified (including parenthetically) in the list published most recently as of the date of enactment of this subsection pursuant to section 104 of the Federally Recognized Indian Tribe List Act of 1994 (25 U.S.C. 5131).

[(10) RECAPTURE.—In the case of any taxpayer who has made an election described in paragraph (1) with respect to a new clean vehicle and received a payment described in paragraph (2)(C) from an eligible entity, if the credit under subsection (a) would otherwise (but for this subsection) not be allowable to such taxpayer pursuant to the application of subsection (f)(10), the tax imposed on such taxpayer under this

chapter for the taxable year in which such vehicle was placed in service shall be increased by the amount of the payment received by such taxpayer.

[(h) TERMINATION.—No credit shall be allowed under this section with respect to any vehicle placed in service after December 31, 2032.]

(g) LIMITATION ON NUMBER OF NEW QUALIFIED PLUG-IN ELECTRIC DRIVE MOTOR VEHICLES ELIGIBLE FOR CREDIT.—

(1) IN GENERAL.—In the case of a new qualified plug-in electric drive motor vehicle sold during the phaseout period, only the applicable percentage of the credit otherwise allowable under subsection (a) shall be allowed.

(2) PHASEOUT PERIOD.—For purposes of this subsection, the phaseout period is the period beginning with the second calendar quarter following the calendar quarter which includes the first date on which the number of new qualified plug-in electric drive motor vehicles manufactured by the manufacturer of the vehicle referred to in paragraph (1) sold for use in the United States after December 31, 2009, is at least 200,000.

(3) APPLICABLE PERCENTAGE.—For purposes of paragraph (1), the applicable percentage is—

(A) 50 percent for the first 2 calendar quarters of the phaseout period,

(B) 25 percent for the 3rd and 4th calendar quarters of the phaseout period, and

(C) 0 percent for each calendar quarter thereafter.

(4) CONTROLLED GROUPS.—Rules similar to the rules of section 30B(f)(4) shall apply for purposes of this subsection.

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Subpart D—BUSINESS RELATED CREDITS

Sec.
38. General business credit.
* * * * * * *
[45W. Qualified commercial clean vehicle credit.]
* * * * * * *
[45Y. Clean electricity production credit.]
* * * * * * *

SEC. 38. GENERAL BUSINESS CREDIT.

(a) ALLOWANCE OF CREDIT.—There shall be allowed as a credit against the tax imposed by this chapter for the taxable year an amount equal to the sum of—

(1) the business credit carryforwards carried to such taxable year,

(2) the amount of the current year business credit, plus

(3) the business credit carrybacks carried to such taxable year.

(b) CURRENT YEAR BUSINESS CREDIT.—For purposes of this subpart, the amount of the current year business credit is the sum of the following credits determined for the taxable year:

(1) the investment credit determined under section 46,

(2) the work opportunity credit determined under section 51(a),

(3) the alcohol fuels credit determined under section 40(a),
(4) the research credit determined under section 41(a),
(5) the low-income housing credit determined under section 42(a),
(6) the enhanced oil recovery credit under section 43(a),
(7) in the case of an eligible small business (as defined in section 44(b)), the disabled access credit determined under section 44(a),
(8) the renewable electricity production credit under section 45(a),
(9) the empowerment zone employment credit determined under section 1396(a),
(10) the Indian employment credit as determined under section 45A(a),
(11) the employer social security credit determined under section 45B(a),
(12) the orphan drug credit determined under section 45C(a),
(13) the new markets tax credit determined under section 45D(a),
(14) in the case of an eligible employer (as defined in section 45E(c)), the small employer pension plan startup cost credit determined under section 45E(a),
(15) the employer-provided child care credit determined under section 45F(a),
(16) the railroad track maintenance credit determined under section 45G(a),
(17) the biodiesel fuels credit determined under section 40A(a),
(18) the low sulfur diesel fuel production credit determined under section 45H(a),
(19) the marginal oil and gas well production credit determined under section 45I(a),
(20) the distilled spirits credit determined under section 5011(a),
(21) the advanced nuclear power facility production credit determined under section 45J(a),
(22) the nonconventional source production credit determined under section 45K(a),
(23) the new energy efficient home credit determined under section 45L(a),
(24) the portion of the alternative motor vehicle credit to which section 30B(g)(1) applies,
(25) the portion of the alternative fuel vehicle refueling property credit to which section 30C(d)(1) applies,
(26) the mine rescue team training credit determined under section 45N(a),
(27) in the case of an eligible agricultural business (as defined in section 45O(e)), the agricultural chemicals security credit determined under section 45O(a),
(28) the differential wage payment credit determined under section 45P(a),
(29) the carbon dioxide sequestration credit determined under section 45Q(a),
(30) the portion of the new ⟦clean⟧ *qualified plug-in electric drive motor* vehicle credit to which section 30D(c)(1) applies,

(31) the small employer health insurance credit determined under section 45R,

(32) in the case of an eligible employer (as defined in section 45S(c)), the paid family and medical leave credit determined under section 45S(a),

(33) in the case of an eligible employer (as defined in section 45T(c)), the retirement auto-enrollment credit determined under section 45T(a),

(34) the zero-emission nuclear power production credit determined under section 45U(a),

(35) the sustainable aviation fuel credit determined under section 40B,

(36) the clean hydrogen production credit determined under section 45V(a),

[(37) the qualified commercial clean vehicle credit determined under section 45W,]

[(38)] *(37)* the advanced manufacturing production credit determined under section 45X(a),

[(39) the clean electricity production credit determined under section 45Y(a), plus]

[(40)] *(38)* the clean fuel production credit determined under section 45Z(a).

[(41)] *(39)* in the case of an eligible small employer (as defined in section 45AA(c)), the military spouse retirement plan eligibility credit determined under section 45AA(a).

(c) LIMITATION BASED ON AMOUNT OF TAX.—

(1) IN GENERAL.—The credit allowed under subsection (a) for any taxable year shall not exceed the excess (if any) of the taxpayer's net income tax over the greater of—

(A) the tentative minimum tax for the taxable year, or

(B) 25 percent of so much of the taxpayer's net regular tax liability as exceeds $25,000.

For purposes of the preceding sentence, the term "net income tax" means the sum of the regular tax liability and the tax imposed by section 55, reduced by the credits allowable under subparts A and B of this part, and the term "net regular tax liability" means the regular tax liability reduced by the sum of the credits allowable under subparts A and B of this part.

(2) EMPOWERMENT ZONE EMPLOYMENT CREDIT MAY OFFSET 25 PERCENT OF MINIMUM TAX.—

(A) IN GENERAL.—In the case of the empowerment zone employment credit—

(i) this section and section 39 shall be applied separately with respect to such credit, and

(ii) for purposes of applying paragraph (1) to such credit—

(I) 75 percent of the tentative minimum tax shall be substituted for the tentative minimum tax under subparagraph (A) thereof, and

(II) the limitation under paragraph (1) (as modified by subclause (I)) shall be reduced by the credit allowed under subsection (a) for the taxable year (other than the empowerment zone employment credit and the specified credits).

(B) EMPOWERMENT ZONE EMPLOYMENT CREDIT.—For purposes of this paragraph, the term "empowerment zone employment credit" means the portion of the credit under subsection (a) which is attributable to the credit determined under section 1396 (relating to empowerment zone employment credit).

(4) SPECIAL RULES FOR SPECIFIED CREDITS.—

(A) IN GENERAL.—In the case of specified credits—

(i) this section and section 39 shall be applied separately with respect to such credits, and

(ii) in applying paragraph (1) to such credits—

(I) the tentative minimum tax shall be treated as being zero, and

(II) the limitation under paragraph (1) (as modified by subclause (I)) shall be reduced by the credit allowed under subsection (a) for the taxable year (other than the specified credits).

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

(i) for taxable years beginning after December 31, 2004, the credit determined under section 40,

(ii) the credit determined under section 41 for the taxable year with respect to an eligible small business (as defined in paragraph (5)(A) after application of the rules of paragraph (5)(B)),

(iii) the credit determined under section 42 to the extent attributable to buildings placed in service after December 31, 2007,

(iv) the credit determined under section 45 to the extent that such credit is attributable to electricity or refined coal produced—

(I) at a facility which is originally placed in service after the date of the enactment of this paragraph, and

(II) during the 4-year period beginning on the date that such facility was originally placed in service,

(v) the credit determined under section 45 to the extent that such credit is attributable to section 45(e)(10) (relating to Indian coal production facilities),

(vi) the credit determined under section 45B,

(vii) the credit determined under section 45G,

(viii) the credit determined under section 45R,

(ix) the credit determined under section 45S,

(x) the credit determined under section 46 to the extent that such credit is attributable to the energy credit determined under section 48,

(xi) 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

(xii) the credit determined under section 51.

(5) RULES RELATED TO ELIGIBLE SMALL BUSINESSES.—

(A) ELIGIBLE SMALL BUSINESS.—For purposes of this subsection, the term "eligible small business" means, with respect to any taxable year—

(i) a corporation the stock of which is not publicly traded,

(ii) a partnership, or

(iii) a sole proprietorship,

if the average annual gross receipts of such corporation, partnership, or sole proprietorship for the 3-taxable-year period preceding such taxable year does not exceed $50,000,000. For purposes of applying the test under the preceding sentence, rules similar to the rules of paragraphs (2) and (3) of section 448(c) shall apply.

(B) TREATMENT OF PARTNERS AND S CORPORATION SHAREHOLDERS.—For purposes of paragraph (4)(B)(ii), any credit determined under section 41 with respect to a partnership or S corporation shall not be treated as a specified credit by any partner or shareholder unless such partner or shareholder meets the gross receipts test under subparagraph (A) for the taxable year in which such credit is treated as a current year business credit.

(6) SPECIAL RULES.—

(A) MARRIED INDIVIDUALS.—In the case of a husband or wife who files a separate return, the amount specified under subparagraph (B) of paragraph (1) shall be $12,500 in lieu of $25,000. This subparagraph shall not apply if the spouse of the taxpayer has no business credit carryforward or carryback to, and has no current year business credit for, the taxable year of such spouse which ends within or with the taxpayer's taxable year.

(B) CONTROLLED GROUPS.—In the case of a controlled group, the $25,000 amount specified under subparagraph (B) of paragraph (1) shall be reduced for each component member of such group by apportioning $25,000 among the component members of such group in such manner as the Secretary shall by regulations prescribe. For purposes of the preceding sentence, the term "controlled group" has the meaning given to such term by section 1563(a).

(C) LIMITATIONS WITH RESPECT TO CERTAIN PERSONS.—In the case of a person described in subparagraph (A) or (B) of section 46(e)(1) (as in effect on the day before the date of the enactment of the Revenue Reconciliation Act of 1990), the $25,000 amount specified under subparagraph (B) of paragraph (1) shall equal such person's ratable share (as determined under section 46(e)(2) (as so in effect) of such amount.

(D) ESTATES AND TRUSTS.—In the case of an estate or trust, the $25,000 amount specified under subparagraph (B) of paragraph (1) shall be reduced to an amount which bears the same ratio to $25,000 as the portion of the income of the estate or trust which is not allocated to beneficiaries bears to the total income of the estate or trust.

(E) CORPORATIONS.—In the case of a corporation—

(i) the first sentence of paragraph (1) shall be applied by substituting "25 percent of the taxpayer's net

income tax as exceeds $25,000" for "the greater of" and all that follows,

(ii) paragraph (2)(A) shall be applied without regard to clause (ii)(I) thereof, and

(iii) paragraph (4)(A) shall be applied without regard to clause (ii)(I) thereof.

(d) ORDERING RULES.—For purposes of any provision of this title where it is necessary to ascertain the extent to which the credits determined under any section referred to in subsection (b) are used in a taxable year or as a carryback or carryforward—

(1) IN GENERAL.—The order in which such credits are used shall be determined on the basis of the order in which they are listed in subsection (b) as of the close of the taxable year in which the credit is used.

(2) COMPONENTS OF INVESTMENT CREDIT.—The order in which the credits listed in section 46 are used shall be determined on the basis of the order in which such credits are listed in section 46 as of the close of the taxable year in which the credit is used.

* * * * * * *

[SEC. 45W. CREDIT FOR QUALIFIED COMMERCIAL CLEAN VEHICLES.

[(a) IN GENERAL.—For purposes of section 38, the qualified commercial clean vehicle credit for any taxable year is an amount equal to the sum of the credit amounts determined under subsection (b) with respect to each qualified commercial clean vehicle placed in service by the taxpayer during the taxable year.

[(b) PER VEHICLE AMOUNT.—

[(1) IN GENERAL.—Subject to paragraph (4), the amount determined under this subsection with respect to any qualified commercial clean vehicle shall be equal to the lesser of—

[(A) 15 percent of the basis of such vehicle (30 percent in the case of a vehicle not powered by a gasoline or diesel internal combustion engine), or

[(B) the incremental cost of such vehicle.

[(2) INCREMENTAL COST.—For purposes of paragraph (1)(B), the incremental cost of any qualified commercial clean vehicle is an amount equal to the excess of the purchase price for such vehicle over such price of a comparable vehicle.

[(3) COMPARABLE VEHICLE.—For purposes of this subsection, the term "comparable vehicle" means, with respect to any qualified commercial clean vehicle, any vehicle which is powered solely by a gasoline or diesel internal combustion engine and which is comparable in size and use to such vehicle.

[(4) LIMITATION.—The amount determined under this subsection with respect to any qualified commercial clean vehicle shall not exceed—

[(A) in the case of a vehicle which has a gross vehicle weight rating of less than 14,000 pounds, $7,500, and

[(B) in the case of a vehicle not described in subparagraph (A), $40,000.

[(c) QUALIFIED COMMERCIAL CLEAN VEHICLE.—For purposes of this section, the term "qualified commercial clean vehicle" means any vehicle which—

[(1) meets the requirements of section 30D(d)(1)(C) and is acquired for use or lease by the taxpayer and not for resale,

[(2) either—

[(A) meets the requirements of subparagraph (D) of section 30D(d)(1) and is manufactured primarily for use on public streets, roads, and highways (not including a vehicle operated exclusively on a rail or rails), or

[(B) is mobile machinery, as defined in section 4053(8) (including vehicles that are not designed to perform a function of transporting a load over the public highways),

[(3) either—

[(A) is propelled to a significant extent by an electric motor which draws electricity from a battery which has a capacity of not less than 15 kilowatt hours (or, in the case of a vehicle which has a gross vehicle weight rating of less than 14,000 pounds, 7 kilowatt hours) and is capable of being recharged from an external source of electricity, or

[(B) is a motor vehicle which satisfies the requirements under subparagraphs (A) and (B) of section 30B(b)(3), and

[(4) is of a character subject to the allowance for depreciation.

[(d) SPECIAL RULES.—

[(1) IN GENERAL.—Rules similar to the rules under subsection (f) of section 30D (without regard to paragraph (10) or (11) thereof) shall apply for purposes of this section.

[(2) VEHICLES PLACED IN SERVICE BY TAX-EXEMPT ENTITIES.—Subsection (c)(4) shall not apply to any vehicle which is not subject to a lease and which is placed in service by a tax-exempt entity described in clause (i), (ii), or (iv) of section 168(h)(2)(A).

[(3) NO DOUBLE BENEFIT.—No credit shall be allowed under this section with respect to any vehicle for which a credit was allowed under section 30D.

[(e) VIN NUMBER REQUIREMENT.—No credit shall be determined under subsection (a) with respect to any vehicle unless the taxpayer includes the vehicle identification number of such vehicle on the return of tax for the taxable year.

[(f) REGULATIONS AND GUIDANCE.—The Secretary shall issue such regulations or other guidance as the Secretary determines necessary to carry out the purposes of this section, including regulations or other guidance relating to determination of the incremental cost of any qualified commercial clean vehicle.

[(g) TERMINATION.—No credit shall be determined under this section with respect to any vehicle acquired after December 31, 2032.]

* * * * * * *

[SEC. 45Y. CLEAN ELECTRICITY PRODUCTION CREDIT.

[(a) AMOUNT OF CREDIT.—

[(1) IN GENERAL.—For purposes of section 38, the clean electricity production credit for any taxable year is an amount equal to the product of—

[(A) the kilowatt hours of electricity—

[(i) produced by the taxpayer at a qualified facility, and

[(ii)(I) sold by the taxpayer to an unrelated person during the taxable year, or

[(II) in the case of a qualified facility which is equipped with a metering device which is owned and operated by an unrelated person, sold, consumed, or stored by the taxpayer during the taxable year, multiplied by

[(B) the applicable amount with respect to such qualified facility.

[(2) APPLICABLE AMOUNT.—

[(A) BASE AMOUNT.—Subject to subsection (g)(7), in the case of any qualified facility which is not described in clause (i) or (ii) of subparagraph (B) and does not satisfy the requirements described in clause (iii) of such subparagraph, the applicable amount shall be 0.3 cents.

[(B) ALTERNATIVE AMOUNT.—Subject to subsection (g)(7), in the case of any qualified facility—

[(i) with a maximum net output of less than 1 megawatt (as measured in alternating current),

[(ii) the construction of which begins prior to the date that is 60 days after the Secretary publishes guidance with respect to the requirements of paragraphs (9) and (10) of subsection (g), or

[(iii) which—

[(I) satisfies the requirements under paragraph (9) of subsection (g), and

[(II) with respect to the construction of such facility, satisfies the requirements under paragraph (10) of subsection (g),

the applicable amount shall be 1.5 cents.

[(b) QUALIFIED FACILITY.—

[(1) IN GENERAL.—

[(A) DEFINITION.—Subject to subparagraphs (B), (C), and (D), the term "qualified facility" means a facility owned by the taxpayer—

[(i) which is used for the generation of electricity,

[(ii) which is placed in service after December 31, 2024, and

[(iii) for which the greenhouse gas emissions rate (as determined under paragraph (2)) is not greater than zero.

[(B) 10-YEAR PRODUCTION CREDIT.—For purposes of this section, a facility shall only be treated as a qualified facility during the 10-year period beginning on the date the facility was originally placed in service.

[(C) EXPANSION OF FACILITY; INCREMENTAL PRODUCTION.—The term "qualified facility" shall include either of the following in connection with a facility described in subparagraph (A) (without regard to clause (ii) of such subparagraph) which was placed in service before January 1, 2025, but only to the extent of the increased amount of electricity produced at the facility by reason of the following:

[(i) A new unit which is placed in service after December 31, 2024.

[(ii) Any additions of capacity which are placed in service after December 31, 2024.

[(D) COORDINATION WITH OTHER CREDITS.—The term "qualified facility" shall not include any facility for which a credit determined under section 45, 45J, 45Q, 45U, 48, 48A, or 48E is allowed under section 38 for the taxable year or any prior taxable year.

[(2) GREENHOUSE GAS EMISSIONS RATE.—

[(A) IN GENERAL.—For purposes of this section, the term "greenhouse gas emissions rate" means the amount of greenhouse gases emitted into the atmosphere by a facility in the production of electricity, expressed as grams of CO_2e per KWh.

[(B) FUEL COMBUSTION AND GASIFICATION.—In the case of a facility which produces electricity through combustion or gasification, the greenhouse gas emissions rate for such facility shall be equal to the net rate of greenhouse gases emitted into the atmosphere by such facility (taking into account lifecycle greenhouse gas emissions, as described in section 211(*o*)(1)(H) of the Clean Air Act (42 U.S.C. 7545(*o*)(1)(H))) in the production of electricity, expressed as grams of CO_2e per KWh.

[(C) ESTABLISHMENT OF EMISSIONS RATES FOR FACILITIES.—

[(i) PUBLISHING EMISSIONS RATES.—The Secretary shall annually publish a table that sets forth the greenhouse gas emissions rates for types or categories of facilities, which a taxpayer shall use for purposes of this section.

[(ii) PROVISIONAL EMISSIONS RATE.—In the case of any facility for which an emissions rate has not been established by the Secretary, a taxpayer which owns such facility may file a petition with the Secretary for determination of the emissions rate with respect to such facility.

[(D) CARBON CAPTURE AND SEQUESTRATION EQUIPMENT.—For purposes of this subsection, the amount of greenhouse gases emitted into the atmosphere by a facility in the production of electricity shall not include any qualified carbon dioxide that is captured by the taxpayer and—

[(i) pursuant to any regulations established under paragraph (2) of section 45Q(f), disposed of by the taxpayer in secure geological storage, or

[(ii) utilized by the taxpayer in a manner described in paragraph (5) of such section.

[(c) INFLATION ADJUSTMENT.—

[(1) IN GENERAL.—In the case of a calendar year beginning after 2024, the 0.3 cent amount in paragraph (2)(A) of subsection (a) and the 1.5 cent amount in paragraph (2)(B) of such subsection shall each be adjusted by multiplying such amount by the inflation adjustment factor for the calendar year in which the sale, consumption, or storage of the electricity occurs. If the 0.3 cent amount as increased under this paragraph is not a multiple of 0.05 cent, such amount shall be rounded to the nearest multiple of 0.05 cent. If the 1.5 cent amount as

increased under this paragraph is not a multiple of 0.1 cent, such amount shall be rounded to the nearest multiple of 0.1 cent.

[(2) ANNUAL COMPUTATION.—The Secretary shall, not later than April 1 of each calendar year, determine and publish in the Federal Register the inflation adjustment factor for such calendar year in accordance with this subsection.

[(3) INFLATION ADJUSTMENT FACTOR.—The term "inflation adjustment factor" means, with respect to a calendar year, a fraction the numerator of which is the GDP implicit price deflator for the preceding calendar year and the denominator of which is the GDP implicit price deflator for the calendar year 1992. The term "GDP implicit price deflator" means the most recent revision of the implicit price deflator for the gross domestic product as computed and published by the Department of Commerce before March 15 of the calendar year.

[(d) CREDIT PHASE-OUT.—

[(1) IN GENERAL.—The amount of the clean electricity production credit under subsection (a) for any qualified facility the construction of which begins during a calendar year described in paragraph (2) shall be equal to the product of—

[(A) the amount of the credit determined under subsection (a) without regard to this subsection, multiplied by

[(B) the phase-out percentage under paragraph (2).

[(2) PHASE-OUT PERCENTAGE.—The phase-out percentage under this paragraph is equal to—

[(A) for a facility the construction of which begins during the first calendar year following the applicable year, 100 percent,

[(B) for a facility the construction of which begins during the second calendar year following the applicable year, 75 percent,

[(C) for a facility the construction of which begins during the third calendar year following the applicable year, 50 percent, and

[(D) for a facility the construction of which begins during any calendar year subsequent to the calendar year described in subparagraph (C), 0 percent.

[(3) APPLICABLE YEAR.—For purposes of this subsection, the term "applicable year" means the later of—

[(A) the calendar year in which the Secretary determines that the annual greenhouse gas emissions from the production of electricity in the United States are equal to or less than 25 percent of the annual greenhouse gas emissions from the production of electricity in the United States for calendar year 2022, or

[(B) 2032.

[(e) DEFINITIONS.—For purposes of this section:

[(1) CO_2E PER KWH.—The term "CO_2e per KWh" means, with respect to any greenhouse gas, the equivalent carbon dioxide (as determined based on global warming potential) per kilowatt hour of electricity produced.

[(2) GREENHOUSE GAS.—The term "greenhouse gas" has the same meaning given such term under section 211(*o*)(1)(G) of

the Clean Air Act (42 U.S.C. 7545(*o*)(1)(G)), as in effect on the date of the enactment of this section.

[(3) QUALIFIED CARBON DIOXIDE.—The term "qualified carbon dioxide" means carbon dioxide captured from an industrial source which—

[(A) would otherwise be released into the atmosphere as industrial emission of greenhouse gas,

[(B) is measured at the source of capture and verified at the point of disposal or utilization, and

[(C) is captured and disposed or utilized within the United States (within the meaning of section 638(1)) or a possession of the United States (within the meaning of section 638(2)).

[(f) GUIDANCE.—Not later than January 1, 2025, the Secretary shall issue guidance regarding implementation of this section, including calculation of greenhouse gas emission rates for qualified facilities and determination of clean electricity production credits under this section.

[(g) SPECIAL RULES.—

[(1) ONLY PRODUCTION IN THE UNITED STATES TAKEN INTO ACCOUNT.—Consumption, sales, or storage shall be taken into account under this section only with respect to electricity the production of which is within—

[(A) the United States (within the meaning of section 638(1)), or

[(B) a possession of the United States (within the meaning of section 638(2)).

[(2) COMBINED HEAT AND POWER SYSTEM PROPERTY.—

[(A) IN GENERAL.—For purposes of subsection (a)—

[(i) the kilowatt hours of electricity produced by a taxpayer at a qualified facility shall include any production in the form of useful thermal energy by any combined heat and power system property within such facility, and

[(ii) the amount of greenhouse gases emitted into the atmosphere by such facility in the production of such useful thermal energy shall be included for purposes of determining the greenhouse gas emissions rate for such facility.

[(B) COMBINED HEAT AND POWER SYSTEM PROPERTY.—For purposes of this paragraph, the term "combined heat and power system property" has the same meaning given such term by section 48(c)(3) (without regard to subparagraphs (A)(iv), (B), and (D) thereof).

[(C) CONVERSION FROM BTU TO KWH.—

[(i) IN GENERAL.—For purposes of subparagraph (A)(i), the amount of kilowatt hours of electricity produced in the form of useful thermal energy shall be equal to the quotient of—

[(I) the total useful thermal energy produced by the combined heat and power system property within the qualified facility, divided by

[(II) the heat rate for such facility.

[(ii) HEAT RATE.—For purposes of this subparagraph, the term "heat rate" means the amount of en-

ergy used by the qualified facility to generate 1 kilowatt hour of electricity, expressed as British thermal units per net kilowatt hour generated.

[(3) PRODUCTION ATTRIBUTABLE TO THE TAXPAYER.—In the case of a qualified facility in which more than 1 person has an ownership interest, except to the extent provided in regulations prescribed by the Secretary, production from the facility shall be allocated among such persons in proportion to their respective ownership interests in the gross sales from such facility.

[(4) RELATED PERSONS.—Persons shall be treated as related to each other if such persons would be treated as a single employer under the regulations prescribed under section 52(b). In the case of a corporation which is a member of an affiliated group of corporations filing a consolidated return, such corporation shall be treated as selling electricity to an unrelated person if such electricity is sold to such a person by another member of such group.

[(5) PASS-THRU IN THE CASE OF ESTATES AND TRUSTS.—Under regulations prescribed by the Secretary, rules similar to the rules of subsection (d) of section 52 shall apply.

[(6) ALLOCATION OF CREDIT TO PATRONS OF AGRICULTURAL COOPERATIVE.—

[(A) ELECTION TO ALLOCATE.—

[(i) IN GENERAL.—In the case of an eligible cooperative organization, any portion of the credit determined under subsection (a) for the taxable year may, at the election of the organization, be apportioned among patrons of the organization on the basis of the amount of business done by the patrons during the taxable year.

[(ii) FORM AND EFFECT OF ELECTION.—An election under clause (i) for any taxable year shall be made on a timely filed return for such year. Such election, once made, shall be irrevocable for such taxable year. Such election shall not take effect unless the organization designates the apportionment as such in a written notice mailed to its patrons during the payment period described in section 1382(d).

[(B) TREATMENT OF ORGANIZATIONS AND PATRONS.—The amount of the credit apportioned to any patrons under subparagraph (A)—

[(i) shall not be included in the amount determined under subsection (a) with respect to the organization for the taxable year, and

[(ii) shall be included in the amount determined under subsection (a) for the first taxable year of each patron ending on or after the last day of the payment period (as defined in section 1382(d)) for the taxable year of the organization or, if earlier, for the taxable year of each patron ending on or after the date on which the patron receives notice from the cooperative of the apportionment.

[(C) SPECIAL RULES FOR DECREASE IN CREDITS FOR TAXABLE YEAR.—If the amount of the credit of a cooperative organization determined under subsection (a) for a taxable

year is less than the amount of such credit shown on the return of the cooperative organization for such year, an amount equal to the excess of—

[(i) such reduction, over

[(ii) the amount not apportioned to such patrons under subparagraph (A) for the taxable year,

shall be treated as an increase in tax imposed by this chapter on the organization. Such increase shall not be treated as tax imposed by this chapter for purposes of determining the amount of any credit under this chapter.

[(D) ELIGIBLE COOPERATIVE DEFINED.—For purposes of this section, the term "eligible cooperative" means a cooperative organization described in section 1381(a) which is owned more than 50 percent by agricultural producers or by entities owned by agricultural producers. For this purpose an entity owned by an agricultural producer is one that is more than 50 percent owned by agricultural producers.

[(7) INCREASE IN CREDIT IN ENERGY COMMUNITIES.—In the case of any qualified facility which is located in an energy community (as defined in section 45(b)(11)(B)), for purposes of determining the amount of the credit under subsection (a) with respect to any electricity produced by the taxpayer at such facility during the taxable year, the applicable amount under paragraph (2) of such subsection shall be increased by an amount equal to 10 percent of the amount otherwise in effect under such paragraph.

[(8) CREDIT REDUCED FOR TAX-EXEMPT BONDS.—Rules similar to the rules of section 45(b)(3) shall apply.

[(9) WAGE REQUIREMENTS.—Rules similar to the rules of section 45(b)(7) shall apply.

[(10) APPRENTICESHIP REQUIREMENTS.—Rules similar to the rules of section 45(b)(8) shall apply.

[(11) DOMESTIC CONTENT BONUS CREDIT AMOUNT.—

[(A) IN GENERAL.—In the case of any qualified facility which satisfies the requirement under subparagraph (B)(i), the amount of the credit determined under subsection (a) shall be increased by an amount equal to 10 percent of the amount so determined (as determined without application of paragraph (7)).

[(B) REQUIREMENT.—

[(i) IN GENERAL.—The requirement described in this subclause is satisfied with respect to any qualified facility if the taxpayer certifies to the Secretary (at such time, and in such form and manner, as the Secretary may prescribe) that any steel, iron, or manufactured product which is a component of such facility (upon completion of construction) was produced in the United States (as determined under section 661 of title 49, Code of Federal Regulations).

[(ii) STEEL AND IRON.—In the case of steel or iron, clause (i) shall be applied in a manner consistent with section 661.5 of title 49, Code of Federal Regulations.

[(iii) MANUFACTURED PRODUCT.—For purposes of clause (i), the manufactured products which are com-

ponents of a qualified facility upon completion of construction shall be deemed to have been produced in the United States if not less than the adjusted percentage (as determined under subparagraph (C)) of the total costs of all such manufactured products of such facility are attributable to manufactured products (including components) which are mined, produced, or manufactured in the United States.

[(C) ADJUSTED PERCENTAGE.—

[(i) IN GENERAL.—Subject to subclause (ii), for purposes of subparagraph (B)(iii), the adjusted percentage shall be—

[(I) in the case of a facility the construction of which begins before January 1, 2025, 40 percent,

[(II) in the case of a facility the construction of which begins after December 31, 2024, and before January 1, 2026, 45 percent,

[(III) in the case of a facility the construction of which begins after December 31, 2025, and before January 1, 2027, 50 percent, and

[(IV) in the case of a facility the construction of which begins after December 31, 2026, 55 percent.

[(ii) OFFSHORE WIND FACILITY.—For purposes of subparagraph (B)(iii), in the case of a qualified facility which is an offshore wind facility, the adjusted percentage shall be—

[(I) in the case of a facility the construction of which begins before January 1, 2025, 20 percent,

[(II) in the case of a facility the construction of which begins after December 31, 2024, and before January 1, 2026, 27.5 percent,

[(III) in the case of a facility the construction of which begins after December 31, 2025, and before January 1, 2027, 35 percent,

[(IV) in the case of a facility the construction of which begins after December 31, 2026, and before January 1, 2028, 45 percent, and

[(V) in the case of a facility the construction of which begins after December 31, 2027, 55 percent.

[(12) PHASEOUT FOR ELECTIVE PAYMENT.—

[(A) IN GENERAL.—In the case of a taxpayer making an election under section 6417 with respect to a credit under this section, the amount of such credit shall be replaced with—

[(i) the value of such credit (determined without regard to this paragraph), multiplied by

[(ii) the applicable percentage.

[(B) 100 PERCENT APPLICABLE PERCENTAGE FOR CERTAIN QUALIFIED FACILITIES.—In the case of any qualified facility—

[(i) which satisfies the requirements under paragraph (11)(B), or

[(ii) with a maximum net output of less than 1 megawatt (as measured in alternating current),

the applicable percentage shall be 100 percent.

[(C) PHASED DOMESTIC CONTENT REQUIREMENT.—Subject to subparagraph (D), in the case of any qualified facility which is not described in subparagraph (B), the applicable percentage shall be—

[(i) if construction of such facility began before January 1, 2024, 100 percent,

[(ii) if construction of such facility began in calendar year 2024, 90 percent,

[(iii) if construction of such facility began in calendar year 2025, 85 percent, and

[(iv) if construction of such facility began after December 31, 2025, 0 percent.

[(D) EXCEPTION.—

[(i) IN GENERAL.—For purposes of this paragraph, the Secretary shall provide exceptions to the requirements under this paragraph if—

[(I) the inclusion of steel, iron, or manufactured products which are produced in the United States increases the overall costs of construction of qualified facilities by more than 25 percent, or

[(II) relevant steel, iron, or manufactured products are not produced in the United States in sufficient and reasonably available quantities or of a satisfactory quality.

[(ii) APPLICABLE PERCENTAGE.—In any case in which the Secretary provides an exception pursuant to clause (i), the applicable percentage shall be 100 percent.]

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Subpart E—RULES FOR COMPUTING INVESTMENT CREDIT

Sec.
46. Amount of credit.

* * * * * * *

[48E. Clean electricity investment credit.]

* * * * * * *

SEC. 46. AMOUNT OF CREDIT.

For purposes of section 38, the amount of the investment credit determined under this section for any taxable year shall be the sum of—

(1) the rehabilitation credit,
(2) the energy credit,
(3) the qualifying advanced coal project credit,
(4) the qualifying gasification project credit,
(5) the qualifying advanced energy project credit, *and*
(6) the advanced manufacturing investment credit[, and].
[(7) the clean electricity investment credit.]

* * * * * * *

SEC. 48. ENERGY CREDIT.

(a) ENERGY CREDIT.—

(1) IN GENERAL.—For purposes of section 46, except as provided in paragraphs (1)(B), (2)(B), and (3)(B) of subsection (c),

the energy credit for any taxable year is the energy percentage of the basis of each energy property placed in service during such taxable year.

(2) ENERGY PERCENTAGE.—

(A) IN GENERAL.—Except as provided in paragraphs (6) and (7), the energy percentage is—

(i) 6 percent in the case of—

(I) qualified fuel cell property,

(II) energy property described in clause (i) or (iii) of paragraph (3)(A) but only with respect to property the construction of which begins before January 1, 2025,

(III) energy property described in paragraph (3)(A)(ii),

(IV) qualified small wind energy property,

(V) waste energy recovery property,

(VI) energy storage technology,

(VII) qualified biogas property,

(VIII) microgrid controllers, and

(IX) energy property described in clauses (v) and (vii) of paragraph (3)(A), and

(ii) in the case of any energy property to which clause (i) does not apply, 2 percent.

(B) COORDINATION WITH REHABILITATION CREDIT.—The energy percentage shall not apply to that portion of the basis of any property which is attributable to qualified rehabilitation expenditures.

(3) ENERGY PROPERTY.—For purposes of this subpart, the term "energy property" means any property—

(A) which is—

(i) equipment which uses solar energy to generate electricity, to heat or cool (or provide hot water for use in) a structure, or to provide solar process heat, excepting property used to generate energy for the purposes of heating a swimming pool,

(ii) equipment which uses solar energy to illuminate the inside of a structure using fiber-optic distributed sunlight, or electrochromic glass which uses electricity to change its light transmittance properties in order to heat or cool a structure, but only with respect to property the construction of which begins before January 1, 2025,

(iii) equipment used to produce, distribute, or use energy derived from a geothermal deposit (within the meaning of section 613(e)(2)), but only, in the case of electricity generated by geothermal power, up to (but not including) the electrical transmission stage,

(iv) qualified fuel cell property or qualified microturbine property,

(v) combined heat and power system property,

(vi) qualified small wind energy property,

(vii) equipment which uses the ground or ground water as a thermal energy source to heat a structure or as a thermal energy sink to cool a structure, but

only with respect to property the construction of which begins before January 1, 2035,

(viii) waste energy recovery property,

(ix) energy storage technology,

(x) qualified biogas property, or

(xi) microgrid controllers,

(B)(i) the construction, reconstruction, or erection of which is completed by the taxpayer, or

(ii) which is acquired by the taxpayer if the original use of such property commences with the taxpayer,

(C) with respect to which depreciation (or amortization in lieu of depreciation) is allowable, and

(D) which meets the performance and quality standards (if any) which—

(i) have been prescribed by the Secretary by regulations (after consultation with the Secretary of Energy), and

(ii) are in effect at the time of the acquisition of the property.

Such term shall not include any property which is part of a facility the production from which is allowed as a credit under section 45 for the taxable year or any prior taxable year.

(4) SPECIAL RULE FOR PROPERTY FINANCED BY TAX-EXEMPT BONDS.—Rules similar to the rule under section 45(b)(3) shall apply for purposes of this section.

(5) ELECTION TO TREAT QUALIFIED FACILITIES AS ENERGY PROPERTY.—

(A) IN GENERAL.—In the case of any qualified property which is part of a qualified investment credit facility—

(i) such property shall be treated as energy property for purposes of this section, and

(ii) the energy percentage with respect to such property shall be 6 percent.

(B) DENIAL OF PRODUCTION CREDIT.—No credit shall be allowed under section 45 for any taxable year with respect to any qualified investment credit facility.

(C) QUALIFIED INVESTMENT CREDIT FACILITY.—For purposes of this paragraph, the term "qualified investment credit facility" means any facility—

(i) which is a qualified facility (within the meaning of section 45) described in paragraph (1), (2), (3), (4), (6), (7), (9), or (11) of section 45(d),

(ii) which is placed in service after 2008 and the construction of which begins before January 1, 2025, and

(iii) with respect to which—

(I) no credit has been allowed under section 45, and

(II) the taxpayer makes an irrevocable election to have this paragraph apply.

(D) QUALIFIED PROPERTY.—For purposes of this paragraph, the term "qualified property" means property—

(i) which is—

(I) tangible personal property, or

(II) other tangible property (not including a building or its structural components), but only if

such property is used as an integral part of the qualified investment credit facility,

(ii) with respect to which depreciation (or amortization in lieu of depreciation) is allowable,

(iii) which is constructed, reconstructed, erected, or acquired by the taxpayer, and

(iv) the original use of which commences with the taxpayer.

(E) PHASEOUT OF CREDIT FOR WIND FACILITIES.—In the case of any facility using wind to produce electricity which is placed in service before January 1, 2022, and treated as energy property by reason of this paragraph, the amount of the credit determined under this section (determined after the application of paragraphs (1) and (2) and without regard to this subparagraph) shall be reduced by—

(i) in the case of any facility the construction of which begins after December 31, 2016, and before January 1, 2018, 20 percent,

(ii) in the case of any facility the construction of which begins after December 31, 2017, and before January 1, 2019, 40 percent,

(iii) in the case of any facility the construction of which begins after December 31, 2018, and before January 1, 2020, 60 percent, and

(iv) in the case of any facility the construction of which begins after December 31, 2019, and before January 1, 2022, 40 percent.

(F) QUALIFIED OFFSHORE WIND FACILITIES.—

(i) IN GENERAL.—In the case of any qualified offshore wind facility, subparagraph (E) shall not apply.

(ii) QUALIFIED OFFSHORE WIND FACILITY.—For purposes of this subparagraph, the term "qualified offshore wind facility" means a qualified facility (within the meaning of section 45) described in paragraph (1) of section 45(d) (determined without regard to any date by which the construction of the facility is required to begin) which is located in the inland navigable waters of the United States or in the coastal waters of the United States.

(6) PHASEOUT FOR CERTAIN ENERGY PROPERTY.—In the case of any qualified fuel cell property, qualified small wind property, or energy property described in clause (i) or clause (ii) of paragraph (3)(A) the construction of which begins after December 31, 2019, and which is placed in service before January 1, 2022, the energy percentage determined under paragraph (2) shall be equal to 26 percent.

(7) PHASEOUT FOR CERTAIN ENERGY PROPERTY.—In the case of any energy property described in clause (vii) of paragraph (3)(A), the energy percentage determined under paragraph (2) shall be equal to—

(A) in the case of any property the construction of which begins before January 1, 2033, and which is placed in service after December 31, 2021, 6 percent,

(B) in the case of any property the construction of which begins after December 31, 2032, and before January 1, 2034, 5.2 percent, and

(C) in the case of any property the construction of which begins after December 31, 2033, and before January 1, 2035, 4.4 percent.

(8) INTERCONNECTION PROPERTY.—

(A) IN GENERAL.—For purposes of determining the credit under subsection (a), energy property shall include amounts paid or incurred by the taxpayer for qualified interconnection property in connection with the installation of energy property (as defined in paragraph (3)) which has a maximum net output of not greater than 5 megawatts (as measured in alternating current), to provide for the transmission or distribution of the electricity produced or stored by such property, and which are properly chargeable to the capital account of the taxpayer.

(B) QUALIFIED INTERCONNECTION PROPERTY.—The term "qualified interconnection property" means, with respect to an energy project which is not a microgrid controller, any tangible property—

(i) which is part of an addition, modification, or upgrade to a transmission or distribution system which is required at or beyond the point at which the energy project interconnects to such transmission or distribution system in order to accommodate such interconnection,

(ii) either—

(I) which is constructed, reconstructed, or erected by the taxpayer, or

(II) for which the cost with respect to the construction, reconstruction, or erection of such property is paid or incurred by such taxpayer, and

(iii) the original use of which, pursuant to an interconnection agreement, commences with a utility.

(C) INTERCONNECTION AGREEMENT.—The term "interconnection agreement" means an agreement with a utility for the purposes of interconnecting the energy property owned by such taxpayer to the transmission or distribution system of such utility.

(D) UTILITY.—For purposes of this paragraph, the term "utility" means the owner or operator of an electrical transmission or distribution system which is subject to the regulatory authority of a State or political subdivision thereof, any agency or instrumentality of the United States, a public service or public utility commission or other similar body of any State or political subdivision thereof, or the governing or ratemaking body of an electric cooperative.

(E) SPECIAL RULE FOR INTERCONNECTION PROPERTY.—In the case of expenses paid or incurred for interconnection property, amounts otherwise chargeable to capital account with respect to such expenses shall be reduced under rules similar to the rules of section 50(c).

(9) INCREASED CREDIT AMOUNT FOR ENERGY PROJECTS.—

(A) IN GENERAL.—

(i) RULE.—In the case of any energy project which satisfies the requirements of subparagraph (B), the amount of the credit determined under this subsection (determined after the application of paragraphs (1) through (8) and paragraph (15) and without regard to this clause) shall be equal to such amount multiplied by 5.

(ii) ENERGY PROJECT DEFINED.—For purposes of this subsection, the term "energy project" means a project consisting of one or more energy properties that are part of a single project.

(B) PROJECT REQUIREMENTS.—A project meets the requirements of this subparagraph if it is one of the following:

(i) A project with a maximum net output of less than 1 megawatt of electrical (as measured in alternating current) or thermal energy.

(ii) A project the construction of which begins before the date that is 60 days after the Secretary publishes guidance with respect to the requirements of paragraphs (10)(A) and (11).

(iii) A project which satisfies the requirements of paragraphs (10)(A) and (11).

(10) PREVAILING WAGE REQUIREMENTS.—

(A) IN GENERAL.—The requirements described in this subparagraph with respect to any energy project are that the taxpayer shall ensure that any laborers and mechanics employed by the taxpayer or any contractor or subcontractor in—

(i) the construction of such energy project, and

(ii) for the 5-year period beginning on the date such project is originally placed in service, the alteration or repair of such project,

shall be paid wages at rates not less than the prevailing rates for construction, alteration, or repair of a similar character in the locality in which such project is located as most recently determined by the Secretary of Labor, in accordance with subchapter IV of chapter 31 of title 40, United States Code. Subject to subparagraph (C), for purposes of any determination under paragraph (9)(A)(i) for the taxable year in which the energy project is placed in service, the taxpayer shall be deemed to satisfy the requirement under clause (ii) at the time such project is placed in service.

(B) CORRECTION AND PENALTY RELATED TO FAILURE TO SATISFY WAGE REQUIREMENTS.—Rules similar to the rules of section 45(b)(7)(B) shall apply.

(C) RECAPTURE.—The Secretary shall, by regulations or other guidance, provide for recapturing the benefit of any increase in the credit allowed under this subsection by reason of this paragraph with respect to any project which does not satisfy the requirements under subparagraph (A) (after application of subparagraph (B)) for the period described in clause (ii) of subparagraph (A) (but which does

not cease to be investment credit property within the meaning of section 50(a)). The period and percentage of such recapture shall be determined under rules similar to the rules of section 50(a).

(11) APPRENTICESHIP REQUIREMENTS.—Rules similar to the rules of section 45(b)(8) shall apply.

(12) DOMESTIC CONTENT BONUS CREDIT AMOUNT.—

(A) IN GENERAL.—In the case of any energy project which satisfies the requirement under subparagraph (B), for purposes of applying paragraph (2) with respect to such property, the energy percentage shall be increased by the applicable credit rate increase.

(B) REQUIREMENT.—Rules similar to the rules of section 45(b)(9)(B) shall apply.

(C) APPLICABLE CREDIT RATE INCREASE.—For purposes of subparagraph (A), the applicable credit rate increase shall be—

(i) in the case of an energy project which does not satisfy the requirements of paragraph (9)(B), 2 percentage points, and

(ii) in the case of an energy project which satisfies the requirements of paragraph (9)(B), 10 percentage points.

(13) PHASEOUT FOR ELECTIVE PAYMENT.—In the case of a taxpayer making an election under section 6417 with respect to a credit under this section, rules similar to the rules of section 45(b)(10) shall apply.

(14) INCREASE IN CREDIT RATE FOR ENERGY COMMUNITIES.—

(A) IN GENERAL.—In the case of any energy project that is placed in service within an energy community (as defined in section 45(b)(11)(B), as applied by substituting "energy project" for "qualified facility" each place it appears), for purposes of applying paragraph (2) with respect to energy property which is part of such project, the energy percentage shall be increased by the applicable credit rate increase.

(B) APPLICABLE CREDIT RATE INCREASE.—For purposes of subparagraph (A), the applicable credit rate increase shall be equal to—

(i) in the case of any energy project which does not satisfy the requirements of paragraph (9)(B), 2 percentage points, and

(ii) in the case of any energy project which satisfies the requirements of paragraph (9)(B), 10 percentage points.

(15) ELECTION TO TREAT CLEAN HYDROGEN PRODUCTION FACILITIES AS ENERGY PROPERTY.—

(A) IN GENERAL.—In the case of any qualified property (as defined in paragraph (5)(D)) which is part of a specified clean hydrogen production facility—

(i) such property shall be treated as energy property for purposes of this section, and

(ii) the energy percentage with respect to such property is—

(I) in the case of a facility which is designed and reasonably expected to produce qualified clean hydrogen which is described in a subparagraph (A) of section 45V(b)(2), 1.2 percent,

(II) in the case of a facility which is designed and reasonably expected to produce qualified clean hydrogen which is described in a subparagraph (B) of such section, 1.5 percent,

(III) in the case of a facility which is designed and reasonably expected to produce qualified clean hydrogen which is described in a subparagraph (C) of such section, 2 percent, and

(IV) in the case of a facility which is designed and reasonably expected to produce qualified clean hydrogen which is described in subparagraph (D) of such section, 6 percent.

(B) DENIAL OF PRODUCTION CREDIT.—No credit shall be allowed under section 45V or section 45Q for any taxable year with respect to any specified clean hydrogen production facility or any carbon capture equipment included at such facility.

(C) SPECIFIED CLEAN HYDROGEN PRODUCTION FACILITY.—For purposes of this paragraph, the term "specified clean hydrogen production facility" means any qualified clean hydrogen production facility (as defined in section 45V(c)(3))—

(i) which is placed in service after December 31, 2022,

(ii) with respect to which—

(I) no credit has been allowed under section 45V or 45Q, and

(II) the taxpayer makes an irrevocable election to have this paragraph apply, and

(iii) for which an unrelated third party has verified (in such form or manner as the Secretary may prescribe) that such facility produces hydrogen through a process which results in lifecycle greenhouse gas emissions which are consistent with the hydrogen that such facility was designed and expected to produce under subparagraph (A)(ii).

(D) QUALIFIED CLEAN HYDROGEN.—For purposes of this paragraph, the term "qualified clean hydrogen" has the meaning given such term by section 45V(c)(2).

(E) REGULATIONS.—The Secretary shall issue such regulations or other guidance as the Secretary determines necessary to carry out the purposes of this section, including regulations or other guidance which recaptures so much of any credit allowed under this section as exceeds the amount of the credit which would have been allowed if the expected production were consistent with the actual verified production (or all of the credit so allowed in the absence of such verification).

(16) REGULATIONS AND GUIDANCE.—The Secretary shall issue such regulations or other guidance as the Secretary determines necessary to carry out the purposes of this subsection, includ-

ing regulations or other guidance which provides for requirements for recordkeeping or information reporting for purposes of administering the requirements of this subsection.

(b) CERTAIN PROGRESS EXPENDITURE RULES MADE APPLICABLE.—Rules similar to the rules of subsections (c)(4) and (d) of section 46 (as in effect on the day before the date of the enactment of the Revenue Reconciliation Act of 1990) shall apply for purposes of subsection (a).

(c) DEFINITIONS.—For purposes of this section—

(1) QUALIFIED FUEL CELL PROPERTY.—

(A) IN GENERAL.—The term "qualified fuel cell property" means a fuel cell power plant which—

(i) has a nameplate capacity of at least 0.5 kilowatt (1 kilowatt in the case of a fuel cell power plant with a linear generator assembly) of electricity using an electrochemical or electromechanical process, and

(ii) has an electricity-only generation efficiency greater than 30 percent.

(B) LIMITATION.—In the case of qualified fuel cell property placed in service during the taxable year, the credit otherwise determined under subsection (a) for such year with respect to such property shall not exceed an amount equal to $1,500 for each 0.5 kilowatt of capacity of such property.

(C) FUEL CELL POWER PLANT.—The term "fuel cell power plant" means an integrated system comprised of a fuel cell stack assembly, or linear generator assembly, and associated balance of plant components which converts a fuel into electricity using electrochemical or electromechanical means.

(D) LINEAR GENERATOR ASSEMBLY.—The term "linear generator assembly" does not include any assembly which contains rotating parts.

(E) TERMINATION.—The term "qualified fuel cell property" shall not include any property the construction of which does not begin before January 1, 2025.

(2) QUALIFIED MICROTURBINE PROPERTY.—

(A) IN GENERAL.—The term "qualified microturbine property" means a stationary microturbine power plant which—

(i) has a nameplate capacity of less than 2,000 kilowatts, and

(ii) has an electricity-only generation efficiency of not less than 26 percent at International Standard Organization conditions.

(B) LIMITATION.—In the case of qualified microturbine property placed in service during the taxable year, the credit otherwise determined under subsection (a) for such year with respect to such property shall not exceed an amount equal to $200 for each kilowatt of capacity of such property.

(C) STATIONARY MICROTURBINE POWER PLANT.—The term "stationary microturbine power plant" means an integrated system comprised of a gas turbine engine, a combustor, a recuperator or regenerator, a generator or alter-

nator, and associated balance of plant components which converts a fuel into electricity and thermal energy. Such term also includes all secondary components located between the existing infrastructure for fuel delivery and the existing infrastructure for power distribution, including equipment and controls for meeting relevant power standards, such as voltage, frequency, and power factors.

(D) TERMINATION.—The term "qualified microturbine property" shall not include any property the construction of which does not begin before January 1, 2025.

(3) COMBINED HEAT AND POWER SYSTEM PROPERTY.—

(A) COMBINED HEAT AND POWER SYSTEM PROPERTY.—The term "combined heat and power system property" means property comprising a system—

(i) which uses the same energy source for the simultaneous or sequential generation of electrical power, mechanical shaft power, or both, in combination with the generation of steam or other forms of useful thermal energy (including heating and cooling applications),

(ii) which produces—

(I) at least 20 percent of its total useful energy in the form of thermal energy which is not used to produce electrical or mechanical power (or combination thereof), and

(II) at least 20 percent of its total useful energy in the form of electrical or mechanical power (or combination thereof),

(iii) the energy efficiency percentage of which exceeds 60 percent, and

(iv) the construction of which begins before January 1, 2025.

(B) LIMITATION.—

(i) IN GENERAL.—In the case of combined heat and power system property with an electrical capacity in excess of the applicable capacity placed in service during the taxable year, the credit under subsection (a)(1) (determined without regard to this paragraph) for such year shall be equal to the amount which bears the same ratio to such credit as the applicable capacity bears to the capacity of such property.

(ii) APPLICABLE CAPACITY.—For purposes of clause (i), the term "applicable capacity" means 15 megawatts or a mechanical energy capacity of more than 20,000 horsepower or an equivalent combination of electrical and mechanical energy capacities.

(iii) MAXIMUM CAPACITY.—The term "combined heat and power system property" shall not include any property comprising a system if such system has a capacity in excess of 50 megawatts or a mechanical energy capacity in excess of 67,000 horsepower or an equivalent combination of electrical and mechanical energy capacities.

(C) SPECIAL RULES.—

(i) ENERGY EFFICIENCY PERCENTAGE.—For purposes of this paragraph, the energy efficiency percentage of a system is the fraction—

(I) the numerator of which is the total useful electrical, thermal, and mechanical power produced by the system at normal operating rates, and expected to be consumed in its normal application, and

(II) the denominator of which is the lower heating value of the fuel sources for the system.

(ii) DETERMINATIONS MADE ON BTU BASIS.—The energy efficiency percentage and the percentages under subparagraph (A)(ii) shall be determined on a Btu basis.

(iii) INPUT AND OUTPUT PROPERTY NOT INCLUDED.—The term "combined heat and power system property" does not include property used to transport the energy source to the facility or to distribute energy produced by the facility.

(D) SYSTEMS USING BIOMASS.—If a system is designed to use biomass (within the meaning of paragraphs (2) and (3) of section 45(c) without regard to the last sentence of paragraph (3)(A)) for at least 90 percent of the energy source—

(i) subparagraph (A)(iii) shall not apply, but

(ii) the amount of credit determined under subsection (a) with respect to such system shall not exceed the amount which bears the same ratio to such amount of credit (determined without regard to this subparagraph) as the energy efficiency percentage of such system bears to 60 percent.

(4) QUALIFIED SMALL WIND ENERGY PROPERTY.—

(A) IN GENERAL.—The term "qualified small wind energy property" means property which uses a qualifying small wind turbine to generate electricity.

(B) QUALIFYING SMALL WIND TURBINE.—The term "qualifying small wind turbine" means a wind turbine which has a nameplate capacity of not more than 100 kilowatts.

(C) TERMINATION.—The term "qualified small wind energy property" shall not include any property the construction of which does not begin before January 1, 2025.

(5) WASTE ENERGY RECOVERY PROPERTY.—

(A) IN GENERAL.—The term "waste energy recovery property" means property that generates electricity solely from heat from buildings or equipment if the primary purpose of such building or equipment is not the generation of electricity.

(B) CAPACITY LIMITATION.—The term "waste energy recovery property" shall not include any property which has a capacity in excess of 50 megawatts.

(C) NO DOUBLE BENEFIT.—Any waste energy recovery property (determined without regard to this subparagraph) which is part of a system which is a combined heat and power system property shall not be treated as waste energy recovery property for purposes of this section unless the taxpayer elects to not treat such system as a combined

heat and power system property for purposes of this section.

(D) TERMINATION.—The term "waste energy recovery property" shall not include any property the construction of which does not begin before January 1, 2025.

(6) ENERGY STORAGE TECHNOLOGY.—

(A) IN GENERAL.—The term "energy storage technology" means—

(i) property (other than property primarily used in the transportation of goods or individuals and not for the production of electricity) which receives, stores, and delivers energy for conversion to electricity (or, in the case of hydrogen, which stores energy), and has a nameplate capacity of not less than 5 kilowatt hours, and

(ii) thermal energy storage property.

(B) MODIFICATIONS OF CERTAIN PROPERTY.—In the case of any property which either—

(i) was placed in service before the date of enactment of this section and would be described in subparagraph (A)(i), except that such property has a capacity of less than 5 kilowatt hours and is modified in a manner that such property (after such modification) has a nameplate capacity of not less than 5 kilowatt hours, or

(ii) is described in subparagraph (A)(i) and is modified in a manner that such property (after such modification) has an increase in nameplate capacity of not less than 5 kilowatt hours,

such property shall be treated as described in subparagraph (A)(i) except that the basis of any existing property prior to such modification shall not be taken into account for purposes of this section. In the case of any property to which this subparagraph applies, subparagraph (D) shall be applied by substituting "modification" for "construction".

(C) THERMAL ENERGY STORAGE PROPERTY.—

(i) IN GENERAL.—Subject to clause (ii), for purposes of this paragraph, the term "thermal energy storage property" means property comprising a system which—

(I) is directly connected to a heating, ventilation, or air conditioning system,

(II) removes heat from, or adds heat to, a storage medium for subsequent use, and

(III) provides energy for the heating or cooling of the interior of a residential or commercial building.

(ii) EXCLUSION.—The term "thermal energy storage property" shall not include—

(I) a swimming pool,

(II) combined heat and power system property, or

(III) a building or its structural components.

(D) TERMINATION.—The term "energy storage technology" shall not include any property the construction of which begins after December 31, 2024.

(7) QUALIFIED BIOGAS PROPERTY.—

(A) IN GENERAL.—The term "qualified biogas property" means property comprising a system which—

(i) converts biomass (as defined in section 45K(c)(3), as in effect on the date of enactment of this paragraph) into a gas which—

(I) consists of not less than 52 percent methane by volume, or

(II) is concentrated by such system into a gas which consists of not less than 52 percent methane, and

(ii) captures such gas for sale or productive use, and not for disposal via combustion.

(B) INCLUSION OF CLEANING AND CONDITIONING PROPERTY.—The term "qualified biogas property" includes any property which is part of such system which cleans or conditions such gas.

(C) TERMINATION.—The term "qualified biogas property" shall not include any property the construction of which begins after December 31, 2024.

(8) MICROGRID CONTROLLER.—

(A) IN GENERAL.—The term "microgrid controller" means equipment which is—

(i) part of a qualified microgrid, and

(ii) designed and used to monitor and control the energy resources and loads on such microgrid.

(B) QUALIFIED MICROGRID.—The term "qualified microgrid" means an electrical system which—

(i) includes equipment which is capable of generating not less than 4 kilowatts and not greater than 20 megawatts of electricity,

(ii) is capable of operating—

(I) in connection with the electrical grid and as a single controllable entity with respect to such grid, and

(II) independently (and disconnected) from such grid, and

(iii) is not part of a bulk-power system (as defined in section 215 of the Federal Power Act (16 U.S.C. 824o)).

(C) TERMINATION.—The term "microgrid controller" shall not include any property the construction of which begins after December 31, 2024.

(d) COORDINATION WITH DEPARTMENT OF TREASURY GRANTS.—In the case of any property with respect to which the Secretary makes a grant under section 1603 of the American Recovery and Reinvestment Tax Act of 2009—

(1) DENIAL OF PRODUCTION AND INVESTMENT CREDITS.—No credit shall be determined under this section or section 45 with respect to such property for the taxable year in which such grant is made or any subsequent taxable year.

(2) RECAPTURE OF CREDITS FOR PROGRESS EXPENDITURES MADE BEFORE GRANT.—If a credit was determined under this section with respect to such property for any taxable year ending before such grant is made—

(A) the tax imposed under subtitle A on the taxpayer for the taxable year in which such grant is made shall be increased by so much of such credit as was allowed under section 38,

(B) the general business carryforwards under section 39 shall be adjusted so as to recapture the portion of such credit which was not so allowed, and

(C) the amount of such grant shall be determined without regard to any reduction in the basis of such property by reason of such credit.

(3) TREATMENT OF GRANTS.—Any such grant—

(A) shall not be includible in the gross income or alternative minimum taxable income of the taxpayer, but

(B) shall be taken into account in determining the basis of the property to which such grant relates, except that the basis of such property shall be reduced under section 50(c) in the same manner as a credit allowed under subsection (a).

(e) SPECIAL RULES FOR CERTAIN SOLAR AND WIND FACILITIES PLACED IN SERVICE IN CONNECTION WITH LOW-INCOME COMMUNITIES.—

(1) IN GENERAL.—In the case of any qualified solar and wind facility with respect to which the Secretary makes an allocation of environmental justice solar and wind capacity limitation under paragraph (4)—

(A) the energy percentage otherwise determined under paragraph (2) or (5) of subsection (a) with respect to any eligible property which is part of such facility shall be increased by—

(i) in the case of a facility described in subclause (I) of paragraph (2)(A)(iii) and not described in subclause (II) of such paragraph, 10 percentage points, and

(ii) in the case of a facility described in subclause (II) of paragraph (2)(A)(iii), 20 percentage points, and

(B) the increase in the credit determined under subsection (a) by reason of this subsection for any taxable year with respect to all property which is part of such facility shall not exceed the amount which bears the same ratio to the amount of such increase (determined without regard to this subparagraph) as—

(i) the environmental justice solar and wind capacity limitation allocated to such facility, bears to

(ii) the total megawatt nameplate capacity of such facility, as measured in direct current.

(2) QUALIFIED SOLAR AND WIND FACILITY.—For purposes of this subsection—

(A) IN GENERAL.—The term "qualified solar and wind facility" means any facility—

(i) which generates electricity solely from property described in section 45(d)(1) or in clause (i) or (vi) of subsection (a)(3)(A),

(ii) which has a maximum net output of less than 5 megawatts (as measured in alternating current), and

(iii) which—

(I) is located in a low-income community (as defined in section 45D(e)) or on Indian land (as defined in section 2601(2) of the Energy Policy Act of 1992 (25 U.S.C. 3501(2))), or

(II) is part of a qualified low-income residential building project or a qualified low-income economic benefit project.

(B) QUALIFIED LOW-INCOME RESIDENTIAL BUILDING PROJECT.—A facility shall be treated as part of a qualified low-income residential building project if—

(i) such facility is installed on a residential rental building which participates in a covered housing program (as defined in section 41411(a) of the Violence Against Women Act of 1994 (34 U.S.C. 12491(a)(3)), a housing assistance program administered by the Department of Agriculture under title V of the Housing Act of 1949, a housing program administered by a tribally designated housing entity (as defined in section 4(22) of the Native American Housing Assistance and Self-Determination Act of 1996 (25 U.S.C. 4103(22))) or such other affordable housing programs as the Secretary may provide, and

(ii) the financial benefits of the electricity produced by such facility are allocated equitably among the occupants of the dwelling units of such building.

(C) QUALIFIED LOW-INCOME ECONOMIC BENEFIT PROJECT.—A facility shall be treated as part of a qualified low-income economic benefit project if at least 50 percent of the financial benefits of the electricity produced by such facility are provided to households with income of—

(i) less than 200 percent of the poverty line (as defined in section 36B(d)(3)(A)) applicable to a family of the size involved, or

(ii) less than 80 percent of area median gross income (as determined under section 142(d)(2)(B)).

(D) FINANCIAL BENEFIT.—For purposes of subparagraphs (B) and (C), electricity acquired at a below-market rate shall not fail to be taken into account as a financial benefit.

(3) ELIGIBLE PROPERTY.—For purposes of this section, the term "eligible property" means energy property which—

(A) is part of a facility described in section 45(d)(1) for which an election was made under subsection (a)(5), or

(B) is described in clause (i) or (vi) of subsection (a)(3)(A),

including energy storage technology (as described in subsection (a)(3)(A)(ix)) installed in connection with such energy property.

(4) ALLOCATIONS.—

(A) IN GENERAL.—Not later than 180 days after the date of enactment of this subsection, the Secretary shall establish a program to allocate amounts of environmental justice solar and wind capacity limitation to qualified solar

and wind facilities. In establishing such program and to carry out the purposes of this subsection, the Secretary shall provide procedures to allow for an efficient allocation process, including, when determined appropriate, consideration of multiple projects in a single application if such projects will be placed in service by a single taxpayer.

(B) LIMITATION.—The amount of environmental justice solar and wind capacity limitation allocated by the Secretary under subparagraph (A) during any calendar year shall not exceed the annual capacity limitation with respect to such year.

(C) ANNUAL CAPACITY LIMITATION.—For purposes of this paragraph, the term "annual capacity limitation" means 1.8 gigawatts of direct current capacity for each of calendar years 2023 and 2024, and zero thereafter.

(D) CARRYOVER OF UNUSED LIMITATION.—If the annual capacity limitation for any calendar year exceeds the aggregate amount allocated for such year under this paragraph, such limitation for the succeeding calendar year shall be increased by the amount of such excess. No amount may be carried under the preceding sentence to any calendar year after 2024 ⟦except as provided in section 48E(h)(4)(D)(ii)⟧.

(E) PLACED IN SERVICE DEADLINE.—

(i) IN GENERAL.—Paragraph (1) shall not apply with respect to any property which is placed in service after the date that is 4 years after the date of the allocation with respect to the facility of which such property is a part.

(ii) APPLICATION OF CARRYOVER.—Any amount of environmental justice solar and wind capacity limitation which expires under clause (i) during any calendar year shall be taken into account as an excess described in subparagraph (D) (or as an increase in such excess) for such calendar year, subject to the limitation imposed by the last sentence of such subparagraph.

(5) RECAPTURE.—The Secretary shall, by regulations or other guidance, provide for recapturing the benefit of any increase in the credit allowed under subsection (a) by reason of this subsection with respect to any property which ceases to be property eligible for such increase (but which does not cease to be investment credit property within the meaning of section 50(a)). The period and percentage of such recapture shall be determined under rules similar to the rules of section 50(a). To the extent provided by the Secretary, such recapture may not apply with respect to any property if, within 12 months after the date the taxpayer becomes aware (or reasonably should have become aware) of such property ceasing to be property eligible for such increase, the eligibility of such property for such increase is restored. The preceding sentence shall not apply more than once with respect to any facility.

* * * * * * *

SEC. 48C. QUALIFYING ADVANCED ENERGY PROJECT CREDIT.

(a) IN GENERAL.—For purposes of section 46, the qualifying advanced energy project credit for any taxable year is an amount equal to 30 percent of the qualified investment for such taxable year with respect to any qualifying advanced energy project of the taxpayer.

(b) QUALIFIED INVESTMENT.—

(1) IN GENERAL.—For purposes of subsection (a), the qualified investment for any taxable year is the basis of eligible property placed in service by the taxpayer during such taxable year which is part of a qualifying advanced energy project.

(2) CERTAIN QUALIFIED PROGRESS EXPENDITURES RULES MADE APPLICABLE.—Rules similar to the rules of subsections (c)(4) and (d) of section 46 (as in effect on the day before the enactment of the Revenue Reconciliation Act of 1990) shall apply for purposes of this section.

(3) LIMITATION.—The amount which is treated as the qualified investment for all taxable years with respect to any qualifying advanced energy project shall not exceed the amount designated by the Secretary as eligible for the credit under this section.

(c) DEFINITIONS.—

(1) QUALIFYING ADVANCED ENERGY PROJECT.—

(A) IN GENERAL.—The term "qualifying advanced energy project" means a project, any portion of the qualified investment of which is certified by the Secretary under subsection (e) as eligible for a credit under this section—

(i) which re-equips, expands, or establishes an industrial or manufacturing facility for the production or recycling of—

(I) property designed to be used to produce energy from the sun, water, wind, geothermal deposits (within the meaning of section 613(e)(2)), or other renewable resources,

(II) fuel cells, microturbines, or energy storage systems and components,

(III) electric grid modernization equipment or components,

(IV) property designed to capture, remove, use, or sequester carbon oxide emissions,

(V) equipment designed to refine, electrolyze, or blend any fuel, chemical, or product which is—

(aa) renewable, or

(bb) low-carbon and low-emission,

(VI) property designed to produce energy conservation technologies (including residential, commercial, and industrial applications),

(VII) light-, medium-, or heavy-duty electric or fuel cell vehicles, as well as—

(aa) technologies, components, or materials for such vehicles, and

(bb) associated charging or refueling infrastructure,

(VIII) hybrid vehicles with a gross vehicle weight rating of not less than 14,000 pounds, as

well as technologies, components, or materials for such vehicles, or

(IX) other advanced energy property designed to reduce greenhouse gas emissions as may be determined by the Secretary,

(ii) which re-equips an industrial or manufacturing facility with equipment designed to reduce greenhouse gas emissions by at least 20 percent through the installation of—

(I) low- or zero-carbon process heat systems,

(II) carbon capture, transport, utilization and storage systems,

(III) energy efficiency and reduction in waste from industrial processes, or

(IV) any other industrial technology designed to reduce greenhouse gas emissions, as determined by the Secretary, or

(iii) which re-equips, expands, or establishes an industrial facility for the processing, refining, or recycling of critical materials (as defined in section 7002(a) of the Energy Act of 2020 (30 U.S.C. 1606(a)).

(B) EXCEPTION.—Such term shall not include any portion of a project for the production of any property which is used in the refining or blending of any transportation fuel (other than renewable fuels).

(2) ELIGIBLE PROPERTY.—The term "eligible property" means any property—

(A) which is necessary for—

(i) the production or recycling of property described in clause (i) of paragraph (1)(A),

(ii) re-equipping an industrial or manufacturing facility described in clause (ii) of such paragraph, or

(iii) re-equipping, expanding, or establishing an industrial facility described in clause (iii) of such paragraph,

(B) which is—

(i) tangible personal property, or

(ii) other tangible property (not including a building or its structural components), but only if such property is used as an integral part of the qualified investment credit facility, and

(C) with respect to which depreciation (or amortization in lieu of depreciation) is allowable.

(d) QUALIFYING ADVANCED ENERGY PROJECT PROGRAM.—

(1) ESTABLISHMENT.—

(A) IN GENERAL.—Not later than 180 days after the date of enactment of this section, the Secretary, in consultation with the Secretary of Energy, shall establish a qualifying advanced energy project program to consider and award certifications for qualified investments eligible for credits under this section to qualifying advanced energy project sponsors.

(B) LIMITATION.—The total amount of credits that may be allocated under the program shall not exceed $2,300,000,000.

(2) CERTIFICATION.—

(A) APPLICATION PERIOD.—Each applicant for certification under this paragraph shall submit an application containing such information as the Secretary may require during the 2-year period beginning on the date the Secretary establishes the program under paragraph (1).

(B) TIME TO MEET CRITERIA FOR CERTIFICATION.—Each applicant for certification shall have 1 year from the date of acceptance by the Secretary of the application during which to provide to the Secretary evidence that the requirements of the certification have been met.

(C) PERIOD OF ISSUANCE.—An applicant which receives a certification shall have 3 years from the date of issuance of the certification in order to place the project in service and if such project is not placed in service by that time period, then the certification shall no longer be valid.

(3) SELECTION CRITERIA.—In determining which qualifying advanced energy projects to certify under this section, the Secretary—

(A) shall take into consideration only those projects where there is a reasonable expectation of commercial viability, and

(B) shall take into consideration which projects—

(i) will provide the greatest domestic job creation (both direct and indirect) during the credit period,

(ii) will provide the greatest net impact in avoiding or reducing air pollutants or anthropogenic emissions of greenhouse gases,

(iii) have the greatest potential for technological innovation and commercial deployment,

(iv) have the lowest levelized cost of generated or stored energy, or of measured reduction in energy consumption or greenhouse gas emission (based on costs of the full supply chain), and

(v) have the shortest project time from certification to completion.

(4) REVIEW AND REDISTRIBUTION.—

(A) REVIEW.—Not later than 4 years after the date of enactment of this section, the Secretary shall review the credits allocated under this section as of such date.

(B) REDISTRIBUTION.—The Secretary may reallocate credits awarded under this section if the Secretary determines that—

(i) there is an insufficient quantity of qualifying applications for certification pending at the time of the review, or

(ii) any certification made pursuant to paragraph (2) has been revoked pursuant to paragraph (2)(B) because the project subject to the certification has been delayed as a result of third party opposition or litigation to the proposed project.

(C) REALLOCATION.—If the Secretary determines that credits under this section are available for reallocation pursuant to the requirements set forth in paragraph (2),

the Secretary is authorized to conduct an additional program for applications for certification.

(5) DISCLOSURE OF ALLOCATIONS.—The Secretary shall, upon making a certification under this subsection, publicly disclose the identity of the applicant and the amount of the credit with respect to such applicant.

(e) ADDITIONAL ALLOCATIONS.—

(1) IN GENERAL.—Not later than 180 days after the date of enactment of this subsection, the Secretary shall establish a program to consider and award certifications for qualified investments eligible for credits under this section to qualifying advanced energy project sponsors.

(2) LIMITATION.—The total amount of credits which may be allocated under the program established under paragraph (1) shall not exceed $10,000,000,000, of which not greater than $6,000,000,000 may be allocated to qualified investments which are not located within a census tract which—

(A) is described in clause (iii) of section 45(b)(11)(B), and

(B) prior to the date of enactment of this subsection, had no project which received a certification and allocation of credits under subsection (d).

(3) CERTIFICATIONS.—

(A) APPLICATION REQUIREMENT.—Each applicant for certification under this subsection shall submit an application at such time and containing such information as the Secretary may require.

(B) TIME TO MEET CRITERIA FOR CERTIFICATION.—Each applicant for certification shall have 2 years from the date of acceptance by the Secretary of the application during which to provide to the Secretary evidence that the requirements of the certification have been met.

(C) PERIOD OF ISSUANCE.—An applicant which receives a certification shall have 2 years from the date of issuance of the certification in order to place the project in service and to notify the Secretary that such project has been so placed in service, and if such project is not placed in service by that time period, then the certification shall no longer be valid. If any certification is revoked under this subparagraph, the amount of the limitation under paragraph (2) shall be increased by the amount of the credit with respect to such revoked certification.

(D) LOCATION OF PROJECT.—In the case of an applicant which receives a certification, if the Secretary determines that the project has been placed in service at a location which is materially different than the location specified in the application for such project, the certification shall no longer be valid.

(4) CREDIT RATE CONDITIONED UPON WAGE AND APPRENTICESHIP REQUIREMENTS.—

(A) BASE RATE.—For purposes of allocations under this subsection, the amount of the credit determined under subsection (a) shall be determined by substituting "6 percent" for "30 percent".

(B) ALTERNATIVE RATE.—In the case of any project which satisfies the requirements of paragraphs (5)(A) and (6), subparagraph (A) shall not apply.

(5) PREVAILING WAGE REQUIREMENTS.—

(A) IN GENERAL.—The requirements described in this subparagraph with respect to a project are that the taxpayer shall ensure that any laborers and mechanics employed by the taxpayer or any contractor or subcontractor in the re-equipping, expansion, or establishment of a manufacturing facility shall be paid wages at rates not less than the prevailing rates for construction, alteration, or repair of a similar character in the locality in which such project is located as most recently determined by the Secretary of Labor, in accordance with subchapter IV of chapter 31 of title 40, United States Code.

(B) CORRECTION AND PENALTY RELATED TO FAILURE TO SATISFY WAGE REQUIREMENTS.—Rules similar to the rules of section 45(b)(7)(B) shall apply.

(6) APPRENTICESHIP REQUIREMENTS.—Rules similar to the rules of section 45(b)(8) shall apply.

(7) DISCLOSURE OF ALLOCATIONS.—The Secretary shall, upon making a certification under this subsection, publicly disclose the identity of the applicant and the amount of the credit with respect to such applicant.

(f) DENIAL OF DOUBLE BENEFIT.—A credit shall not be allowed under this section for any qualified investment for which a credit is allowed under section 48, 48A, 48B, [48E,] 45Q, or 45V.

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[SEC. 48E. CLEAN ELECTRICITY INVESTMENT CREDIT.

[(a) INVESTMENT CREDIT FOR QUALIFIED PROPERTY.—

[(1) IN GENERAL.—For purposes of section 46, the clean electricity investment credit for any taxable year is an amount equal to the applicable percentage of the qualified investment for such taxable year with respect to—

[(A) any qualified facility, and

[(B) any energy storage technology.

[(2) APPLICABLE PERCENTAGE.—

[(A) QUALIFIED FACILITIES.—Subject to paragraph (3)—

[(i) BASE RATE.—In the case of any qualified facility which is not described in subclause (I) or (II) of clause (ii) and does not satisfy the requirements described in subclause (III) of such clause, the applicable percentage shall be 6 percent.

[(ii) ALTERNATIVE RATE.—In the case of any qualified facility—

[(I) with a maximum net output of less than 1 megawatt (as measured in alternating current),

[(II) the construction of which begins prior to the date that is 60 days after the Secretary publishes guidance with respect to the requirements of paragraphs (3) and (4) of subsection (d), or

[(III) which—

[(aa) satisfies the requirements of subsection (d)(3), and

[(bb) with respect to the construction of such facility, satisfies the requirements of subsection (d)(4),

the applicable percentage shall be 30 percent.

[(B) ENERGY STORAGE TECHNOLOGY.—Subject to paragraph (3)—

[(i) BASE RATE.—In the case of any energy storage technology which is not described in subclause (I) or (II) of clause (ii) and does not satisfy the requirements described in subclause (III) of such clause, the applicable percentage shall be 6 percent.

[(ii) ALTERNATIVE RATE.—In the case of any energy storage technology—

[(I) with a capacity of less than 1 megawatt,

[(II) the construction of which begins prior to the date that is 60 days after the Secretary publishes guidance with respect to the requirements of paragraphs (3) and (4) of subsection (d), or

[(III) which—

[(aa) satisfies the requirements of subsection (d)(3), and

[(bb) with respect to the construction of such property, satisfies the requirements of subsection (d)(4),

the applicable percentage shall be 30 percent.

[(3) INCREASE IN CREDIT RATE IN CERTAIN CASES.—

[(A) ENERGY COMMUNITIES.—

[(i) IN GENERAL.—In the case of any qualified investment with respect to a qualified facility or with respect to energy storage technology which is placed in service within an energy community (as defined in section 45(b)(11)(B)), for purposes of applying paragraph (2) with respect to such property or investment, the applicable percentage shall be increased by the applicable credit rate increase.

[(ii) APPLICABLE CREDIT RATE INCREASE.—For purposes of clause (i), the applicable credit rate increase shall be an amount equal to—

[(I) in the case of any qualified investment with respect to a qualified facility described in paragraph (2)(A)(i) or with respect to energy storage technology described in paragraph (2)(B)(i), 2 percentage points, and

[(II) in the case of any qualified investment with respect to a qualified facility described in paragraph (2)(A)(ii) or with respect to energy storage technology described in paragraph (2)(B)(ii), 10 percentage points.

[(B) DOMESTIC CONTENT.—Rules similar to the rules of section 48(a)(12) shall apply.

[(b) QUALIFIED INVESTMENT WITH RESPECT TO A QUALIFIED FACILITY.—

[(1) IN GENERAL.—For purposes of subsection (a), the qualified investment with respect to any qualified facility for any taxable year is the sum of—

[(A) the basis of any qualified property placed in service by the taxpayer during such taxable year which is part of a qualified facility, plus

[(B) the amount of any expenditures which are—

[(i) paid or incurred by the taxpayer for qualified interconnection property—

[(I) in connection with a qualified facility which has a maximum net output of not greater than 5 megawatts (as measured in alternating current), and

[(II) placed in service during the taxable year of the taxpayer, and

[(ii) properly chargeable to capital account of the taxpayer.

[(2) QUALIFIED PROPERTY.—For purposes of this section, the term "qualified property" means property—

[(A) which is—

[(i) tangible personal property, or

[(ii) other tangible property (not including a building or its structural components), but only if such property is used as an integral part of the qualified facility,

[(B) with respect to which depreciation (or amortization in lieu of depreciation) is allowable, and

[(C)(i) the construction, reconstruction, or erection of which is completed by the taxpayer, or

[(ii) which is acquired by the taxpayer if the original use of such property commences with the taxpayer.

[(3) QUALIFIED FACILITY.—

[(A) IN GENERAL.—For purposes of this section, the term "qualified facility" means a facility—

[(i) which is used for the generation of electricity,

[(ii) which is placed in service after December 31, 2024, and

[(iii) for which the anticipated greenhouse gas emissions rate (as determined under subparagraph (B)(ii)) is not greater than zero.

[(B) ADDITIONAL RULES.—

[(i) EXPANSION OF FACILITY; INCREMENTAL PRODUCTION.—Rules similar to the rules of section 45Y(b)(1)(C) shall apply for purposes of this paragraph.

[(ii) GREENHOUSE GAS EMISSIONS RATE.—Rules similar to the rules of section 45Y(b)(2) shall apply for purposes of this paragraph.

[(C) EXCLUSION.—The term "qualified facility" shall not include any facility for which—

[(i) a renewable electricity production credit determined under section 45,

[(ii) an advanced nuclear power facility production credit determined under section 45J,

[(iii) a carbon oxide sequestration credit determined under section 45Q,

[(iv) a zero-emission nuclear power production credit determined under section 45U,

[(v) a clean electricity production credit determined under section 45Y,

[(vi) an energy credit determined under section 48, or

[(vii) a qualifying advanced coal project credit under section 48A,

is allowed under section 38 for the taxable year or any prior taxable year.

[(4) QUALIFIED INTERCONNECTION PROPERTY.—For purposes of this paragraph, the term "qualified interconnection property" has the meaning given such term in section 48(a)(8)(B).

[(5) COORDINATION WITH REHABILITATION CREDIT.—The qualified investment with respect to any qualified facility for any taxable year shall not include that portion of the basis of any property which is attributable to qualified rehabilitation expenditures (as defined in section 47(c)(2)).

[(6) DEFINITIONS.—For purposes of this subsection, the terms "CO2e per KWh" and "greenhouse gas emissions rate" have the same meaning given such terms under section 45Y.

[(c) QUALIFIED INVESTMENT WITH RESPECT TO ENERGY STORAGE TECHNOLOGY.—

[(1) QUALIFIED INVESTMENT.—For purposes of subsection (a), the qualified investment with respect to energy storage technology for any taxable year is the basis of any energy storage technology placed in service by the taxpayer during such taxable year.

[(2) ENERGY STORAGE TECHNOLOGY.—For purposes of this section, the term "energy storage technology" has the meaning given such term in section 48(c)(6) (except that subparagraph (D) of such section shall not apply).

[(d) SPECIAL RULES.—

[(1) CERTAIN PROGRESS EXPENDITURE RULES MADE APPLICABLE.—Rules similar to the rules of subsections (c)(4) and (d) of section 46 (as in effect on the day before the date of the enactment of the Revenue Reconciliation Act of 1990) shall apply for purposes of subsection (a).

[(2) SPECIAL RULE FOR PROPERTY FINANCED BY SUBSIDIZED ENERGY FINANCING OR PRIVATE ACTIVITY BONDS.—Rules similar to the rules of section 45(b)(3) shall apply.

[(3) PREVAILING WAGE REQUIREMENTS.—Rules similar to the rules of section 48(a)(10) shall apply.

[(4) APPRENTICESHIP REQUIREMENTS.—Rules similar to the rules of section 45(b)(8) shall apply.

[(5) DOMESTIC CONTENT REQUIREMENT FOR ELECTIVE PAYMENT.—In the case of a taxpayer making an election under section 6417 with respect to a credit under this section, rules similar to the rules of section 45Y(g)(12) shall apply.

[(e) CREDIT PHASE-OUT.—

[(1) IN GENERAL.—The amount of the clean electricity investment credit under subsection (a) for any qualified investment with respect to any qualified facility or energy storage technology the construction of which begins during a calendar year described in paragraph (2) shall be equal to the product of—

[(A) the amount of the credit determined under subsection (a) without regard to this subsection, multiplied by

‘‘(B) the phase-out percentage under paragraph (2).

‘‘(2) PHASE-OUT PERCENTAGE.—The phase-out percentage under this paragraph is equal to—

‘‘(A) for any qualified investment with respect to any qualified facility or energy storage technology the construction of which begins during the first calendar year following the applicable year, 100 percent,

‘‘(B) for any qualified investment with respect to any qualified facility or energy storage technology the construction of which begins during the second calendar year following the applicable year, 75 percent,

‘‘(C) for any qualified investment with respect to any qualified facility or energy storage technology the construction of which begins during the third calendar year following the applicable year, 50 percent, and

‘‘(D) for any qualified investment with respect to any qualified facility or energy storage technology the construction of which begins during any calendar year subsequent to the calendar year described in subparagraph (C), 0 percent.

‘‘(3) APPLICABLE YEAR.—For purposes of this subsection, the term ‘‘applicable year’’ has the same meaning given such term in section 45Y(d)(3).

‘‘(f) GREENHOUSE GAS.—In this section, the term ‘‘greenhouse gas’’ has the same meaning given such term under section 45Y(e)(2).

‘‘(g) RECAPTURE OF CREDIT.—For purposes of section 50, if the Secretary determines that the greenhouse gas emissions rate for a qualified facility is greater than 10 grams of CO_2e per KWh, any property for which a credit was allowed under this section with respect to such facility shall cease to be investment credit property in the taxable year in which the determination is made.

‘‘(h) SPECIAL RULES FOR CERTAIN FACILITIES PLACED IN SERVICE IN CONNECTION WITH LOW-INCOME COMMUNITIES.—

‘‘(1) IN GENERAL.—In the case of any applicable facility with respect to which the Secretary makes an allocation of environmental justice capacity limitation under paragraph (4)—

‘‘(A) the applicable percentage otherwise determined under subsection (a)(2) with respect to any eligible property which is part of such facility shall be increased by—

‘‘(i) in the case of a facility described in subclause (I) of paragraph (2)(A)(iii) and not described in subclause (II) of such paragraph, 10 percentage points, and

‘‘(ii) in the case of a facility described in subclause (II) of paragraph (2)(A)(iii), 20 percentage points, and

‘‘(B) the increase in the credit determined under subsection (a) by reason of this subsection for any taxable year with respect to all property which is part of such facility shall not exceed the amount which bears the same ratio to the amount of such increase (determined without regard to this subparagraph) as—

‘‘(i) the environmental justice capacity limitation allocated to such facility, bears to

‘‘(ii) the total megawatt nameplate capacity of such facility, as measured in direct current.

[(2) APPLICABLE FACILITY.—For purposes of this subsection—

[(A) IN GENERAL.—The term "applicable facility" means any qualified facility—

[(i) which is not described in section 45Y(b)(2)(B),

[(ii) which has a maximum net output of less than 5 megawatts (as measured in alternating current), and

[(iii) which—

[(I) is located in a low-income community (as defined in section 45D(e)) or on Indian land (as defined in section 2601(2) of the Energy Policy Act of 1992 (25 U.S.C. 3501(2))), or

[(II) is part of a qualified low-income residential building project or a qualified low-income economic benefit project.

[(B) QUALIFIED LOW-INCOME RESIDENTIAL BUILDING PROJECT.—A facility shall be treated as part of a qualified low-income residential building project if—

[(i) such facility is installed on a residential rental building which participates in a covered housing program (as defined in section 41411(a) of the Violence Against Women Act of 1994 (34 U.S.C. 12491(a)(3)), a housing assistance program administered by the Department of Agriculture under title V of the Housing Act of 1949, a housing program administered by a tribally designated housing entity (as defined in section 4(22) of the Native American Housing Assistance and Self-Determination Act of 1996 (25 U.S.C. 4103(22))) or such other affordable housing programs as the Secretary may provide, and

[(ii) the financial benefits of the electricity produced by such facility are allocated equitably among the occupants of the dwelling units of such building.

[(C) QUALIFIED LOW-INCOME ECONOMIC BENEFIT PROJECT.—A facility shall be treated as part of a qualified low-income economic benefit project if at least 50 percent of the financial benefits of the electricity produced by such facility are provided to households with income of—

[(i) less than 200 percent of the poverty line (as defined in section 36B(d)(3)(A)) applicable to a family of the size involved, or

[(ii) less than 80 percent of area median gross income (as determined under section 142(d)(2)(B)).

[(D) FINANCIAL BENEFIT.—For purposes of subparagraphs (B) and (C), electricity acquired at a below-market rate shall not fail to be taken into account as a financial benefit.

[(3) ELIGIBLE PROPERTY.—For purposes of this subsection, the term "eligible property" means a qualified investment with respect to any applicable facility.

[(4) ALLOCATIONS.—

[(A) IN GENERAL.—Not later than January 1, 2025, the Secretary shall establish a program to allocate amounts of environmental justice capacity limitation to applicable facilities. In establishing such program and to carry out the purposes of this subsection, the Secretary shall provide

procedures to allow for an efficient allocation process, including, when determined appropriate, consideration of multiple projects in a single application if such projects will be placed in service by a single taxpayer.

[(B) LIMITATION.—The amount of environmental justice capacity limitation allocated by the Secretary under subparagraph (A) during any calendar year shall not exceed the annual capacity limitation with respect to such year.

[(C) ANNUAL CAPACITY LIMITATION.—For purposes of this paragraph, the term "annual capacity limitation" means 1.8 gigawatts of direct current capacity for each calendar year during the period beginning on January 1, 2025, and ending on December 31 of the applicable year (as defined in section 45Y(d)(3)), and zero thereafter.

[(D) CARRYOVER OF UNUSED LIMITATION.—

[(i) IN GENERAL.—If the annual capacity limitation for any calendar year exceeds the aggregate amount allocated for such year under this paragraph, such limitation for the succeeding calendar year shall be increased by the amount of such excess. No amount may be carried under the preceding sentence to any calendar year after the third calendar year following the applicable year (as defined in section 45Y(d)(3)).

[(ii) CARRYOVER FROM SECTION 48 FOR CALENDAR YEAR 2025.—If the annual capacity limitation for calendar year 2024 under section 48(e)(4)(D) exceeds the aggregate amount allocated for such year under such section, such excess amount may be carried over and applied to the annual capacity limitation under this subsection for calendar year 2025. The annual capacity limitation for calendar year 2025 shall be increased by the amount of such excess.

[(E) PLACED IN SERVICE DEADLINE.—

[(i) IN GENERAL.—Paragraph (1) shall not apply with respect to any property which is placed in service after the date that is 4 years after the date of the allocation with respect to the facility of which such property is a part.

[(ii) APPLICATION OF CARRYOVER.—Any amount of environmental justice capacity limitation which expires under clause (i) during any calendar year shall be taken into account as an excess described in subparagraph (D)(i) (or as an increase in such excess) for such calendar year, subject to the limitation imposed by the last sentence of such subparagraph.

[(5) RECAPTURE.—The Secretary shall, by regulations or other guidance, provide for recapturing the benefit of any increase in the credit allowed under subsection (a) by reason of this subsection with respect to any property which ceases to be property eligible for such increase (but which does not cease to be investment credit property within the meaning of section 50(a)). The period and percentage of such recapture shall be determined under rules similar to the rules of section 50(a). To the extent provided by the Secretary, such recapture may not apply with respect to any property if, within 12 months after

the date the taxpayer becomes aware (or reasonably should have become aware) of such property ceasing to be property eligible for such increase, the eligibility of such property for such increase is restored. The preceding sentence shall not apply more than once with respect to any facility.

[(i) GUIDANCE.—Not later than January 1, 2025, the Secretary shall issue guidance regarding implementation of this section.]

SEC. 49. AT-RISK RULES.

(a) GENERAL RULE.—

(1) CERTAIN NONRECOURSE FINANCING EXCLUDED FROM CREDIT BASE.—

(A) LIMITATION.—The credit base of any property to which this paragraph applies shall be reduced by the nonqualified nonrecourse financing with respect to such credit base (as of the close of the taxable year in which placed in service).

(B) PROPERTY TO WHICH PARAGRAPH APPLIES.—This paragraph applies to any property which—

(i) is placed in service during the taxable year by a taxpayer described in section 465(a)(1), and

(ii) is used in connection with an activity with respect to which any loss is subject to limitation under section 465.

(C) CREDIT BASE DEFINED.—For purposes of this paragraph, the term "credit base" means—

(i) the portion of the basis of any qualified rehabilitated building attributable to qualified rehabilitation expenditures,

(ii) the basis of any energy property,

(iii) the basis of any property which is part of a qualifying advanced coal project under section 48A,

(iv) the basis of any property which is part of a qualifying gasification project under section 48B,

(v) the basis of any property which is part of a qualifying advanced energy project under section 48C, *and*

(vi) the basis of any qualified property (as defined in subsection (b)(2) of section 48D) which is part of an advanced manufacturing facility (as defined in subsection (b)(3) of such section)[,].

[(vii) the basis of any qualified property which is part of a qualified facility under section 48E, and

[(viii) the basis of any energy storage technology under section 48E.]

(D) NONQUALIFIED NONRECOURSE FINANCING.—

(i) IN GENERAL.—For purposes of this paragraph and paragraph (2), the term "nonqualified nonrecourse financing" means any nonrecourse financing which is not qualified commercial financing.

(ii) QUALIFIED COMMERCIAL FINANCING.—For purposes of this paragraph, the term "qualified commercial financing" means any financing with respect to any property if—

(I) such property is acquired by the taxpayer from a person who is not a related person,

(II) the amount of the nonrecourse financing with respect to such property does not exceed 80 percent of the credit base of such property, and

(III) such financing is borrowed 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.

Such term shall not include any convertible debt.

(iii) NONRECOURSE FINANCING.—For purposes of this subparagraph, the term "nonrecourse financing" includes—

(I) any amount with respect to which the taxpayer is protected against loss through guarantees, stop-loss agreements, or other similar arrangements, and

(II) except to the extent provided in regulations, any amount borrowed from a person who has an interest (other than as a creditor) in the activity in which the property is used or from a related person to a person (other than the taxpayer) having such an interest.

In the case of amounts borrowed by a corporation from a shareholder, subclause (II) shall not apply to an interest as a shareholder.

(iv) QUALIFIED PERSON.—For purposes of this paragraph, the term "qualified person" means any person which is actively and regularly engaged in the business of lending money and which is not—

(I) a related person with respect to the taxpayer,

(II) a person from which the taxpayer acquired the property (or a related person to such person), or

(III) a person who receives a fee with respect to the taxpayer's investment in the property (or a related person to such person).

(v) RELATED PERSON.—For purposes of this subparagraph, the term "related person" has the meaning given such term by section 465(b)(3)(C). Except as otherwise provided in regulations prescribed by the Secretary, the determination of whether a person is a related person shall be made as of the close of the taxable year in which the property is placed in service.

(E) APPLICATION TO PARTNERSHIPS AND S CORPORATIONS.—For purposes of this paragraph and paragraph (2)—

(i) IN GENERAL.—Except as otherwise provided in this subparagraph, in the case of any partnership or S corporation, the determination of whether a partner's or shareholder's allocable share of any financing is nonqualified nonrecourse financing shall be made at the partner or shareholder level.

(ii) SPECIAL RULE FOR CERTAIN RECOURSE FINANCING OF S CORPORATION.—A shareholder of an S corporation

shall be treated as liable for his allocable share of any financing provided by a qualified person to such corporation if—

(I) such financing is recourse financing (determined at the corporate level), and

(II) such financing is provided with respect to qualified business property of such corporation.

(iii) QUALIFIED BUSINESS PROPERTY.—For purposes of clause (ii), the term "qualified business property" means any property if—

(I) such property is used by the corporation in the active conduct of a trade or business,

(II) during the entire 12-month period ending on the last day of the taxable year, such corporation had at least 3 full-time employees who were not owner-employees (as defined in section 465(c)(7)(E)(i)) and substantially all the services of whom were services directly related to such trade or business, and

(III) during the entire 12-month period ending on the last day of such taxable year, such corporation had at least 1 full-time employee substantially all of the services of whom were in the active management of the trade or business.

(iv) DETERMINATION OF ALLOCABLE SHARE.—The determination of any partner's or shareholder's allocable share of any financing shall be made in the same manner as the credit allowable by section 38 with respect to such property.

(F) SPECIAL RULES FOR ENERGY PROPERTY.—Rules similar to the rules of subparagraph (F) of section 46(c)(8) (as in effect on the day before the date of the enactment of the Revenue Reconciliation Act of 1990) shall apply for purposes of this paragraph.

(2) SUBSEQUENT DECREASES IN NONQUALIFIED NONRECOURSE FINANCING WITH RESPECT TO THE PROPERTY.—

(A) IN GENERAL.—If, at the close of a taxable year following the taxable year in which the property was placed in service, there is a net decrease in the amount of nonqualified nonrecourse financing with respect to such property, such net decrease shall be taken into account as an increase in the credit base for such property in accordance with subparagraph (C).

(B) CERTAIN TRANSACTIONS NOT TAKEN INTO ACCOUNT.—For purposes of this paragraph, nonqualified nonrecourse financing shall not be treated as decreased through the surrender or other use of property financed by nonqualified nonrecourse financing.

(C) MANNER IN WHICH TAKEN INTO ACCOUNT.—

(i) CREDIT DETERMINED BY REFERENCE TO TAXABLE YEAR PROPERTY PLACED IN SERVICE.—For purposes of determining the amount of credit allowable under section 38 and the amount of credit subject to the early disposition or cessation rules under section 50(a), any increase in a taxpayer's credit base for any property

by reason of this paragraph shall be taken into account as if it were property placed in service by the taxpayer in the taxable year in which the property referred to in subparagraph (A) was first placed in service.

(ii) CREDIT ALLOWED FOR YEAR OF DECREASE IN NONQUALIFIED NONRECOURSE FINANCING.—Any credit allowable under this subpart for any increase in qualified investment by reason of this paragraph shall be treated as earned during the taxable year of the decrease in the amount of nonqualified nonrecourse financing.

(b) INCREASES IN NONQUALIFIED NONRECOURSE FINANCING.—

(1) IN GENERAL.—If, as of the close of the taxable year, there is a net increase with respect to the taxpayer in the amount of nonqualified nonrecourse financing (within the meaning of subsection (a)(1)) with respect to any property to which subsection (a)(1) applied, then the tax under this chapter for such taxable year shall be increased by an amount equal to the aggregate decrease in credits allowed under section 38 for all prior taxable years which would have resulted from reducing the credit base (as defined in subsection (a)(1)(C)) taken into account with respect to such property by the amount of such net increase. For purposes of determining the amount of credit subject to the early disposition or cessation rules of section 50(a), the net increase in the amount of the nonqualified nonrecourse financing with respect to the property shall be treated as reducing the property's credit base in the year in which the property was first placed in service.

(2) TRANSFERS OF DEBT MORE THAN 1 YEAR AFTER INITIAL BORROWING NOT TREATED AS INCREASING NONQUALIFIED NONRECOURSE FINANCING.—For purposes of paragraph (1), the amount of nonqualified nonrecourse financing (within the meaning of subsection (a)(1)(D)) with respect to the taxpayer shall not be treated as increased by reason of a transfer of (or agreement to transfer) any evidence of any indebtedness if such transfer occurs (or such agreement is entered into) more than 1 year after the date such indebtedness was incurred.

(3) SPECIAL RULES FOR CERTAIN ENERGY PROPERTY.—Rules similar to the rules of section 47(d)(3) (as in effect on the day before the date of the enactment of the Revenue Reconciliation Act of 1990) shall apply for purposes of this subsection.

(4) SPECIAL RULE.—Any increase in tax under paragraph (1) shall not be treated as tax imposed by this chapter for purposes of determining the amount of any credit allowable under this chapter.

SEC. 50. OTHER SPECIAL RULES.

(a) RECAPTURE IN CASE OF DISPOSITIONS, ETC..—Under regulations prescribed by the Secretary—

(1) EARLY DISPOSITION, ETC..—

(A) GENERAL RULE.—If, during any taxable year, investment credit property is disposed of, or otherwise ceases to be investment credit property with respect to the taxpayer, before the close of the recapture period, then the tax under this chapter for such taxable year shall be increased by the

recapture percentage of the aggregate decrease in the credits allowed under section 38 for all prior taxable years which would have resulted solely from reducing to zero any credit determined under this subpart with respect to such property.

(B) RECAPTURE PERCENTAGE.—For purposes of subparagraph (A), the recapture percentage shall be determined in accordance with the following table:

(2) PROPERTY CEASES TO QUALIFY FOR PROGRESS EXPENDITURES.—

(A) IN GENERAL.—If during any taxable year any building to which section 47(d) applied ceases (by reason of sale or other disposition, cancellation or abandonment of contract, or otherwise) to be, with respect to the taxpayer, property which, when placed in service, will be a qualified rehabilitated building, then the tax under this chapter for such taxable year shall be increased by an amount equal to the aggregate decrease in the credits allowed under section 38 for all prior taxable years which would have resulted solely from reducing to zero the credit determined under this subpart with respect to such building.

(B) CERTAIN EXCESS CREDIT RECAPTURED.—Any amount which would have been applied as a reduction under paragraph (2) of section 47(b) but for the fact that a reduction under such paragraph cannot reduce the amount taken into account under section 47(b)(1) below zero shall be treated as an amount required to be recaptured under subparagraph (A) for the taxable year during which the building is placed in service.

(C) CERTAIN SALES AND LEASEBACKS.—Under regulations prescribed by the Secretary, a sale by, and leaseback to, a taxpayer who, when the property is placed in service, will be a lessee to whom the rules referred to in subsection (d)(5) apply shall not be treated as a cessation described in subparagraph (A) to the extent that the amount which will be passed through to the lessee under such rules with respect to such property is not less than the qualified rehabilitation expenditures properly taken into account by the lessee under section 47(d) with respect to such property.

(D) COORDINATION WITH PARAGRAPH (1).—If, after property is placed in service, there is a disposition or other cessation described in paragraph (1), then paragraph (1) shall be applied as if any credit which was allowable by reason of section 47(d) and which has not been required to be recaptured before such disposition, cessation, or change in use were allowable for the taxable year the property was placed in service.

(E) SPECIAL RULES.—Rules similar to the rules of this paragraph shall apply in cases where qualified progress expenditures were taken into account under the rules referred to in section 48(b), 48A(b)(3), 48B(b)(3), 48C(b)(2), ⟦48D(b)(5), or 48E(e)⟧ *or 48D(b)(5)*.

(3) CERTAIN EXPANSIONS IN CONNECTION WITH ADVANCED MANUFACTURING FACILITIES.—

(A) IN GENERAL.—If there is a an applicable transaction by an applicable taxpayer before the close of the 10-year period beginning on the date such taxpayer placed in service investment credit property which is eligible for the advanced manufacturing investment credit under section 48D(a), then the tax under this chapter for the taxable year in which such transaction occurs shall be increased by 100 percent of the aggregate decrease in the credits allowed under section 38 for all prior taxable years which would have resulted solely from reducing to zero any credit determined under section 46 which is attributable to the advanced manufacturing investment credit under section 48D(a) with respect to such property.

(B) EXCEPTION.—Subparagraph (A) shall not apply if the applicable taxpayer demonstrates to the satisfaction of the Secretary that the applicable transaction has been ceased or abandoned within 45 days of a determination and notice by the Secretary.

(C) REGULATIONS AND GUIDANCE.—The Secretary shall issue such regulations or other guidance as the Secretary determines necessary or appropriate to carry out the purposes of this paragraph, including regulations or other guidance which provide for requirements for recordkeeping or information reporting for purposes of administering the requirements of this paragraph.

(4) CARRYBACKS AND CARRYOVERS ADJUSTED.—In the case of any cessation described in paragraph (1) or (2), or any applicable transaction to which paragraph (3)(A) applies, the carrybacks and carryovers under section 39 shall be adjusted by reason of such cessation or applicable transaction.

(5) SUBSECTION NOT TO APPLY IN CERTAIN CASES.—Paragraphs (1) and (2) shall not apply to—

(A) a transfer by reason of death, or

(B) a transaction to which section 381(a) applies.

For purposes of this subsection, property shall not be treated as ceasing to be investment credit property with respect to the taxpayer by reason of a mere change in the form of conducting the trade or business so long as the property is retained in such trade or business as investment credit property and the taxpayer retains a substantial interest in such trade or business.

(6) DEFINITIONS AND SPECIAL RULES.—

(A) INVESTMENT CREDIT PROPERTY.—For purposes of this subsection, the term "investment credit property" means any property eligible for a credit determined under this subpart.

(B) TRANSFER BETWEEN SPOUSES OR INCIDENT TO DIVORCE.—In the case of any transfer described in subsection (a) of section 1041—

(i) the foregoing provisions of this subsection shall not apply, and

(ii) the same tax treatment under this subsection with respect to the transferred property shall apply to the transferee as would have applied to the transferor.

(C) SPECIAL RULE.—Any increase in tax under paragraph (1), (2), or (3) shall not be treated as tax imposed by this chapter for purposes of determining the amount of any credit allowable under this chapter.

(D) APPLICABLE TRANSACTION.—For purposes of this subsection—

(i) IN GENERAL.—The term "applicable transaction" means, with respect to any applicable taxpayer, any significant transaction (as determined by the Secretary, in coordination with the Secretary of Commerce and the Secretary of Defense) involving the material expansion of semiconductor manufacturing capacity of such applicable taxpayer in the People's Republic of China or a foreign country of concern (as defined in section 9901(7) of the William M. (Mac) Thornberry National Defense Authorization Act for Fiscal Year 2021).

(ii) EXCEPTION.—Such term shall not include a transaction which primarily involves the expansion of manufacturing capacity for legacy semiconductors (as defined in section 9902(a)(6) of the William M. (Mac) Thornberry National Defense Authorization Act for Fiscal Year 2021).

(E) APPLICABLE TAXPAYER.—For purposes of this subsection, the term "applicable taxpayer" means any taxpayer who has been allowed a credit under section 48D(a) for any prior taxable year.

(b) CERTAIN PROPERTY NOT ELIGIBLE.—No credit shall be determined under this subpart with respect to—

(1) PROPERTY USED OUTSIDE UNITED STATES.—

(A) IN GENERAL.—Except as provided in subparagraph (B), no credit shall be determined under this subpart with respect to any property which is used predominantly outside the United States.

(B) EXCEPTIONS.—Subparagraph (A) shall not apply to any property described in section 168(g)(4).

(2) PROPERTY USED FOR LODGING.—No credit shall be determined under this subpart with respect to any property which is used predominantly to furnish lodging or in connection with the furnishing of lodging. The preceding sentence shall not apply to—

(A) nonlodging commercial facilities which are available to persons not using the lodging facilities on the same basis as they are available to persons using the lodging facilities;

(B) property used by a hotel or motel in connection with the trade or business of furnishing lodging where the predominant portion of the accommodations is used by transients;

(C) a certified historic structure to the extent of that portion of the basis which is attributable to qualified rehabilitation expenditures; and

(D) any energy property.

(3) PROPERTY USED BY CERTAIN TAX-EXEMPT ORGANIZATION.—No credit shall be determined under this subpart with respect

to any property used by an organization (other than a cooperative described in section 521) which is exempt from the tax imposed by this chapter unless such property is used predominantly in an unrelated trade or business the income of which is subject to tax under section 511. If the property is debt-financed property (as defined in section 514(b)), the amount taken into account for purposes of determining the amount of the credit under this subpart with respect to such property shall be that percentage of the amount (which but for this paragraph would be so taken into account) which is the same percentage as is used under section 514(a), for the year the property is placed in service, in computing the amount of gross income to be taken into account during such taxable year with respect to such property. If any qualified rehabilitated building is used by the tax-exempt organization pursuant to a lease, this paragraph shall not apply for purposes of determining the amount of the rehabilitation credit.

(4) PROPERTY USED BY GOVERNMENTAL UNITS OR FOREIGN PERSONS OR ENTITIES.—

(A) IN GENERAL.—No credit shall be determined under this subpart with respect to any property used—

(i) by the United States, any State or political subdivision thereof, any possession of the United States, or any agency or instrumentality of any of the foregoing, or

(ii) by any foreign person or entity (as defined in section 168(h)(2)(C)), but only with respect to property to which section 168(h)(2)(A)(iii) applies (determined after the application of section 168(h)(2)(B)).

(B) EXCEPTION FOR SHORT-TERM LEASES.—This paragraph and paragraph (3) shall not apply to any property by reason of use under a lease with a term of less than 6 months (determined under section 168(i)(3)).

(C) EXCEPTION FOR QUALIFIED REHABILITATED BUILDINGS LEASED TO GOVERNMENTS, ETC..—If any qualified rehabilitated building is leased to a governmental unit (or a foreign person or entity) this paragraph shall not apply for purposes of determining the rehabilitation credit with respect to such building.

(D) SPECIAL RULES FOR PARTNERSHIPS, ETC..—For purposes of this paragraph and paragraph (3), rules similar to the rules of paragraphs (5) and (6) of section 168(h) shall apply.

(E) CROSS REFERENCE.—For special rules for the application of this paragraph and paragraph (3), see section 168(h).

(c) BASIS ADJUSTMENT TO INVESTMENT CREDIT PROPERTY.—

(1) IN GENERAL.—For purposes of this subtitle, if a credit is determined under this subpart with respect to any property, the basis of such property shall be reduced by the amount of the credit so determined.

(2) CERTAIN DISPOSITIONS.—If during any taxable year there is a recapture amount determined with respect to any property the basis of which was reduced under paragraph (1), the basis of such property (immediately before the event resulting in

such recapture) shall be increased by an amount equal to such recapture amount. For purposes of the preceding sentence, the term "recapture amount" means any increase in tax (or adjustment in carrybacks or carryovers) determined under subsection (a).

(3) SPECIAL RULE.—In the case of any energy credit [or clean electricity investment credit]—

(A) only 50 percent of such credit shall be taken into account under paragraph (1),

(B) only 50 percent of any recapture amount attributable to such credit shall be taken into account under paragraph (2), and

(C) paragraph (1) shall not apply for purposes of determining eligible basis under section 42.

(4) RECAPTURE OF REDUCTIONS.—

(A) IN GENERAL.—For purposes of sections 1245 and 1250, any reduction under this subsection shall be treated as a deduction allowed for depreciation.

(B) SPECIAL RULE FOR SECTION 1250.—For purposes of section 1250(b), the determination of what would have been the depreciation adjustments under the straight line method shall be made as if there had been no reduction under this section.

(5) ADJUSTMENT IN BASIS OF INTEREST IN PARTNERSHIP OR S CORPORATION.—The adjusted basis of—

(A) a partner's interest in a partnership, and

(B) stock in an S corporation,

shall be appropriately adjusted to take into account adjustments made under this subsection in the basis of property held by the partnership or S corporation (as the case may be).

(d) CERTAIN RULES MADE APPLICABLE.—For purposes of this subpart, rules similar to the rules of the following provisions (as in effect on the day before the date of the enactment of the Revenue Reconciliation Act of 1990) shall apply:

(1) Section 46(e) (relating to limitations with respect to certain persons).

(2) Section 46(f) (relating to limitation in case of certain regulated companies). At the election of a taxpayer, this paragraph shall not apply to any energy storage technology (as defined in section 48(c)(6)), provided—

(A) no election under this paragraph shall be permitted if the making of such election is prohibited by a State or political subdivision thereof, by any 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 that regulates public utilities as described in section 7701(a)(33)(A),

(B) an election under this paragraph shall be made separately with respect to each energy storage technology by the due date (including extensions) of the Federal tax return for the taxable year in which the energy storage technology is placed in service by the taxpayer, and once made, may be revoked only with the consent of the Secretary, and

(C) an election shall not apply with respect to any energy storage technology if such energy storage technology has a maximum capacity equal to or less than 500 kilowatt hours.

(3) Section 46(h) (relating to special rules for cooperatives).

(4) Paragraphs (2) and (3) of section 48(b) (relating to special rule for sale-leasebacks).

(5) Section 48(d) (relating to certain leased property).

(6) Section 48(f) (relating to estates and trusts).

(7) Section 48(r) (relating to certain 501(d) organizations).

Paragraphs (1)(A), (2)(A), and (4) of the section 46(e) referred to in paragraph (1) of this subsection shall not apply to any taxable year beginning after December 31, 1995. In the case of a real estate investment trust making an election under section 6418, paragraphs (1)(B) and (2)(B) of the section 46(e) referred to in paragraph (1) of this subsection shall not apply to any investment credit property of such real estate investment trust to which such election applies. In the case of a real estate investment trust making an election under section 6418, paragraphs (1)(B) and (2)(B) of the section 46(e) referred to in paragraph (1) of this subsection shall not apply to any investment credit property of such real estate investment trust to which such election applies.

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Subchapter B—COMPUTATION OF TAXABLE INCOME

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PART VI—ITEMIZED DEDUCTIONS FOR INDIVIDUALS AND CORPORATIONS

Sec.
161. Allowance of deductions.

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Sec. 174A. Temporary rules for research and experimental expenditures.

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SEC. 163. INTEREST.

(a) GENERAL RULE.—There shall be allowed as a deduction all interest paid or accrued within the taxable year on indebtedness.

(b) INSTALLMENT PURCHASES WHERE INTEREST CHARGE IS NOT SEPARATELY STATED.—

(1) GENERAL RULE.—If personal property or educational services are purchased under a contract—

(A) which provides that payment of part or all of the purchase price is to be made in installments, and

(B) in which carrying charges are separately stated but the interest charge cannot be ascertained,

then the payments made during the taxable year under the contract shall be treated for purposes of this section as if they included interest equal to 6 percent of the average unpaid balance under the contract during the taxable year. For purposes of the preceding sentence, the average unpaid balance is the sum of the unpaid balance outstanding on the first day of each

month beginning during the taxable year, divided by 12. For purposes of this paragraph, the term "educational services" means any service (including lodging) which is purchased from an educational organization described in section 170(b)(1)(A)(ii) and which is provided for a student of such organization.

(2) LIMITATION.—In the case of any contract to which paragraph (1) applies, the amount treated as interest for any taxable year shall not exceed the aggregate carrying charges which are properly attributable to such taxable year.

(c) REDEEMABLE GROUND RENTS.—For purposes of this subtitle, any annual or periodic rental under a redeemable ground rent (excluding amounts in redemption thereof) shall be treated as interest on an indebtedness secured by a mortgage.

(d) LIMITATION ON INVESTMENT INTEREST.—

(1) IN GENERAL.—In the case of a taxpayer other than a corporation, the amount allowed as a deduction under this chapter for investment interest for any taxable year shall not exceed the net investment income of the taxpayer for the taxable year.

(2) CARRYFORWARD OF DISALLOWED INTEREST.—The amount not allowed as a deduction for any taxable year by reason of paragraph (1) shall be treated as investment interest paid or accrued by the taxpayer in the succeeding taxable year.

(3) INVESTMENT INTEREST.—For purposes of this subsection—

(A) IN GENERAL.—The term "investment interest" means any interest allowable as a deduction under this chapter (determined without regard to paragraph (1)) which is paid or accrued on indebtedness properly allocable to property held for investment.

(B) EXCEPTIONS.—The term "investment interest" shall not include—

(i) any qualified residence interest (as defined in subsection (h)(3)), or

(ii) any interest which is taken into account under section 469 in computing income or loss from a passive activity of the taxpayer.

(C) PERSONAL PROPERTY USED IN SHORT SALE.—For purposes of this paragraph, the term "interest" includes any amount allowable as a deduction in connection with personal property used in a short sale.

(4) NET INVESTMENT INCOME.—For purposes of this subsection—

(A) IN GENERAL.—The term "net investment income" means the excess of—

(i) investment income, over

(ii) investment expenses.

(B) INVESTMENT INCOME.—The term "investment income" means the sum of—

(i) gross income from property held for investment (other than any gain taken into account under clause (ii)(I)),

(ii) the excess (if any) of—

(I) the net gain attributable to the disposition of property held for investment, over

(II) the net capital gain determined by only taking into account gains and losses from dispositions of property held for investment, plus

(iii) so much of the net capital gain referred to in clause (ii)(II) (or, if lesser, the net gain referred to in clause (ii)(I)) as the taxpayer elects to take into account under this clause.

Such term shall include qualified dividend income (as defined in section 1(h)(11)(B)) only to the extent the taxpayer elects to treat such income as investment income for purposes of this subsection.

(C) INVESTMENT EXPENSES.—The term "investment expenses" means the deductions allowed under this chapter (other than for interest) which are directly connected with the production of investment income.

(D) INCOME AND EXPENSES FROM PASSIVE ACTIVITIES.—Investment income and investment expenses shall not include any income or expenses taken into account under section 469 in computing income or loss from a passive activity.

(5) PROPERTY HELD FOR INVESTMENT.—For purposes of this subsection—

(A) IN GENERAL.—The term "property held for investment" shall include—

(i) any property which produces income of a type described in section 469(e)(1), and

(ii) any interest held by a taxpayer in an activity involving the conduct of a trade or business—

(I) which is not a passive activity, and

(II) with respect to which the taxpayer does not materially participate.

(B) INVESTMENT EXPENSES.—In the case of property described in subparagraph (A)(i), expenses shall be allocated to such property in the same manner as under section 469.

(C) TERMS.—For purposes of this paragraph, the terms "activity", "passive activity", and "materially participate" have the meanings given such terms by section 469.

(e) ORIGINAL ISSUE DISCOUNT.—

(1) IN GENERAL.—The portion of the original issue discount with respect to any debt instrument which is allowable as a deduction to the issuer for any taxable year shall be equal to the aggregate daily portions of the original issue discount for days during such taxable year.

(2) DEFINITIONS AND SPECIAL RULES.—For purposes of this subsection—

(A) DEBT INSTRUMENT.—The term "debt instrument" has the meaning given such term by section 1275(a)(1).

(B) DAILY PORTIONS.—The daily portion of the original issue discount for any day shall be determined under section 1272(a) (without regard to paragraph (7) thereof and without regard to section 1273(a)(3)).

(C) SHORT-TERM OBLIGATIONS.—In the case of an obligor of a short-term obligation (as defined in section 1283(a)(1)(A)) who uses the cash receipts and disbursements method of accounting, the original issue discount

(and any other interest payable) on such obligation shall be deductible only when paid.

(3) SPECIAL RULE FOR ORIGINAL ISSUE DISCOUNT ON OBLIGATION HELD BY RELATED FOREIGN PERSON.—

(A) IN GENERAL.—If any debt instrument having original issue discount is held by a related foreign person, any portion of such original issue discount shall not be allowable as a deduction to the issuer until paid. The preceding sentence shall not apply to the extent that the original issue discount is effectively connected with the conduct by such foreign related person of a trade or business within the United States unless such original issue discount is exempt from taxation (or is subject to a reduced rate of tax) pursuant to a treaty obligation of the United States.

(B) SPECIAL RULE FOR CERTAIN FOREIGN ENTITIES.—

(i) IN GENERAL.—In the case of any debt instrument having original issue discount which is held by a related foreign person which is a controlled foreign corporation (as defined in section 957) or a passive foreign investment company (as defined in section 1297), a deduction shall be allowable to the issuer with respect to such original issue discount for any taxable year before the taxable year in which paid only to the extent such original issue discount is includible (determined without regard to properly allocable deductions and qualified deficits under section 952(c)(1)(B)) during such prior taxable year in the gross income of a United States person who owns (within the meaning of section 958(a)) stock in such corporation.

(ii) SECRETARIAL AUTHORITY.—The Secretary may by regulation exempt transactions from the application of clause (i), including any transaction which is entered into by a payor in the ordinary course of a trade or business in which the payor is predominantly engaged.

(C) RELATED FOREIGN PERSON.—For purposes of subparagraph (A), the term "related foreign person" means any person—

(i) who is not a United States person, and

(ii) who is related (within the meaning of section 267(b)) to the issuer.

(4) EXCEPTION.—This subsection shall not apply to any debt instrument described in section 1272(a)(2)(D) (relating to loans between natural persons).

(5) SPECIAL RULES FOR ORIGINAL ISSUE DISCOUNT ON CERTAIN HIGH YIELD OBLIGATIONS.—

(A) IN GENERAL.—In the case of an applicable high yield discount obligation issued by a corporation—

(i) no deduction shall be allowed under this chapter for the disqualified portion of the original issue discount on such obligation, and

(ii) the remainder of such original issue discount shall not be allowable as a deduction until paid.

For purposes of this paragraph, rules similar to the rules of subsection (i)(3)(B) shall apply in determining the

amount of the original issue discount and when the original issue discount is paid.

(B) DISQUALIFIED PORTION TREATED AS STOCK DISTRIBUTION FOR PURPOSES OF DIVIDEND RECEIVED DEDUCTION.—

(i) IN GENERAL.—Solely for purposes of sections 243, 245, 246, and 246A, the dividend equivalent portion of any amount includible in gross income of a corporation under section 1272(a) in respect of an applicable high yield discount obligation shall be treated as a dividend received by such corporation from the corporation issuing such obligation.

(ii) DIVIDEND EQUIVALENT PORTION.—For purposes of clause (i), the dividend equivalent portion of any amount includible in gross income under section 1272(a) in respect of an applicable high yield discount obligation is the portion of the amount so includible—

(I) which is attributable to the disqualified portion of the original issue discount on such obligation, and

(II) which would have been treated as a dividend if it had been a distribution made by the issuing corporation with respect to stock in such corporation.

(C) DISQUALIFIED PORTION.—

(i) IN GENERAL.—For purposes of this paragraph, the disqualified portion of the original issue discount on any applicable high yield discount obligation is the lesser of—

(I) the amount of such original issue discount, or

(II) the portion of the total return on such obligation which bears the same ratio to such total return as the disqualified yield on such obligation bears to the yield to maturity on such obligation.

(ii) DEFINITIONS.—For purposes of clause (i), the term "disqualified yield" means the excess of the yield to maturity on the obligation over the sum referred to in subsection (i)(1)(B) plus 1 percentage point, and the term "total return" is the amount which would have been the original issue discount on the obligation if interest described in the parenthetical in section 1273(a)(2) were included in the stated redemption price at maturity.

(D) EXCEPTION FOR S CORPORATIONS.—This paragraph shall not apply to any obligation issued by any corporation for any period for which such corporation is an S corporation.

(E) EFFECT ON EARNINGS AND PROFITS.—This paragraph shall not apply for purposes of determining earnings and profits; except that, for purposes of determining the dividend equivalent portion of any amount includible in gross income under section 1272(a) in respect of an applicable high yield discount obligation, no reduction shall be made for any amount attributable to the disqualified portion of any original issue discount on such obligation.

(F) SUSPENSION OF APPLICATION OF PARAGRAPH.—

(i) TEMPORARY SUSPENSION.—This paragraph shall not apply to any applicable high yield discount obligation issued during the period beginning on September 1, 2008, and ending on December 31, 2009, in exchange (including an exchange resulting from a modification of the debt instrument) for an obligation which is not an applicable high yield discount obligation and the issuer (or obligor) of which is the same as the issuer (or obligor) of such applicable high yield discount obligation. The preceding sentence shall not apply to any obligation the interest on which is interest described in section 871(h)(4) (without regard to subparagraph (D) thereof) or to any obligation issued to a related person (within the meaning of section 108(e)(4)).

(ii) SUCCESSIVE APPLICATION.—Any obligation to which clause (i) applies shall not be treated as an applicable high yield discount obligation for purposes of applying this subparagraph to any other obligation issued in exchange for such obligation.

(iii) SECRETARIAL AUTHORITY TO SUSPEND APPLICATION.—The Secretary may apply this paragraph with respect to debt instruments issued in periods following the period described in clause (i) if the Secretary determines that such application is appropriate in light of distressed conditions in the debt capital markets.

(G) CROSS REFERENCE.—For definition of applicable high yield discount obligation, see subsection (i).

(6) CROSS REFERENCES.—For provision relating to deduction of original issue discount on tax-exempt obligation, see section 1288.

For special rules in the case of the borrower under certain loans for personal use, see section 1275(b).

(f) DENIAL OF DEDUCTION FOR INTEREST ON CERTAIN OBLIGATIONS NOT IN REGISTERED FORM.—

(1) IN GENERAL.—Nothing in subsection (a) or in any other provision of law shall be construed to provide a deduction for interest on any registration-required obligation unless such obligation is in registered form.

(2) REGISTRATION-REQUIRED OBLIGATION.—For purposes of this section—

(A) IN GENERAL.—The term "registration-required obligation" means any obligation (including any obligation issued by a governmental entity) other than an obligation which—

(i) is issued by a natural person,

(ii) is not of a type offered to the public, or

(iii) has a maturity (at issue) of not more than 1 year.

(B) AUTHORITY TO INCLUDE OTHER OBLIGATIONS.—Clauses (ii) and (iii) of subparagraph (A) shall not apply to any obligation if—

(i) such obligation is of a type which the Secretary has determined by regulations to be used frequently in avoiding Federal taxes, and

(ii) such obligation is issued after the date on which the regulations referred to in clause (i) take effect.

(3) BOOK ENTRIES PERMITTED, ETC..—For purposes of this subsection, rules similar to the rules of section 149(a)(3) shall apply, except that a dematerialized book entry system or other book entry system specified by the Secretary shall be treated as a book entry system described in such section.

(g) REDUCTION OF DEDUCTION WHERE SECTION 25 CREDIT TAKEN.—The amount of the deduction under this section for interest paid or accrued during any taxable year on indebtedness with respect to which a mortgage credit certificate has been issued under section 25 shall be reduced by the amount of the credit allowable with respect to such interest under section 25 (determined without regard to section 26).

(h) DISALLOWANCE OF DEDUCTION FOR PERSONAL INTEREST.—

(1) IN GENERAL.—In the case of a taxpayer other than a corporation, no deduction shall be allowed under this chapter for personal interest paid or accrued during the taxable year.

(2) PERSONAL INTEREST.—For purposes of this subsection, the term "personal interest" means any interest allowable as a deduction under this chapter other than—

(A) interest paid or accrued on indebtedness properly allocable to a trade or business (other than the trade or business of performing services as an employee),

(B) any investment interest (within the meaning of subsection (d)),

(C) any interest which is taken into account under section 469 in computing income or loss from a passive activity of the taxpayer,

(D) any qualified residence interest (within the meaning of paragraph (3)),

(E) any interest payable under section 6601 on any unpaid portion of the tax imposed by section 2001 for the period during which an extension of time for payment of such tax is in effect under section 6163, and

(F) any interest allowable as a deduction under section 221 (relating to interest on educational loans).

(3) QUALIFIED RESIDENCE INTEREST.—For purposes of this subsection—

(A) IN GENERAL.—The term "qualified residence interest" means any interest which is paid or accrued during the taxable year on—

(i) acquisition indebtedness with respect to any qualified residence of the taxpayer, or

(ii) home equity indebtedness with respect to any qualified residence of the taxpayer.

For purposes of the preceding sentence, the determination of whether any property is a qualified residence of the taxpayer shall be made as of the time the interest is accrued.

(B) ACQUISITION INDEBTEDNESS.—

(i) IN GENERAL.—The term "acquisition indebtedness" means any indebtedness which—

(I) is incurred in acquiring, constructing, or substantially improving any qualified residence of the taxpayer, and

(II) is secured by such residence.

Such term also includes any indebtedness secured by such residence resulting from the refinancing of indebtedness meeting the requirements of the preceding sentence (or this sentence); but only to the extent the amount of the indebtedness resulting from such refinancing does not exceed the amount of the refinanced indebtedness.

(ii) $1,000,000 LIMITATION.—The aggregate amount treated as acquisition indebtedness for any period shall not exceed $1,000,000 ($500,000 in the case of a married individual filing a separate return).

(C) HOME EQUITY INDEBTEDNESS.—

(i) IN GENERAL.—The term "home equity indebtedness" means any indebtedness (other than acquisition indebtedness) secured by a qualified residence to the extent the aggregate amount of such indebtedness does not exceed—

(I) the fair market value of such qualified residence, reduced by

(II) the amount of acquisition indebtedness with respect to such residence.

(ii) LIMITATION.—The aggregate amount treated as home equity indebtedness for any period shall not exceed $100,000 ($50,000 in the case of a separate return by a married individual).

(D) TREATMENT OF INDEBTEDNESS INCURRED ON OR BEFORE OCTOBER 13, 1987.—

(i) IN GENERAL.—In the case of any pre-October 13, 1987, indebtedness—

(I) such indebtedness shall be treated as acquisition indebtedness, and

(II) the limitation of subparagraph (B)(ii) shall not apply.

(ii) REDUCTION IN $1,000,000 LIMITATION.—The limitation of subparagraph (B)(ii) shall be reduced (but not below zero) by the aggregate amount of outstanding pre-October 13, 1987, indebtedness.

(iii) PRE-OCTOBER 13, 1987, INDEBTEDNESS.—The term "pre-October 13, 1987, indebtedness" means—

(I) any indebtedness which was incurred on or before October 13, 1987, and which was secured by a qualified residence on October 13, 1987, and at all times thereafter before the interest is paid or accrued, or

(II) any indebtedness which is secured by the qualified residence and was incurred after October 13, 1987, to refinance indebtedness described in subclause (I) (or refinanced indebtedness meeting the requirements of this subclause) to the extent (immediately after the refinancing) the principal amount of the indebtedness resulting from the refinancing does not exceed the principal amount of the refinanced indebtedness (immediately before the refinancing).

(iv) LIMITATION ON PERIOD OF REFINANCING.—Subclause (II) of clause (iii) shall not apply to any indebtedness after—

(I) the expiration of the term of the indebtedness described in clause (iii)(I), or

(II) if the principal of the indebtedness described in clause (iii)(I) is not amortized over its term, the expiration of the term of the 1st refinancing of such indebtedness (or if earlier, the date which is 30 years after the date of such 1st refinancing).

(E) MORTGAGE INSURANCE PREMIUMS TREATED AS INTEREST.—

(i) IN GENERAL.—Premiums paid or accrued for qualified mortgage insurance by a taxpayer during the taxable year in connection with acquisition indebtedness with respect to a qualified residence of the taxpayer shall be treated for purposes of this section as interest which is qualified residence interest.

(ii) PHASEOUT.—The amount otherwise treated as interest under clause (i) shall be reduced (but not below zero) by 10 percent of such amount for each $1,000 ($500 in the case of a married individual filing a separate return) (or fraction thereof) that the taxpayer's adjusted gross income for the taxable year exceeds $100,000 ($50,000 in the case of a married individual filing a separate return).

(iii) LIMITATION.—Clause (i) shall not apply with respect to any mortgage insurance contracts issued before January 1, 2007.

(iv) TERMINATION.—Clause (i) shall not apply to amounts—

(I) paid or accrued after December 31, 2021, or

(II) properly allocable to any period after such date.

(F) SPECIAL RULES FOR TAXABLE YEARS 2018 THROUGH 2025.—

(i) IN GENERAL.—In the case of taxable years beginning after December 31, 2017, and before January 1, 2026—

(I) DISALLOWANCE OF HOME EQUITY INDEBTEDNESS INTEREST.—Subparagraph (A)(ii) shall not apply.

(II) LIMITATION ON ACQUISITION INDEBTEDNESS.—Subparagraph (B)(ii) shall be applied by substituting "$750,000 ($375,000" for "$1,000,000 ($500,000".

(III) TREATMENT OF INDEBTEDNESS INCURRED ON OR BEFORE DECEMBER 15, 2017.—Subclause (II) shall not apply to any indebtedness incurred on or before December 15, 2017, and, in applying such subclause to any indebtedness incurred after such date, the limitation under such subclause shall be reduced (but not below zero) by the amount of any indebtedness incurred on or before December 15,

2017, which is treated as acquisition indebtedness for purposes of this subsection for the taxable year.

(IV) BINDING CONTRACT EXCEPTION.—In the case of a taxpayer who enters into a written binding contract before December 15, 2017, to close on the purchase of a principal residence before January 1, 2018, and who purchases such residence before April 1, 2018, subclause (III) shall be applied by substituting "April 1, 2018" for "December 15, 2017".

(ii) TREATMENT OF LIMITATION IN TAXABLE YEARS AFTER DECEMBER 31, 2025.—In the case of taxable years beginning after December 31, 2025, the limitation under subparagraph (B)(ii) shall be applied to the aggregate amount of indebtedness of the taxpayer described in subparagraph (B)(i) without regard to the taxable year in which the indebtedness was incurred.

(iii) TREATMENT OF REFINANCINGS OF INDEBTEDNESS.—

(I) IN GENERAL.—In the case of any indebtedness which is incurred to refinance indebtedness, such refinanced indebtedness shall be treated for purposes of clause (i)(III) as incurred on the date that the original indebtedness was incurred to the extent the amount of the indebtedness resulting from such refinancing does not exceed the amount of the refinanced indebtedness.

(II) LIMITATION ON PERIOD OF REFINANCING.—Subclause (I) shall not apply to any indebtedness after the expiration of the term of the original indebtedness or, if the principal of such original indebtedness is not amortized over its term, the expiration of the term of the 1st refinancing of such indebtedness (or if earlier, the date which is 30 years after the date of such 1st refinancing).

(iv) COORDINATION WITH EXCLUSION OF INCOME FROM DISCHARGE OF INDEBTEDNESS.—Section 108(h)(2) shall be applied without regard to this subparagraph.

(4) OTHER DEFINITIONS AND SPECIAL RULES.—For purposes of this subsection—

(A) QUALIFIED RESIDENCE.—

(i) IN GENERAL.—The term "qualified residence" means—

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

(II) 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)).

(ii) MARRIED INDIVIDUALS FILING SEPARATE RETURNS.—If a married couple does not file a joint return for the taxable year—

(I) such couple shall be treated as 1 taxpayer for purposes of clause (i), and

(II) each individual shall be entitled to take into account 1 residence unless both individuals consent in writing to 1 individual taking into account the principal residence and 1 other residence.

(iii) RESIDENCE NOT RENTED.—For purposes of clause (i)(II), notwithstanding section 280A(d)(1), if the taxpayer does not rent a dwelling unit at any time during a taxable year, such unit may be treated as a residence for such taxable year.

(B) SPECIAL RULE FOR COOPERATIVE HOUSING CORPORATIONS.—Any indebtedness secured by stock held by the taxpayer as a tenant-stockholder (as defined in section 216) in a cooperative housing corporation (as so defined) shall be treated as secured by the house or apartment which the taxpayer is entitled to occupy as such a tenant-stockholder. If stock described in the preceding sentence may not be used to secure indebtedness, indebtedness shall be treated as so secured if the taxpayer establishes to the satisfaction of the Secretary that such indebtedness was incurred to acquire such stock.

(C) UNENFORCEABLE SECURITY INTERESTS.—Indebtedness shall not fail to be treated as secured by any property solely because, under any applicable State or local homestead or other debtor protection law in effect on August 16, 1986, the security interest is ineffective or the enforceability of the security interest is restricted.

(D) SPECIAL RULES FOR ESTATES AND TRUSTS.—For purposes of determining whether any interest paid or accrued by an estate or trust is qualified residence interest, any residence held by such estate or trust shall be treated as a qualified residence of such estate or trust if such estate or trust establishes that such residence is a qualified residence of a beneficiary who has a present interest in such estate or trust or an interest in the residuary of such estate or trust.

(E) QUALIFIED MORTGAGE INSURANCE.—The term "qualified mortgage insurance" means—

(i) mortgage insurance provided by the Department of Veterans Affairs, the Federal Housing Administration, or the Rural Housing Service, and

(ii) private mortgage insurance (as defined by section 2 of the Homeowners Protection Act of 1998 (12 U.S.C. 4901), as in effect on the date of the enactment of this subparagraph).

(F) SPECIAL RULES FOR PREPAID QUALIFIED MORTGAGE INSURANCE.—Any amount paid by the taxpayer for qualified mortgage insurance that is properly allocable to any mortgage the payment of which extends to periods that are after the close of the taxable year in which such amount is paid shall be chargeable to capital account and shall be treated as paid in such periods to which so allocated. No deduction shall be allowed for the unamortized balance of such account if such mortgage is satisfied before the end

of its term. The preceding sentences shall not apply to amounts paid for qualified mortgage insurance provided by the Department of Veterans Affairs or the Rural Housing Service.

(i) APPLICABLE HIGH YIELD DISCOUNT OBLIGATION.—

(1) IN GENERAL.—For purposes of this section, the term "applicable high yield discount obligation" means any debt instrument if—

(A) the maturity date of such instrument is more than 5 years from the date of issue,

(B) the yield to maturity on such instrument equals or exceeds the sum of—

(i) the applicable Federal rate in effect under section 1274(d) for the calendar month in which the obligation is issued, plus

(ii) 5 percentage points, and

(C) such instrument has significant original issue discount.

For purposes of subparagraph (B)(i), the Secretary may by regulation (i) permit a rate to be used with respect to any debt instrument which is higher than the applicable Federal rate if the taxpayer establishes to the satisfaction of the Secretary that such higher rate is based on the same principles as the applicable Federal rate and is appropriate for the term of the instrument, or (ii) permit, on a temporary basis, a rate to be used with respect to any debt instrument which is higher than the applicable Federal rate if the Secretary determines that such rate is appropriate in light of distressed conditions in the debt capital markets.

(2) SIGNIFICANT ORIGINAL ISSUE DISCOUNT.—For purposes of paragraph (1)(C), a debt instrument shall be treated as having significant original issue discount if—

(A) the aggregate amount which would be includible in gross income with respect to such instrument for periods before the close of any accrual period (as defined in section 1272(a)(5)) ending after the date 5 years after the date of issue, exceeds—

(B) the sum of—

(i) the aggregate amount of interest to be paid under the instrument before the close of such accrual period, and

(ii) the product of the issue price of such instrument (as defined in sections 1273(b) and 1274(a)) and its yield to maturity.

(3) SPECIAL RULES.—For purposes of determining whether a debt instrument is an applicable high yield discount obligation—

(A) any payment under the instrument shall be assumed to be made on the last day permitted under the instrument, and

(B) any payment to be made in the form of another obligation of the issuer (or a related person within the meaning of section 453(f)(1)) shall be assumed to be made when such obligation is required to be paid in cash or in property other than such obligation.

Except for purposes of paragraph (1)(B), any reference to an obligation in subparagraph (B) of this paragraph shall be treated as including a reference to stock.

(4) DEBT INSTRUMENT.—For purposes of this subsection, the term "debt instrument" means any instrument which is a debt instrument as defined in section 1275(a).

(5) REGULATIONS.—The Secretary shall prescribe such regulations as may be appropriate to carry out the purposes of this subsection and subsection (e)(5), including—

(A) regulations providing for modifications to the provisions of this subsection and subsection (e)(5) in the case of varying rates of interest, put or call options, indefinite maturities, contingent payments, assumptions of debt instruments, conversion rights, or other circumstances where such modifications are appropriate to carry out the purposes of this subsection and subsection (e)(5), and

(B) regulations to prevent avoidance of the purposes of this subsection and subsection (e)(5) through the use of issuers other than C corporations, agreements to borrow amounts due under the debt instrument, or other arrangements.

(j) LIMITATION ON BUSINESS INTEREST.—

(1) IN GENERAL.—The amount allowed as a deduction under this chapter for any taxable year for business interest shall not exceed the sum of—

(A) the business interest income of such taxpayer for such taxable year,

(B) 30 percent of the adjusted taxable income of such taxpayer for such taxable year, plus

(C) the floor plan financing interest of such taxpayer for such taxable year.

The amount determined under subparagraph (B) shall not be less than zero.

(2) CARRYFORWARD OF DISALLOWED BUSINESS INTEREST.—The amount of any business interest not allowed as a deduction for any taxable year by reason of paragraph (1) shall be treated as business interest paid or accrued in the succeeding taxable year.

(3) EXEMPTION FOR CERTAIN SMALL BUSINESSES.—In the case of any taxpayer (other than a tax shelter prohibited from using the cash receipts and disbursements method of accounting under section 448(a)(3)) which meets the gross receipts test of section 448(c) for any taxable year, paragraph (1) shall not apply to such taxpayer for such taxable year. In the case of any taxpayer which is not a corporation or a partnership, the gross receipts test of section 448(c) shall be applied in the same manner as if such taxpayer were a corporation or partnership.

(4) APPLICATION TO PARTNERSHIPS, ETC..—

(A) IN GENERAL.—In the case of any partnership—

(i) this subsection shall be applied at the partnership level and any deduction for business interest shall be taken into account in determining the nonseparately stated taxable income or loss of the partnership, and

(ii) the adjusted taxable income of each partner of such partnership—

(I) shall be determined without regard to such partner's distributive share of any items of income, gain, deduction, or loss of such partnership, and

(II) shall be increased by such partner's distributive share of such partnership's excess taxable income.

For purposes of clause (ii)(II), a partner's distributive share of partnership excess taxable income shall be determined in the same manner as the partner's distributive share of nonseparately stated taxable income or loss of the partnership.

(B) SPECIAL RULES FOR CARRYFORWARDS.—

(i) IN GENERAL.—The amount of any business interest not allowed as a deduction to a partnership for any taxable year by reason of paragraph (1) for any taxable year—

(I) shall not be treated under paragraph (2) as business interest paid or accrued by the partnership in the succeeding taxable year, and

(II) shall, subject to clause (ii), be treated as excess business interest which is allocated to each partner in the same manner as the non-separately stated taxable income or loss of the partnership.

(ii) TREATMENT OF EXCESS BUSINESS INTEREST ALLOCATED TO PARTNERS.—If a partner is allocated any excess business interest from a partnership under clause (i) for any taxable year—

(I) such excess business interest shall be treated as business interest paid or accrued by the partner in the next succeeding taxable year in which the partner is allocated excess taxable income from such partnership, but only to the extent of such excess taxable income, and

(II) any portion of such excess business interest remaining after the application of subclause (I) shall, subject to the limitations of subclause (I), be treated as business interest paid or accrued in succeeding taxable years.

For purposes of applying this paragraph, excess taxable income allocated to a partner from a partnership for any taxable year shall not be taken into account under paragraph (1)(A) with respect to any business interest other than excess business interest from the partnership until all such excess business interest for such taxable year and all preceding taxable years has been treated as paid or accrued under clause (ii).

(iii) BASIS ADJUSTMENTS.—

(I) IN GENERAL.—The adjusted basis of a partner in a partnership interest shall be reduced (but not below zero) by the amount of excess business interest allocated to the partner under clause (i)(II).

(II) SPECIAL RULE FOR DISPOSITIONS.—If a partner disposes of a partnership interest, the adjusted basis of the partner in the partnership interest shall be increased immediately before the disposition by the amount of the excess (if any) of the amount of the basis reduction under subclause (I) over the portion of any excess business interest allocated to the partner under clause (i)(II) which has previously been treated under clause (ii) as business interest paid or accrued by the partner. The preceding sentence shall also apply to transfers of the partnership interest (including by reason of death) in a transaction in which gain is not recognized in whole or in part. No deduction shall be allowed to the transferor or transferee under this chapter for any excess business interest resulting in a basis increase under this subclause.

(C) EXCESS TAXABLE INCOME.—The term "excess taxable income" means, with respect to any partnership, the amount which bears the same ratio to the partnership's adjusted taxable income as—

(i) the excess (if any) of—

(I) the amount determined for the partnership under paragraph (1)(B), over

(II) the amount (if any) by which the business interest of the partnership, reduced by the floor plan financing interest, exceeds the business interest income of the partnership, bears to

(ii) the amount determined for the partnership under paragraph (1)(B).

(D) APPLICATION TO S CORPORATIONS.—Rules similar to the rules of subparagraphs (A) and (C) shall apply with respect to any S corporation and its shareholders.

(5) BUSINESS INTEREST.—For purposes of this subsection, the term "business interest" means any interest paid or accrued on indebtedness properly allocable to a trade or business. Such term shall not include investment interest (within the meaning of subsection (d)).

(6) BUSINESS INTEREST INCOME.—For purposes of this subsection, the term "business interest income" means the amount of interest includible in the gross income of the taxpayer for the taxable year which is properly allocable to a trade or business. Such term shall not include investment income (within the meaning of subsection (d)).

(7) TRADE OR BUSINESS.—For purposes of this subsection—

(A) IN GENERAL.—The term "trade or business" shall not include—

(i) the trade or business of performing services as an employee,

(ii) any electing real property trade or business,

(iii) any electing farming business, or

(iv) the trade or business of the furnishing or sale of—

(I) electrical energy, water, or sewage disposal services,

(II) gas or steam through a local distribution system, or

(III) transportation of gas or steam by pipeline,

if the rates for such furnishing or sale, as the case may be, have been established or approved by a State or political subdivision thereof, by any agency or instrumentality of the United States, by a public service or public utility commission or other similar body of any State or political subdivision thereof, or by the governing or ratemaking body of an electric cooperative.

(B) ELECTING REAL PROPERTY TRADE OR BUSINESS.—For purposes of this paragraph, the term "electing real property trade or business" means any trade or business which is described in section 469(c)(7)(C) and which makes an election under this subparagraph. Any such election shall be made at such time and in such manner as the Secretary shall prescribe, and, once made, shall be irrevocable.

(C) ELECTING FARMING BUSINESS.—For purposes of this paragraph, the term "electing farming business" means—

(i) a farming business (as defined in section 263A(e)(4)) which makes an election under this subparagraph, or

(ii) any trade or business of a specified agricultural or horticultural cooperative (as defined in section 199A(g)(2)) with respect to which the cooperative makes an election under this subparagraph.

Any such election shall be made at such time and in such manner as the Secretary shall prescribe, and, once made, shall be irrevocable.

(8) ADJUSTED TAXABLE INCOME.—For purposes of this subsection, the term "adjusted taxable income" means the taxable income of the taxpayer—

(A) computed without regard to—

(i) any item of income, gain, deduction, or loss which is not properly allocable to a trade or business,

(ii) any business interest or business interest income,

(iii) the amount of any net operating loss deduction under section 172,

(iv) the amount of any deduction allowed under section 199A, and

(v) in the case of taxable years beginning before **[**January 1, 2022**]** *January 1, 2026*, any deduction allowable for depreciation, amortization, or depletion, and

(B) computed with such other adjustments as provided by the Secretary.

(9) FLOOR PLAN FINANCING INTEREST DEFINED.—For purposes of this subsection—

(A) IN GENERAL.—The term "floor plan financing interest" means interest paid or accrued on floor plan financing indebtedness.

(B) FLOOR PLAN FINANCING INDEBTEDNESS.—The term "floor plan financing indebtedness" means indebtedness—

(i) used to finance the acquisition of motor vehicles held for sale or lease, and

(ii) secured by the inventory so acquired.

(C) MOTOR VEHICLE.—The term "motor vehicle" means a motor vehicle that is any of the following:

(i) Any self-propelled vehicle designed for transporting persons or property on a public street, highway, or road.

(ii) A boat.

(iii) Farm machinery or equipment.

(10) SPECIAL RULE FOR TAXABLE YEARS BEGINNING IN 2019 AND 2020.—

(A) IN GENERAL.—

(i) IN GENERAL.—Except as provided in clause (ii) or (iii), in the case of any taxable year beginning in 2019 or 2020, paragraph (1)(B) shall be applied by substituting "50 percent" for "30 percent".

(ii) SPECIAL RULE FOR PARTNERSHIPS.—In the case of a partnership—

(I) clause (i) shall not apply to any taxable year beginning in 2019, but

(II) unless a partner elects not to have this subclause apply, in the case of any excess business interest of the partnership for any taxable year beginning in 2019 which is allocated to the partner under paragraph (4)(B)(i)(II)—

(aa) 50 percent of such excess business interest shall be treated as business interest which, notwithstanding paragraph (4)(B)(ii), is paid or accrued by the partner in the partner's first taxable year beginning in 2020 and which is not subject to the limits of paragraph (1), and

(bb) 50 percent of such excess business interest shall be subject to the limitations of paragraph (4)(B)(ii) in the same manner as any other excess business interest so allocated.

(iii) ELECTION OUT.—A taxpayer may elect, at such time and in such manner as the Secretary may prescribe, not to have clause (i) apply to any taxable year. Such an election, once made, may be revoked only with the consent of the Secretary. In the case of a partnership, any such election shall be made by the partnership and may be made only for taxable years beginning in 2020.

(B) ELECTION TO USE 2019 ADJUSTED TAXABLE INCOME FOR TAXABLE YEARS BEGINNING IN 2020.—

(i) IN GENERAL.—Subject to clause (ii), in the case of any taxable year beginning in 2020, the taxpayer may elect to apply this subsection by substituting the adjusted taxable income of the taxpayer for the last taxable year beginning in 2019 for the adjusted taxable income for such taxable year. In the case of a partner-

ship, any such election shall be made by the partnership.

(ii) SPECIAL RULE FOR SHORT TAXABLE YEARS.—If an election is made under clause (i) for a taxable year which is a short taxable year, the adjusted taxable income for the taxpayer's last taxable year beginning in 2019 which is substituted under clause (i) shall be equal to the amount which bears the same ratio to such adjusted taxable income determined without regard to this clause as the number of months in the short taxable year bears to 12

(11) CROSS REFERENCES.—(A) For requirement that an electing real property trade or business use the alternative depreciation system, see section 168(g)(1)(F).

(B) For requirement that an electing farming business use the alternative depreciation system, see section 168(g)(1)(G).

(k) SECTION 6166 INTEREST.—No deduction shall be allowed under this section for any interest payable under section 6601 on any unpaid portion of the tax imposed by section 2001 for the period during which an extension of time for payment of such tax is in effect under section 6166.

(l) DISALLOWANCE OF DEDUCTION ON CERTAIN DEBT INSTRUMENTS OF CORPORATIONS.—

(1) IN GENERAL.—No deduction shall be allowed under this chapter for any interest paid or accrued on a disqualified debt instrument.

(2) DISQUALIFIED DEBT INSTRUMENT.—For purposes of this subsection, the term "disqualified debt instrument" means any indebtedness of a corporation which is payable in equity of the issuer or a related party or equity held by the issuer (or any related party) in any other person.

(3) SPECIAL RULES FOR AMOUNTS PAYABLE IN EQUITY.—For purposes of paragraph (2), indebtedness shall be treated as payable in equity of the issuer or any other person only if—

(A) a substantial amount of the principal or interest is required to be paid or converted, or at the option of the issuer or a related party is payable in, or convertible into, such equity,

(B) a substantial amount of the principal or interest is required to be determined, or at the option of the issuer or a related party is determined, by reference to the value of such equity, or

(C) the indebtedness is part of an arrangement which is reasonably expected to result in a transaction described in subparagraph (A) or (B).

For purposes of this paragraph, principal or interest shall be treated as required to be so paid, converted, or determined if it may be required at the option of the holder or a related party and there is a substantial certainty the option will be exercised.

(4) CAPITALIZATION ALLOWED WITH RESPECT TO EQUITY OF PERSONS OTHER THAN ISSUER AND RELATED PARTIES.—If the disqualified debt instrument of a corporation is payable in equity held by the issuer (or any related party) in any other person (other than a related party), the basis of such equity shall

be increased by the amount not allowed as a deduction by reason of paragraph (1) with respect to the instrument.

(5) EXCEPTION FOR CERTAIN INSTRUMENTS ISSUED BY DEALERS IN SECURITIES.—For purposes of this subsection, the term "disqualified debt instrument" does not include indebtedness issued by a dealer in securities (or a related party) which is payable in, or by reference to, equity (other than equity of the issuer or a related party) held by such dealer in its capacity as a dealer in securities. For purposes of this paragraph, the term "dealer in securities" has the meaning given such term by section 475.

(6) RELATED PARTY.—For purposes of this subsection, a person is a related party with respect to another person if such person bears a relationship to such other person described in section 267(b) or 707(b).

(7) REGULATIONS.—The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of this subsection, including regulations preventing avoidance of this subsection through the use of an issuer other than a corporation.

(m) INTEREST ON UNPAID TAXES ATTRIBUTABLE TO NONDISCLOSED REPORTABLE TRANSACTIONS.—No deduction shall be allowed under this chapter for any interest paid or accrued under section 6601 on any underpayment of tax which is attributable to the portion of any reportable transaction understatement (as defined in section 6662A(b)) with respect to which the requirement of section 6664(d)(2)(A) [1] is not met.

(n) CROSS REFERENCES.—

(1) For disallowance of certain amounts paid in connection with insurance, endowment, or annuity contracts, see section 264.

(2) For disallowance of deduction for interest relating to tax-exempt income, see section 265(a)(2).

(3) For disallowance of deduction for carrying charges chargeable to capital account, see section 266.

(4) For disallowance of interest with respect to transactions between related taxpayers, see section 267.

(5) For treatment of redeemable ground rents and real property held subject to liabilities under redeemable ground rents, see section 1055.

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SEC. 168. ACCELERATED COST RECOVERY SYSTEM.

(a) GENERAL RULE.—Except as otherwise provided in this section, the depreciation deduction provided by section 167(a) for any tangible property shall be determined by using—

(1) the applicable depreciation method,

(2) the applicable recovery period, and

(3) the applicable convention.

(b) APPLICABLE DEPRECIATION METHOD.—For purposes of this section—

(1) IN GENERAL.—Except as provided in paragraphs (2) and (3), the applicable depreciation method is—

(A) the 200 percent declining balance method,

(B) switching to the straight line method for the 1st taxable year for which using the straight line method with respect to the adjusted basis as of the beginning of such year will yield a larger allowance.

(2) 150 PERCENT DECLINING BALANCE METHOD IN CERTAIN CASES.—Paragraph (1) shall be applied by substituting "150 percent" for "200 percent" in the case of—

(A) any 15-year or 20-year property not referred to in paragraph (3),

(B) any property (other than property described in paragraph (3)) which is a qualified smart electric meter or qualified smart electric grid system, or

(C) any property (other than property described in paragraph (3)) with respect to which the taxpayer elects under paragraph (5) to have the provisions of this paragraph apply.

(3) PROPERTY TO WHICH STRAIGHT LINE METHOD APPLIES.—The applicable depreciation method shall be the straight line method in the case of the following property:

(A) Nonresidential real property.

(B) Residential rental property.

(C) Any railroad grading or tunnel bore.

(D) Property with respect to which the taxpayer elects under paragraph (5) to have the provisions of this paragraph apply.

(E) Property described in subsection (e)(3)(D)(ii).

(F) Water utility property described in subsection (e)(5).

(G) Qualified improvement property described in subsection (e)(6).

(4) SALVAGE VALUE TREATED AS ZERO.—Salvage value shall be treated as zero.

(5) ELECTION.—An election under paragraph (2)(D) or (3)(D) may be made with respect to 1 or more classes of property for any taxable year and once made with respect to any class shall apply to all property in such class placed in service during such taxable year. Such an election, once made, shall be irrevocable.

(c) APPLICABLE RECOVERY PERIOD.—For purposes of this section, the applicable recovery period shall be determined in accordance with the following table:

(d) APPLICABLE CONVENTION.—For purposes of this section—

(1) IN GENERAL.—Except as otherwise provided in this subsection, the applicable convention is the half-year convention.

(2) REAL PROPERTY.—In the case of—

(A) nonresidential real property,

(B) residential rental property, and

(C) any railroad grading or tunnel bore,

the applicable convention is the mid-month convention.

(3) SPECIAL RULE WHERE SUBSTANTIAL PROPERTY PLACED IN SERVICE DURING LAST 3 MONTHS OF TAXABLE YEAR.—

(A) IN GENERAL.—Except as provided in regulations, if during any taxable year—

(i) the aggregate bases of property to which this section applies placed in service during the last 3 months of the taxable year, exceed

(ii) 40 percent of the aggregate bases of property to which this section applies placed in service during such taxable year,

the applicable convention for all property to which this section applies placed in service during such taxable year shall be the mid-quarter convention.

(B) CERTAIN PROPERTY NOT TAKEN INTO ACCOUNT.—For purposes of subparagraph (A), there shall not be taken into account—

(i) any nonresidential real property, residential rental property, and railroad grading or tunnel bore, and

(ii) any other property placed in service and disposed of during the same taxable year.

(4) DEFINITIONS.—

(A) HALF-YEAR CONVENTION.—The half-year convention is a convention which treats all property placed in service during any taxable year (or disposed of during any taxable year) as placed in service (or disposed of) on the mid-point of such taxable year.

(B) MID-MONTH CONVENTION.—The mid-month convention is a convention which treats all property placed in service during any month (or disposed of during any month) as placed in service (or disposed of) on the mid-point of such month.

(C) MID-QUARTER CONVENTION.—The mid-quarter convention is a convention which treats all property placed in service during any quarter of a taxable year (or disposed of during any quarter of a taxable year) as placed in service (or disposed of) on the mid-point of such quarter.

(e) CLASSIFICATION OF PROPERTY.—For purposes of this section—

(1) IN GENERAL.—Except as otherwise provided in this subsection, property shall be classified under the following table:

(2) RESIDENTIAL RENTAL OR NONRESIDENTIAL REAL PROPERTY.—

(A) RESIDENTIAL RENTAL PROPERTY.—

(i) RESIDENTIAL RENTAL PROPERTY.—The term "residential rental property" means any building or structure if 80 percent or more of the gross rental income from such building or structure for the taxable year is rental income from dwelling units.

(ii) DEFINITIONS.—For purposes of clause (i)—

(I) the term "dwelling unit" means a house or apartment used to provide living accommodations in a building or structure, but does not include a unit in a hotel, motel, or other establishment more than one-half of the units in which are used on a transient basis, and

(II) if any portion of the building or structure is occupied by the taxpayer, the gross rental income from such building or structure shall include the rental value of the portion so occupied.

(B) NONRESIDENTIAL REAL PROPERTY.—The term "nonresidential real property" means section 1250 property which is not—

(i) residential rental property, or

(ii) property with a class life of less than 27.5 years.

(3) CLASSIFICATION OF CERTAIN PROPERTY.—

(A) 3-YEAR PROPERTY.—The term "3-year property" includes—

(i) any race horse—

(I) which is placed in service before January 1, 2022, and

(II) which is placed in service after December 31, 2021, and which is more than 2 years old at the time such horse is placed in service by such purchaser,

(ii) any horse other than a race horse which is more than 12 years old at the time it is placed in service, and

(iii) any qualified rent-to-own property.

(B) 5-YEAR PROPERTY.—The term "5-year property" includes—

(i) any automobile or light general purpose truck,

(ii) any semi-conductor manufacturing equipment,

(iii) any computer-based telephone central office switching equipment,

(iv) any qualified technological equipment,

(v) any section 1245 property used in connection with research and experimentation,

(vi) any property which—

(I) is described in subparagraph (A) of section 48(a)(3) (or would be so described if "solar or wind energy" were substituted for "solar energy" in clause (i) thereof and the last sentence of such section did not apply to such subparagraph),

(II) is described in paragraph (15) of section 48(*l*) (as in effect on the day before the date of the enactment of the Revenue Reconciliation Act of 1990) and has a power production capacity of not greater than 80 megawatts, or

(III) is described in section 48(*l*)(3)(A)(ix) (as in effect on the day before the date of the enactment of the Revenue Reconciliation Act of 1990), *and*

(vii) any machinery or equipment (other than any grain bin, cotton ginning asset, fence, or other land improvement) which is used in a farming business (as defined in section 263A(e)(4)), the original use of which commences with the taxpayer after December 31, 2017**[**, and**]**.

[(viii) any qualified facility (as defined in section 45Y(b)(1)(A)), any qualified property (as defined in subsection (b)(2) of section 48E) which is a qualified investment (as defined in subsection (b)(1) of such section), or any energy storage technology (as defined in subsection (c)(2) of such section).**]**

Nothing in any provision of law shall be construed to treat property as not being described in subclause (I) or (II) of clause (vi) by reason of being public utility property.

(C) 7-YEAR PROPERTY.—The term "7-year property" includes—

(i) any railroad track,

(ii) any motorsports entertainment complex,

(iii) any Alaska natural gas pipeline,

(iv) any natural gas gathering line the original use of which commences with the taxpayer after April 11, 2005, and

(v) any property which—

(I) does not have a class life, and

(II) is not otherwise classified under paragraph (2) or this paragraph.

(D) 10-YEAR PROPERTY.—The term "10-year property" includes—

(i) any single purpose agricultural or horticultural structure (within the meaning of subsection (i)(13)),

(ii) any tree or vine bearing fruit or nuts,

(iii) any qualified smart electric meter, and

(iv) any qualified smart electric grid system.

(E) 15-YEAR PROPERTY.—The term "15-year property" includes—

(i) any municipal wastewater treatment plant,

(ii) any telephone distribution plant and comparable equipment used for 2-way exchange of voice and data communications,

(iii) any section 1250 property which is a retail motor fuels outlet (whether or not food or other convenience items are sold at the outlet),

(iv) initial clearing and grading land improvements with respect to gas utility property,

(v) any section 1245 property (as defined in section 1245(a)(3)) used in the transmission at 69 or more kilovolts of electricity for sale and the original use of which commences with the taxpayer after April 11, 2005,

(vi) any natural gas distribution line the original use of which commences with the taxpayer after April 11, 2005, and which is placed in service before January 1, 2011, and

(vii) any qualified improvement property.

(F) 20-YEAR PROPERTY.—The term "20-year property" means initial clearing and grading land improvements with respect to any electric utility transmission and distribution plant.

(4) RAILROAD GRADING OR TUNNEL BORE.—The term "railroad grading or tunnel bore" means all improvements resulting from excavations (including tunneling), construction of embankments, clearings, diversions of roads and streams, sodding of slopes, and from similar work necessary to provide, construct, reconstruct, alter, protect, improve, replace, or restore a roadbed or right-of-way for railroad track.

(5) WATER UTILITY PROPERTY.—The term "water utility property" means property—

(A) which is an integral part of the gathering, treatment, or commercial distribution of water, and which, without regard to this paragraph, would be 20-year property, and

(B) any municipal sewer.

(6) QUALIFIED IMPROVEMENT PROPERTY.—

(A) IN GENERAL.—The term "qualified improvement property" means any improvement made by the taxpayer to an interior portion of a building which is nonresidential real property if such improvement is placed in service after the date such building was first placed in service.

(B) CERTAIN IMPROVEMENTS NOT INCLUDED.—Such term shall not include any improvement for which the expenditure is attributable to—

(i) the enlargement of the building,

(ii) any elevator or escalator, or

(iii) the internal structural framework of the building.

(f) PROPERTY TO WHICH SECTION DOES NOT APPLY.—This section shall not apply to—

(1) CERTAIN METHODS OF DEPRECIATION.—Any property if—

(A) the taxpayer elects to exclude such property from the application of this section, and

(B) for the 1st taxable year for which a depreciation deduction would be allowable with respect to such property in the hands of the taxpayer, the property is properly depreciated under the unit-of-production method or any method of depreciation not expressed in a term of years (other than the retirement-replacement-betterment method or similar method).

(2) CERTAIN PUBLIC UTILITY PROPERTY.—Any public utility property (within the meaning of subsection (i)(10)) if the taxpayer does not use a normalization method of accounting.

(3) FILMS AND VIDEO TAPE.—Any motion picture film or video tape.

(4) SOUND RECORDINGS.—Any works which result from the fixation of a series of musical, spoken, or other sounds, regardless of the nature of the material (such as discs, tapes, or other phonorecordings) in which such sounds are embodied.

(5) CERTAIN PROPERTY PLACED IN SERVICE IN CHURNING TRANSACTIONS.—

(A) IN GENERAL.—Property—

(i) described in paragraph (4) of section 168(e) (as in effect before the amendments made by the Tax Reform Act of 1986), or

(ii) which would be described in such paragraph if such paragraph were applied by substituting "1987" for "1981" and "1986" for "1980" each place such terms appear.

(B) SUBPARAGRAPH (A)(II) NOT TO APPLY.—Clause (ii) of subparagraph (A) shall not apply to—

(i) any residential rental property or nonresidential real property,

(ii) any property if, for the 1st taxable year in which such property is placed in service—

(I) the amount allowable as a deduction under this section (as in effect before the date of the enactment of this paragraph) with respect to such property is greater than,

(II) the amount allowable as a deduction under this section (as in effect on or after such date and using the half-year convention) for such taxable year, or

(iii) any property to which this section (as amended by the Tax Reform Act of 1986) applied in the hands of the transferor.

(C) SPECIAL RULE.—In the case of any property to which this section would apply but for this paragraph, the depreciation deduction under section 167 shall be determined under the provisions of this section as in effect before the amendments made by section 201 of the Tax Reform Act of 1986.

(g) ALTERNATIVE DEPRECIATION SYSTEM FOR CERTAIN PROPERTY.—

(1) IN GENERAL.—In the case of—

(A) any tangible property which during the taxable year is used predominantly outside the United States,

(B) any tax-exempt use property,

(C) any tax-exempt bond financed property,

(D) any imported property covered by an Executive order under paragraph (6),

(E) any property to which an election under paragraph (7) applies,

(F) any property described in paragraph (8), and

(G) any property with a recovery period of 10 years or more which is held by an electing farming business (as defined in section 163(j)(7)(C)),

the depreciation deduction provided by section 167(a) shall be determined under the alternative depreciation system.

(2) ALTERNATIVE DEPRECIATION SYSTEM.—For purposes of paragraph (1), the alternative depreciation system is depreciation determined by using—

(A) the straight line method (without regard to salvage value),

(B) the applicable convention determined under subsection (d), and

(C) a recovery period determined under the following table:

(3) SPECIAL RULES FOR DETERMINING CLASS LIFE.—

(A) TAX-EXEMPT USE PROPERTY SUBJECT TO LEASE.—In the case of any tax-exempt use property subject to a lease, the recovery period used for purposes of paragraph (2) shall (notwithstanding any other subparagraph of this paragraph) in no event be less than 125 percent of the lease term.

(B) SPECIAL RULE FOR CERTAIN PROPERTY ASSIGNED TO CLASSES.—For purposes of paragraph (2), in the case of property described in any of the following subparagraphs of subsection (e)(3), the class life shall be determined as follows:

(C) QUALIFIED TECHNOLOGICAL EQUIPMENT.—In the case of any qualified technological equipment, the recovery period used for purposes of paragraph (2) shall be 5 years.

(D) AUTOMOBILES, ETC..—In the case of any automobile or light general purpose truck, the recovery period used for purposes of paragraph (2) shall be 5 years.

(E) CERTAIN REAL PROPERTY.—In the case of any section 1245 property which is real property with no class life, the recovery period used for purposes of paragraph (2) shall be 40 years.

(4) EXCEPTION FOR CERTAIN PROPERTY USED OUTSIDE UNITED STATES.—Subparagraph (A) of paragraph (1) shall not apply to—

(A) any aircraft which is registered by the Administrator of the Federal Aviation Agency and which is operated to and from the United States or is operated under contract with the United States;

(B) rolling stock which is used within and without the United States and which is—

(i) of a rail carrier subject to part A of subtitle IV of title 49, or

(ii) of a United States person (other than a corporation described in clause (i)) but only if the rolling stock is not leased to one or more foreign persons for periods aggregating more than 12 months in any 24-month period;

(C) any vessel documented under the laws of the United States which is operated in the foreign or domestic commerce of the United States;

(D) any motor vehicle of a United States person (as defined in section 7701(a)(30)) which is operated to and from the United States;

(E) any container of a United States person which is used in the transportation of property to and from the United States;

(F) any property (other than a vessel or an aircraft) of a United States person which is used for the purpose of exploring for, developing, removing, or transporting resources from the outer Continental Shelf (within the meaning of section 2 of the Outer Continental Shelf Lands Act, as amended and supplemented; (43 U.S.C. 1331));

(G) any property which is owned by a domestic corporation or by a United States citizen (other than a citizen entitled to the benefits of section 931 or 933) and which is used predominantly in a possession of the United States by such a corporation or such a citizen, or by a corporation created or organized in, or under the law of, a possession of the United States;

(H) any communications satellite (as defined in section 103(3) of the Communications Satellite Act of 1962, 47 U.S.C. 702(3)), or any interest therein, of a United States person;

(I) any cable, or any interest therein, of a domestic corporation engaged in furnishing telephone service to which section 168(i)(10)(C) applies (or of a wholly owned domestic subsidiary of such a corporation), if such cable is part of a submarine cable system which constitutes part of a com-

munication link exclusively between the United States and one or more foreign countries;

(J) any property (other than a vessel or an aircraft) of a United States person which is used in international or territorial waters within the northern portion of the Western Hemisphere for the purpose of exploring for, developing, removing, or transporting resources from ocean waters or deposits under such waters;

(K) any property described in section 48(*l*)(3)(A)(ix) (as in effect on the day before the date of the enactment of the Revenue Reconciliation Act of 1990) which is owned by a United States person and which is used in international or territorial waters to generate energy for use in the United States; and

(L) any satellite (not described in subparagraph (H)) or other spacecraft (or any interest therein) held by a United States person if such satellite or other spacecraft was launched from within the United States.

For purposes of subparagraph (J), the term "northern portion of the Western Hemisphere" means the area lying west of the 30th meridian west of Greenwich, east of the international dateline, and north of the Equator, but not including any foreign country which is a country of South America.

(5) TAX-EXEMPT BOND FINANCED PROPERTY.—For purposes of this subsection—

(A) IN GENERAL.—Except as otherwise provided in this paragraph, the term "tax-exempt bond financed property" means any property to the extent such property is financed (directly or indirectly) by an obligation the interest on which is exempt from tax under section 103(a).

(B) ALLOCATION OF BOND PROCEEDS.—For purposes of subparagraph (A), the proceeds of any obligation shall be treated as used to finance property acquired in connection with the issuance of such obligation in the order in which such property is placed in service.

(C) QUALIFIED RESIDENTIAL RENTAL PROJECTS.—The term "tax-exempt bond financed property" shall not include any qualified residential rental project (within the meaning of section 142(a)(7)).

(6) IMPORTED PROPERTY.—

(A) COUNTRIES MAINTAINING TRADE RESTRICTIONS OR ENGAGING IN DISCRIMINATORY ACTS.—If the President determines that a foreign country—

(i) maintains nontariff trade restrictions, including variable import fees, which substantially burden United States commerce in a manner inconsistent with provisions of trade agreements, or

(ii) engages in discriminatory or other acts (including tolerance of international cartels) or policies unjustifiably restricting United States commerce,

the President may by Executive order provide for the application of paragraph (1)(D) to any article or class of articles manufactured or produced in such foreign country for such period as may be provided by such Executive order. Any period specified in the preceding sentence shall not

apply to any property ordered before (or the construction, reconstruction, or erection of which began before) the date of the Executive order unless the President determines an earlier date to be in the public interest and specifies such date in the Executive order.

(B) IMPORTED PROPERTY.—For purposes of this subsection, the term "imported property" means any property if—

(i) such property was completed outside the United States, or

(ii) less than 50 percent of the basis of such property is attributable to value added within the United States.

For purposes of this subparagraph, the term "United States" includes the Commonwealth of Puerto Rico and the possessions of the United States.

(7) ELECTION TO USE ALTERNATIVE DEPRECIATION SYSTEM.—

(A) IN GENERAL.—If the taxpayer makes an election under this paragraph with respect to any class of property for any taxable year, the alternative depreciation system under this subsection shall apply to all property in such class placed in service during such taxable year. Notwithstanding the preceding sentence, in the case of nonresidential real property or residential rental property, such election may be made separately with respect to each property.

(B) ELECTION IRREVOCABLE.—An election under subparagraph (A), once made, shall be irrevocable.

(8) ELECTING REAL PROPERTY TRADE OR BUSINESS.—The property described in this paragraph shall consist of any nonresidential real property, residential rental property, and qualified improvement property held by an electing real property trade or business (as defined in 163(j)(7)(B)).

(h) TAX-EXEMPT USE PROPERTY.—

(1) IN GENERAL.—For purposes of this section—

(A) PROPERTY OTHER THAN NONRESIDENTIAL REAL PROPERTY.—Except as otherwise provided in this subsection, the term "tax-exempt use property" means that portion of any tangible property (other than nonresidential real property) leased to a tax-exempt entity.

(B) NONRESIDENTIAL REAL PROPERTY.—

(i) IN GENERAL.—In the case of nonresidential real property, the term "tax-exempt use property" means that portion of the property leased to a tax-exempt entity in a disqualified lease.

(ii) DISQUALIFIED LEASE.—For purposes of this subparagraph, the term "disqualified lease" means any lease of the property to a tax-exempt entity, but only if—

(I) part or all of the property was financed (directly or indirectly) by an obligation the interest on which is exempt from tax under section 103(a) and such entity (or a related entity) participated in such financing,

(II) under such lease there is a fixed or determinable price purchase or sale option which involves such entity (or a related entity) or there is the equivalent of such an option,

(III) such lease has a lease term in excess of 20 years, or

(IV) such lease occurs after a sale (or other transfer) of the property by, or lease of the property from, such entity (or a related entity) and such property has been used by such entity (or a related entity) before such sale (or other transfer) or lease.

(iii) 35-PERCENT THRESHOLD TEST.—Clause (i) shall apply to any property only if the portion of such property leased to tax-exempt entities in disqualified leases is more than 35 percent of the property.

(iv) TREATMENT OF IMPROVEMENTS.—For purposes of this subparagraph, improvements to a property (other than land) shall not be treated as a separate property.

(v) LEASEBACKS DURING 1ST 3 MONTHS OF USE NOT TAKEN INTO ACCOUNT.—Subclause (IV) of clause (ii) shall not apply to any property which is leased within 3 months after the date such property is first used by the tax-exempt entity (or a related entity).

(C) EXCEPTION FOR SHORT-TERM LEASES.—

(i) IN GENERAL.—Property shall not be treated as tax-exempt use property merely by reason of a short-term lease.

(ii) SHORT-TERM LEASE.—For purposes of clause (i), the term "short-term lease" means any lease the term of which is—

(I) less than 3 years, and

(II) less than the greater of 1 year or 30 percent of the property's present class life.

In the case of nonresidential real property and property with no present class life, subclause (II) shall not apply.

(D) EXCEPTION WHERE PROPERTY USED IN UNRELATED TRADE OR BUSINESS.—The term "tax-exempt use property" shall not include any portion of a property if such portion is predominantly used by the tax-exempt entity (directly or through a partnership of which such entity is a partner) in an unrelated trade or business the income of which is subject to tax under section 511. For purposes of subparagraph (B)(iii), any portion of a property so used shall not be treated as leased to a tax-exempt entity in a disqualified lease.

(E) NONRESIDENTIAL REAL PROPERTY DEFINED.—For purposes of this paragraph, the term "nonresidential real property" includes residential rental property.

(2) TAX-EXEMPT ENTITY.—

(A) IN GENERAL.—For purposes of this subsection, the term "tax-exempt entity" means—

(i) the United States, any State or political subdivision thereof, any possession of the United States, or any agency or instrumentality of any of the foregoing,

(ii) an organization (other than a cooperative described in section 521) which is exempt from tax imposed by this chapter,

(iii) any foreign person or entity, and

(iv) any Indian tribal government described in section 7701(a)(40).

For purposes of applying this subsection, any Indian tribal government referred to in clause (iv) shall be treated in the same manner as a State.

(B) EXCEPTION FOR CERTAIN PROPERTY SUBJECT TO UNITED STATES TAX AND USED BY FOREIGN PERSON OR ENTITY.—Clause (iii) of subparagraph (A) shall not apply with respect to any property if more than 50 percent of the gross income for the taxable year derived by the foreign person or entity from the use of such property is—

(i) subject to tax under this chapter, or

(ii) included under section 951 in the gross income of a United States shareholder for the taxable year with or within which ends the taxable year of the controlled foreign corporation in which such income was derived.

For purposes of the preceding sentence, any exclusion or exemption shall not apply for purposes of determining the amount of the gross income so derived, but shall apply for purposes of determining the portion of such gross income subject to tax under this chapter.

(C) FOREIGN PERSON OR ENTITY.—For purposes of this paragraph, the term "foreign person or entity" means—

(i) any foreign government, any international organization, or any agency or instrumentality of any of the foregoing, and

(ii) any person who is not a United States person.

Such term does not include any foreign partnership or other foreign pass-thru entity.

(D) TREATMENT OF CERTAIN TAXABLE INSTRUMENTALITIES.—For purposes of this subsection, a corporation shall not be treated as an instrumentality of the United States or of any State or political subdivision thereof if—

(i) all of the activities of such corporation are subject to tax under this chapter, and

(ii) a majority of the board of directors of such corporation is not selected by the United States or any State or political subdivision thereof.

(E) CERTAIN PREVIOUSLY TAX-EXEMPT ORGANIZATIONS.—

(i) IN GENERAL.—For purposes of this subsection, an organization shall be treated as an organization described in subparagraph (A)(ii) with respect to any property (other than property held by such organization) if such organization was an organization (other than a cooperative described in section 521) exempt from tax imposed by this chapter at any time during the 5-year period ending on the date such property was first used by such organization. The preceding sentence and subparagraph (D)(ii) shall not apply to the Federal Home Loan Mortgage Corporation.

(ii) ELECTION NOT TO HAVE CLAUSE (I) APPLY.—

(I) IN GENERAL.—In the case of an organization formerly exempt from tax under section 501(a) as an organization described in section 501(c)(12), clause (i) shall not apply to such organization with respect to any property if such organization elects not to be exempt from tax under section 501(a) during the tax-exempt use period with respect to such property.

(II) TAX-EXEMPT USE PERIOD.—For purposes of subclause (I), the term "tax-exempt use period" means the period beginning with the taxable year in which the property described in subclause (I) is first used by the organization and ending with the close of the 15th taxable year following the last taxable year of the applicable recovery period of such property.

(III) ELECTION.—Any election under subclause (I), once made, shall be irrevocable.

(iii) TREATMENT OF SUCCESSOR ORGANIZATIONS.—Any organization which is engaged in activities substantially similar to those engaged in by a predecessor organization shall succeed to the treatment under this subparagraph of such predecessor organization.

(iv) FIRST USED.—For purposes of this subparagraph, property shall be treated as first used by the organization—

(I) when the property is first placed in service under a lease to such organization, or

(II) in the case of property leased to (or held by) a partnership (or other pass-thru entity) in which the organization is a member, the later of when such property is first used by such partnership or pass-thru entity or when such organization is first a member of such partnership or pass-thru entity.

(3) SPECIAL RULES FOR CERTAIN HIGH TECHNOLOGY EQUIPMENT.—

(A) EXEMPTION WHERE LEASE TERM IS 5 YEARS OR LESS.—For purposes of this section, the term "tax-exempt use property" shall not include any qualified technological equipment if the lease to the tax-exempt entity has a lease term of 5 years or less. Notwithstanding subsection (i)(3)(A)(i), in determining a lease term for purposes of the preceding sentence, there shall not be taken into account any option of the lessee to renew at the fair market value rent determined at the time of renewal; except that the aggregate period not taken into account by reason of this sentence shall not exceed 24 months.

(B) EXCEPTION FOR CERTAIN PROPERTY.—

(i) IN GENERAL.—For purposes of subparagraph (A), the term "qualified technological equipment" shall not include any property leased to a tax-exempt entity if—

(I) part or all of the property was financed (directly or indirectly) by an obligation the interest on which is exempt from tax under section 103(a),

(II) such lease occurs after a sale (or other transfer) of the property by, or lease of such property from, such entity (or related entity) and such property has been used by such entity (or a related entity) before such sale (or other transfer) or lease, or

(III) such tax-exempt entity is the United States or any agency or instrumentality of the United States.

(ii) LEASEBACKS DURING 1ST 3 MONTHS OF USE NOT TAKEN INTO ACCOUNT.—Subclause (II) of clause (i) shall not apply to any property which is leased within 3 months after the date such property is first used by the tax-exempt entity (or a related entity).

(4) RELATED ENTITIES.—For purposes of this subsection—

(A)(i) Each governmental unit and each agency or instrumentality of a governmental unit is related to each other such unit, agency, or instrumentality which directly or indirectly derives its powers, rights, and duties in whole or in part from the same sovereign authority.

(ii) For purposes of clause (i), the United States, each State, and each possession of the United States shall be treated as a separate sovereign authority.

(B) Any entity not described in subparagraph (A)(i) is related to any other entity if the 2 entities have—

(i) significant common purposes and substantial common membership, or

(ii) directly or indirectly substantial common direction or control.

(C)(i) An entity is related to another entity if either entity owns (directly or through 1 or more entities) a 50 percent or greater interest in the capital or profits of the other entity.

(ii) For purposes of clause (i), entities treated as related under subparagraph (A) or (B) shall be treated as 1 entity.

(D) An entity is related to another entity with respect to a transaction if such transaction is part of an attempt by such entities to avoid the application of this subsection.

(5) TAX-EXEMPT USE OF PROPERTY LEASED TO PARTNERSHIPS, ETC., DETERMINED AT PARTNER LEVEL.—For purposes of this subsection—

(A) IN GENERAL.—In the case of any property which is leased to a partnership, the determination of whether any portion of such property is tax-exempt use property shall be made by treating each tax-exempt entity partner's proportionate share (determined under paragraph (6)(C)) of such property as being leased to such partner.

(B) OTHER PASS-THRU ENTITIES; TIERED ENTITIES.—Rules similar to the rules of subparagraph (A) shall also apply in the case of any pass-thru entity other than a partnership and in the case of tiered partnerships and other entities.

(C) PRESUMPTION WITH RESPECT TO FOREIGN ENTITIES.—Unless it is otherwise established to the satisfaction of the Secretary, it shall be presumed that the partners of a for-

eign partnership (and the beneficiaries of any other foreign pass-thru entity) are persons who are not United States persons.

(6) TREATMENT OF PROPERTY OWNED BY PARTNERSHIPS, ETC..—

(A) IN GENERAL.—For purposes of this subsection, if—

(i) any property which (but for this subparagraph) is not tax-exempt use property is owned by a partnership which has both a tax-exempt entity and a person who is not a tax-exempt entity as partners, and

(ii) any allocation to the tax-exempt entity of partnership items is not a qualified allocation,

an amount equal to such tax-exempt entity's proportionate share of such property shall (except as provided in paragraph (1)(D)) be treated as tax-exempt use property.

(B) QUALIFIED ALLOCATION.—For purposes of subparagraph (A), the term "qualified allocation" means any allocation to a tax-exempt entity which—

(i) is consistent with such entity's being allocated the same distributive share of each item of income, gain, loss, deduction, credit, and basis and such share remains the same during the entire period the entity is a partner in the partnership, and

(ii) has substantial economic effect within the meaning of section 704(b)(2).

For purposes of this subparagraph, items allocated under section 704(c) shall not be taken into account.

(C) DETERMINATION OF PROPORTIONATE SHARE.—

(i) IN GENERAL.—For purposes of subparagraph (A), a tax-exempt entity's proportionate share of any property owned by a partnership shall be determined on the basis of such entity's share of partnership items of income or gain (excluding gain allocated under section 704(c)), whichever results in the largest proportionate share.

(ii) DETERMINATION WHERE ALLOCATIONS VARY.—For purposes of clause (i), if a tax-exempt entity's share of partnership items of income or gain (excluding gain allocated under section 704(c)) may vary during the period such entity is a partner in the partnership, such share shall be the highest share such entity may receive.

(D) DETERMINATION OF WHETHER PROPERTY USED IN UNRELATED TRADE OR BUSINESS.—For purposes of this subsection, in the case of any property which is owned by a partnership which has both a tax-exempt entity and a person who is not a tax-exempt entity as partners, the determination of whether such property is used in an unrelated trade or business of such an entity shall be made without regard to section 514.

(E) OTHER PASS-THRU ENTITIES; TIERED ENTITIES.—Rules similar to the rules of subparagraphs (A), (B), (C), and (D) shall also apply in the case of any pass-thru entity other than a partnership and in the case of tiered partnerships and other entities.

(F) TREATMENT OF CERTAIN TAXABLE ENTITIES.—

(i) IN GENERAL.—For purposes of this paragraph and paragraph (5), except as otherwise provided in this subparagraph, any tax-exempt controlled entity shall be treated as a tax-exempt entity.

(ii) ELECTION.—If a tax-exempt controlled entity makes an election under this clause—

(I) such entity shall not be treated as a tax-exempt entity for purposes of this paragraph and paragraph (5), and

(II) any gain recognized by a tax-exempt entity on any disposition of an interest in such entity (and any dividend or interest received or accrued by a tax-exempt entity from such tax-exempt controlled entity) shall be treated as unrelated business taxable income for purposes of section 511.

Any such election shall be irrevocable and shall bind all tax-exempt entities holding interests in such tax-exempt controlled entity. For purposes of subclause (II), there shall only be taken into account dividends which are properly allocable to income of the tax-exempt controlled entity which was not subject to tax under this chapter.

(iii) TAX-EXEMPT CONTROLLED ENTITY.—

(I) IN GENERAL.—The term "tax-exempt controlled entity" means any corporation (which is not a tax-exempt entity determined without regard to this subparagraph and paragraph (2)(E)) if 50 percent or more (in value) of the stock in such corporation is held by 1 or more tax-exempt entities (other than a foreign person or entity).

(II) ONLY 5-PERCENT SHAREHOLDERS TAKEN INTO ACCOUNT IN CASE OF PUBLICLY TRADED STOCK.—For purposes of subclause (I), in the case of a corporation the stock of which is publicly traded on an established securities market, stock held by a tax-exempt entity shall not be taken into account unless such entity holds at least 5 percent (in value) of the stock in such corporation. For purposes of this subclause, related entities (within the meaning of paragraph (4)) shall be treated as 1 entity.

(III) SECTION 318 TO APPLY.—For purposes of this clause, a tax-exempt entity shall be treated as holding stock which it holds through application of section 318 (determined without regard to the 50-percent limitation contained in subsection (a)(2)(C) thereof).

(G) REGULATIONS.—For purposes of determining whether there is a qualified allocation under subparagraph (B), the regulations prescribed under paragraph (8) for purposes of this paragraph—

(i) shall set forth the proper treatment for partnership guaranteed payments, and

(ii) may provide for the exclusion or segregation of items.

(7) LEASE.—For purposes of this subsection, the term "lease" includes any grant of a right to use property.

(8) REGULATIONS.—The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of this subsection.

(i) DEFINITIONS AND SPECIAL RULES.—For purposes of this section—

(1) CLASS LIFE.—Except as provided in this section, the term "class life" means the class life (if any) which would be applicable with respect to any property as of January 1, 1986, under subsection (m) of section 167 (determined without regard to paragraph (4) and as if the taxpayer had made an election under such subsection). The Secretary, through an office established in the Treasury, shall monitor and analyze actual experience with respect to all depreciable assets. The reference in this paragraph to subsection (m) of section 167 shall be treated as a reference to such subsection as in effect on the day before the date of the enactment of the Revenue Reconciliation Act of 1990.

(2) QUALIFIED TECHNOLOGICAL EQUIPMENT.—

(A) IN GENERAL.—The term "qualified technological equipment" means—

(i) any computer or peripheral equipment,

(ii) any high technology telephone station equipment installed on the customer's premises, and

(iii) any high technology medical equipment.

(B) COMPUTER OR PERIPHERAL EQUIPMENT DEFINED.—For purposes of this paragraph—

(i) IN GENERAL.—The term "computer or peripheral equipment" means—

(I) any computer, and

(II) any related peripheral equipment.

(ii) COMPUTER.—The term "computer" means a programmable electronically activated device which—

(I) is capable of accepting information, applying prescribed processes to the information, and supplying the results of these processes with or without human intervention, and

(II) consists of a central processing unit containing extensive storage, logic, arithmetic, and control capabilities.

(iii) RELATED PERIPHERAL EQUIPMENT.—The term "related peripheral equipment" means any auxiliary machine (whether on-line or off-line) which is designed to be placed under the control of the central processing unit of a computer.

(iv) EXCEPTIONS.—The term "computer or peripheral equipment" shall not include—

(I) any equipment which is an integral part of other property which is not a computer,

(II) typewriters, calculators, adding and accounting machines, copiers, duplicating equipment, and similar equipment, and

(III) equipment of a kind used primarily for amusement or entertainment of the user.

(C) HIGH TECHNOLOGY MEDICAL EQUIPMENT.—For purposes of this paragraph, the term "high technology medical equipment" means any electronic, electromechanical, or computer-based high technology equipment used in the screening, monitoring, observation, diagnosis, or treatment of patients in a laboratory, medical, or hospital environment.

(3) LEASE TERM.—

(A) IN GENERAL.—In determining a lease term—

(i) there shall be taken into account options to renew,

(ii) the term of a lease shall include the term of any service contract or similar arrangement (whether or not treated as a lease under section 7701(e))—

(I) which is part of the same transaction (or series of related transactions) which includes the lease, and

(II) which is with respect to the property subject to the lease or substantially similar property, and

(iii) 2 or more successive leases which are part of the same transaction (or a series of related transactions) with respect to the same or substantially similar property shall be treated as 1 lease.

(B) SPECIAL RULE FOR FAIR RENTAL OPTIONS ON NONRESIDENTIAL REAL PROPERTY OR RESIDENTIAL RENTAL PROPERTY.—For purposes of clause (i) of subparagraph (A), in the case of nonresidential real property or residential rental property, there shall not be taken into account any option to renew at fair market value, determined at the time of renewal.

(4) GENERAL ASSET ACCOUNTS.—Under regulations, a taxpayer may maintain 1 or more general asset accounts for any property to which this section applies. Except as provided in regulations, all proceeds realized on any disposition of property in a general asset account shall be included in income as ordinary income.

(5) CHANGES IN USE.—The Secretary shall, by regulations, provide for the method of determining the deduction allowable under section 167(a) with respect to any tangible property for any taxable year (and the succeeding taxable years) during which such property changes status under this section but continues to be held by the same person.

(6) TREATMENTS OF ADDITIONS OR IMPROVEMENTS TO PROPERTY.—In the case of any addition to (or improvement of) any property—

(A) any deduction under subsection (a) for such addition or improvement shall be computed in the same manner as the deduction for such property would be computed if such property had been placed in service at the same time as such addition or improvement, and

(B) the applicable recovery period for such addition or improvement shall begin on the later of—

(i) the date on which such addition (or improvement) is placed in service, or

(ii) the date on which the property with respect to which such addition (or improvement) was made is placed in service.

(7) TREATMENT OF CERTAIN TRANSFEREES.—

(A) IN GENERAL.—In the case of any property transferred in a transaction described in subparagraph (B), the transferee shall be treated as the transferor for purposes of computing the depreciation deduction determined under this section with respect to so much of the basis in the hands of the transferee as does not exceed the adjusted basis in the hands of the transferor. In any case where this section as in effect before the amendments made by section 201 of the Tax Reform Act of 1986 applied to the property in the hands of the transferor, the reference in the preceding sentence to this section shall be treated as a reference to this section as so in effect.

(B) TRANSACTIONS COVERED.—The transactions described in this subparagraph are—

(i) any transaction described in section 332, 351, 361, 721, or 731, and

(ii) any transaction between members of the same affiliated group during any taxable year for which a consolidated return is made by such group.

(C) PROPERTY REACQUIRED BY THE TAXPAYER.—Under regulations, property which is disposed of and then reacquired by the taxpayer shall be treated for purposes of computing the deduction allowable under subsection (a) as if such property had not been disposed of.

(8) TREATMENT OF LEASEHOLD IMPROVEMENTS.—

(A) IN GENERAL.—In the case of any building erected (or improvements made) on leased property, if such building or improvement is property to which this section applies, the depreciation deduction shall be determined under the provisions of this section.

(B) TREATMENT OF LESSOR IMPROVEMENTS WHICH ARE ABANDONED AT TERMINATION OF LEASE.—An improvement—

(i) which is made by the lessor of leased property for the lessee of such property, and

(ii) which is irrevocably disposed of or abandoned by the lessor at the termination of the lease by such lessee,

shall be treated for purposes of determining gain or loss under this title as disposed of by the lessor when so disposed of or abandoned.

(C) CROSS REFERENCE.—For treatment of qualified long-term real property constructed or improved in connection with cash or rent reduction from lessor to lessee, see section 110(b).

(9) NORMALIZATION RULES.—

(A) IN GENERAL.—In order to use a normalization method of accounting with respect to any public utility property for purposes of subsection (f)(2)—

(i) the taxpayer must, in computing its tax expense for purposes of establishing its cost of service for rate-

making purposes and reflecting operating results in its regulated books of account, use a method of depreciation with respect to such property that is the same as, and a depreciation period for such property that is no shorter than, the method and period used to compute its depreciation expense for such purposes; and

(ii) if the amount allowable as a deduction under this section with respect to such property (respecting all elections made by the taxpayer under this section) differs from the amount that would be allowable as a deduction under section 167 using the method (including the period, first and last year convention, and salvage value) used to compute regulated tax expense under clause (i), the taxpayer must make adjustments to a reserve to reflect the deferral of taxes resulting from such difference.

(B) USE OF INCONSISTENT ESTIMATES AND PROJECTIONS, ETC..—

(i) IN GENERAL.—One way in which the requirements of subparagraph (A) are not met is if the taxpayer, for ratemaking purposes, uses a procedure or adjustment which is inconsistent with the requirements of subparagraph (A).

(ii) USE OF INCONSISTENT ESTIMATES AND PROJECTIONS.—The procedures and adjustments which are to be treated as inconsistent for purposes of clause (i) shall include any procedure or adjustment for ratemaking purposes which uses an estimate or projection of the taxpayer's tax expense, depreciation expense, or reserve for deferred taxes under subparagraph (A)(ii) unless such estimate or projection is also used, for ratemaking purposes, with respect to the other 2 such items and with respect to the rate base.

(iii) REGULATORY AUTHORITY.—The Secretary may by regulations prescribe procedures and adjustments (in addition to those specified in clause (ii)) which are to be treated as inconsistent for purposes of clause (i).

(C) PUBLIC UTILITY PROPERTY WHICH DOES NOT MEET NORMALIZATION RULES.—In the case of any public utility property to which this section does not apply by reason of subsection (f)(2), the allowance for depreciation under section 167(a) shall be an amount computed using the method and period referred to in subparagraph (A)(i).

(10) PUBLIC UTILITY PROPERTY.—The term "public utility property" means property used predominantly in the trade or business of the furnishing or sale of—

(A) electrical energy, water, or sewage disposal services,

(B) gas or steam through a local distribution system,

(C) telephone services, or other communication services if furnished or sold by the Communications Satellite Corporation for purposes authorized by the Communications Satellite Act of 1962 (47 U.S.C. 701), or

(D) transportation of gas or steam by pipeline,

if the rates for such furnishing or sale, as the case may be, have been established or approved by a State or political sub-

division thereof, by any 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.

(11) RESEARCH AND EXPERIMENTATION.—The term "research and experimentation" has the same meaning as the term research and experimental has under section 174.

(12) SECTION 1245 AND 1250 PROPERTY.—The terms "section 1245 property" and "section 1250 property" have the meanings given such terms by sections 1245(a)(3) and 1250(c), respectively.

(13) SINGLE PURPOSE AGRICULTURAL OR HORTICULTURAL STRUCTURE.—

(A) IN GENERAL.—The term "single purpose agricultural or horticultural structure" means—

(i) a single purpose livestock structure, and

(ii) a single purpose horticultural structure.

(B) DEFINITIONS.—For purposes of this paragraph—

(i) SINGLE PURPOSE LIVESTOCK STRUCTURE.—The term "single purpose livestock structure" means any enclosure or structure specifically designed, constructed, and used—

(I) for housing, raising, and feeding a particular type of livestock and their produce, and

(II) for housing the equipment (including any replacements) necessary for the housing, raising, and feeding referred to in subclause (I).

(ii) SINGLE PURPOSE HORTICULTURAL STRUCTURE.—The term "single purpose horticultural structure" means—

(I) a greenhouse specifically designed, constructed, and used for the commercial production of plants, and

(II) a structure specifically designed, constructed, and used for the commercial production of mushrooms.

(iii) STRUCTURES WHICH INCLUDE WORK SPACE.—An enclosure or structure which provides work space shall be treated as a single purpose agricultural or horticultural structure only if such work space is solely for—

(I) the stocking, caring for, or collecting of livestock or plants (as the case may be) or their produce,

(II) the maintenance of the enclosure or structure, and

(III) the maintenance or replacement of the equipment or stock enclosed or housed therein.

(iv) LIVESTOCK.—The term "livestock" includes poultry.

(14) QUALIFIED RENT-TO-OWN PROPERTY.—

(A) IN GENERAL.—The term "qualified rent-to-own property" means property held by a rent-to-own dealer for purposes of being subject to a rent-to-own contract.

(B) RENT-TO-OWN DEALER.—The term "rent-to-own dealer" means a person that, in the ordinary course of business, regularly enters into rent-to-own contracts with customers for the use of consumer property, if a substantial portion of those contracts terminate and the property is returned to such person before the receipt of all payments required to transfer ownership of the property from such person to the customer.

(C) CONSUMER PROPERTY.—The term "consumer property" means tangible personal property of a type generally used within the home for personal use.

(D) RENT-TO-OWN CONTRACT.—The term "rent-to-own contract" means any lease for the use of consumer property between a rent-to-own dealer and a customer who is an individual which—

(i) is titled "Rent-to-Own Agreement" or "Lease Agreement with Ownership Option," or uses other similar language,

(ii) provides for level (or decreasing where no payment is less than 40 percent of the largest payment), regular periodic payments (for a payment period which is a week or month),

(iii) provides that legal title to such property remains with the rent-to-own dealer until the customer makes all the payments described in clause (ii) or early purchase payments required under the contract to acquire legal title to the item of property,

(iv) provides a beginning date and a maximum period of time for which the contract may be in effect that does not exceed 156 weeks or 36 months from such beginning date (including renewals or options to extend),

(v) provides for payments within the 156-week or 36-month period that, in the aggregate, generally exceed the normal retail price of the consumer property plus interest,

(vi) provides for payments under the contract that, in the aggregate, do not exceed $10,000 per item of consumer property,

(vii) provides that the customer does not have any legal obligation to make all the payments referred to in clause (ii) set forth under the contract, and that at the end of each payment period the customer may either continue to use the consumer property by making the payment for the next payment period or return such property to the rent-to-own dealer in good working order, in which case the customer does not incur any further obligations under the contract and is not entitled to a return of any payments previously made under the contract, and

(viii) provides that the customer has no right to sell, sublease, mortgage, pawn, pledge, encumber, or otherwise dispose of the consumer property until all the payments stated in the contract have been made.

(15) MOTORSPORTS ENTERTAINMENT COMPLEX.—

(A) IN GENERAL.—The term "motorsports entertainment complex" means a racing track facility which—

(i) is permanently situated on land, and

(ii) during the 36-month period following the first day of the month in which the asset is placed in service, hosts 1 or more racing events for automobiles (of any type), trucks, or motorcycles which are open to the public for the price of admission.

(B) ANCILLARY AND SUPPORT FACILITIES.—Such term shall include, if owned by the taxpayer who owns the complex and provided for the benefit of patrons of the complex—

(i) ancillary facilities and land improvements in support of the complex's activities (including parking lots, sidewalks, waterways, bridges, fences, and landscaping),

(ii) support facilities (including food and beverage retailing, souvenir vending, and other nonlodging accommodations), and

(iii) appurtenances associated with such facilities and related attractions and amusements (including ticket booths, race track surfaces, suites and hospitality facilities, grandstands and viewing structures, props, walls, facilities that support the delivery of entertainment services, other special purpose structures, facades, shop interiors, and buildings).

(C) EXCEPTION.—Such term shall not include any transportation equipment, administrative services assets, warehouses, administrative buildings, hotels, or motels.

(D) TERMINATION.—Such term shall not include any property placed in service after December 31, 2025.

(16) ALASKA NATURAL GAS PIPELINE.—The term "Alaska natural gas pipeline" means the natural gas pipeline system located in the State of Alaska which—

(A) has a capacity of more than 500,000,000,000 Btu of natural gas per day, and

(B) is—

(i) placed in service after December 31, 2013, or

(ii) treated as placed in service on January 1, 2014, if the taxpayer who places such system in service before January 1, 2014, elects such treatment.

Such term includes the pipe, trunk lines, related equipment, and appurtenances used to carry natural gas, but does not include any gas processing plant.

(17) NATURAL GAS GATHERING LINE.—The term "natural gas gathering line" means—

(A) the pipe, equipment, and appurtenances determined to be a gathering line by the Federal Energy Regulatory Commission, and

(B) the pipe, equipment, and appurtenances used to deliver natural gas from the wellhead or a commonpoint to the point at which such gas first reaches—

(i) a gas processing plant,

(ii) an interconnection with a transmission pipeline for which a certificate as an interstate transmission

pipeline has been issued by the Federal Energy Regulatory Commission,

(iii) an interconnection with an intrastate transmission pipeline, or

(iv) a direct interconnection with a local distribution company, a gas storage facility, or an industrial consumer.

(18) QUALIFIED SMART ELECTRIC METERS.—

(A) IN GENERAL.—The term "qualified smart electric meter" means any smart electric meter which—

(i) is placed in service by a taxpayer who is a supplier of electric energy or a provider of electric energy services, and

(ii) does not have a class life (determined without regard to subsection (e)) of less than 16 years.

(B) SMART ELECTRIC METER.—For purposes of subparagraph (A), the term "smart electric meter" means any time-based meter and related communication equipment which is capable of being used by the taxpayer as part of a system that—

(i) measures and records electricity usage data on a time-differentiated basis in at least 24 separate time segments per day,

(ii) provides for the exchange of information between supplier or provider and the customer's electric meter in support of time-based rates or other forms of demand response,

(iii) provides data to such supplier or provider so that the supplier or provider can provide energy usage information to customers electronically, and

(iv) provides net metering.

(19) QUALIFIED SMART ELECTRIC GRID SYSTEMS.—

(A) IN GENERAL.—The term "qualified smart electric grid system" means any smart grid property which—

(i) is used as part of a system for electric distribution grid communications, monitoring, and management placed in service by a taxpayer who is a supplier of electric energy or a provider of electric energy services, and

(ii) does not have a class life (determined without regard to subsection (e)) of less than 16 years.

(B) SMART GRID PROPERTY.—For the purposes of subparagraph (A), the term "smart grid property" means electronics and related equipment that is capable of—

(i) sensing, collecting, and monitoring data of or from all portions of a utility's electric distribution grid,

(ii) providing real-time, two-way communications to monitor or manage such grid, and

(iii) providing real time analysis of and event prediction based upon collected data that can be used to improve electric distribution system reliability, quality, and performance.

(j) PROPERTY ON INDIAN RESERVATIONS.—

(1) IN GENERAL.—For purposes of subsection (a), the applicable recovery period for qualified Indian reservation property

shall be determined in accordance with the table contained in paragraph (2) in lieu of the table contained in subsection (c).

(2) APPLICABLE RECOVERY PERIOD FOR INDIAN RESERVATION PROPERTY.—For purposes of paragraph (1)—

(3) DEDUCTION ALLOWED IN COMPUTING MINIMUM TAX.—For purposes of determining alternative minimum taxable income under section 55, the deduction under subsection (a) for qualified Indian reservation property shall be determined under this section without regard to any adjustment under section 56.

(4) QUALIFIED INDIAN RESERVATION PROPERTY DEFINED.—For purposes of this subsection—

(A) IN GENERAL.—The term "qualified Indian reservation property" means property which is property described in the table in paragraph (2) and which is—

(i) used by the taxpayer predominantly in the active conduct of a trade or business within an Indian reservation,

(ii) not used or located outside the Indian reservation on a regular basis,

(iii) not acquired (directly or indirectly) by the taxpayer from a person who is related to the taxpayer (within the meaning of section 465(b)(3)(C)), and

(iv) not property (or any portion thereof) placed in service for purposes of conducting or housing class I, II, or III gaming (as defined in section 4 of the Indian Regulatory Act (25 U.S.C. 2703)).

(B) EXCEPTION FOR ALTERNATIVE DEPRECIATION PROPERTY.—The term "qualified Indian reservation property" does not include any property to which the alternative depreciation system under subsection (g) applies, determined—

(i) without regard to subsection (g)(7) (relating to election to use alternative depreciation system), and

(ii) after the application of section 280F(b) (relating to listed property with limited business use).

(C) SPECIAL RULE FOR RESERVATION INFRASTRUCTURE INVESTMENT.—

(i) IN GENERAL.—Subparagraph (A)(ii) shall not apply to qualified infrastructure property located outside of the Indian reservation if the purpose of such property is to connect with qualified infrastructure property located within the Indian reservation.

(ii) QUALIFIED INFRASTRUCTURE PROPERTY.—For purposes of this subparagraph, the term "qualified infrastructure property" means qualified Indian reservation property (determined without regard to subparagraph (A)(ii)) which—

(I) benefits the tribal infrastructure,

(II) is available to the general public, and

(III) is placed in service in connection with the taxpayer's active conduct of a trade or business within an Indian reservation.

Such term includes, but is not limited to, roads, power lines, water systems, railroad spurs, and communications facilities.

(5) REAL ESTATE RENTALS.—For purposes of this subsection, the rental to others of real property located within an Indian reservation shall be treated as the active conduct of a trade or business within an Indian reservation.

(6) INDIAN RESERVATION DEFINED.—For purposes of this subsection, the term "Indian reservation" means a reservation, as defined in—

(A) section 3(d) of the Indian Financing Act of 1974 (25 U.S.C. 1452(d)), or

(B) section 4(10) of the Indian Child Welfare Act of 1978 (25 U.S.C. 1903(10)).

For purposes of the preceding sentence, such section 3(d) shall be applied by treating the term "former Indian reservations in Oklahoma" as including only lands which are within the jurisdictional area of an Oklahoma Indian tribe (as determined by the Secretary of the Interior) and are recognized by such Secretary as eligible for trust land status under 25 CFR Part 151 (as in effect on the date of the enactment of this sentence).

(7) COORDINATION WITH NONREVENUE LAWS.—Any reference in this subsection to a provision not contained in this title shall be treated for purposes of this subsection as a reference to such provision as in effect on the date of the enactment of this paragraph.

(8) ELECTION OUT.—If a taxpayer makes an election under this paragraph with respect to any class of property for any taxable year, paragraph (1) shall not apply to all property in such class placed in service during such taxable year. Such election, once made, shall be irrevocable.

(9) TERMINATION.—This subsection shall not apply to property placed in service after December 31, 2021.

(k) SPECIAL ALLOWANCE FOR CERTAIN PROPERTY.—

(1) ADDITIONAL ALLOWANCE.—In the case of any qualified property—

(A) the depreciation deduction provided by section 167(a) for the taxable year in which such property is placed in service shall include an allowance equal to the applicable percentage of the adjusted basis of the qualified property, and

(B) the adjusted basis of the qualified property shall be reduced by the amount of such deduction before computing the amount otherwise allowable as a depreciation deduction under this chapter for such taxable year and any subsequent taxable year.

(2) QUALIFIED PROPERTY.—For purposes of this subsection—

(A) IN GENERAL.—The term "qualified property" means property—

(i)(I) to which this section applies which has a recovery period of 20 years or less,

(II) which is computer software (as defined in section 167(f)(1)(B)) for which a deduction is allowable under section 167(a) without regard to this subsection,

(III) which is water utility property, or

(IV) which is a qualified film or television production (as defined in subsection (d) of section 181) for which a deduction would have been allowable under

section 181 without regard to subsections (a)(2) and (g) of such section or this subsection, or

(V) which is a qualified live theatrical production (as defined in subsection (e) of section 181) for which a deduction would have been allowable under section 181 without regard to subsections (a)(2) and (g) of such section or this subsection,

(ii) the original use of which begins with the taxpayer or the acquisition of which by the taxpayer meets the requirements of clause (ii) of subparagraph (E), and

(iii) which is placed in service by the taxpayer before January 1, 2027.

(B) CERTAIN PROPERTY HAVING LONGER PRODUCTION PERIODS TREATED AS QUALIFIED PROPERTY.—

(i) IN GENERAL.—The term "qualified property" includes any property if such property—

(I) meets the requirements of clauses (i) and (ii) of subparagraph (A),

(II) is placed in service by the taxpayer before January 1, 2028,

(III) is acquired by the taxpayer (or acquired pursuant to a written binding contract entered into) before January 1, 2027,

(IV) has a recovery period of at least 10 years or is transportation property,

(V) is subject to section 263A, and

(VI) meets the requirements of clause (iii) of section 263A(f)(1)(B) (determined as if such clause also applies to property which has a long useful life (within the meaning of section 263A(f))).

(ii) ONLY PRE-JANUARY 1, 2027 BASIS ELIGIBLE FOR ADDITIONAL ALLOWANCE.—In the case of property which is qualified property solely by reason of clause (i), paragraph (1) shall apply only to the extent of the adjusted basis thereof attributable to manufacture, construction, or production before January 1, 2027.

(iii) TRANSPORTATION PROPERTY.—For purposes of this subparagraph, the term "transportation property" means tangible personal property used in the trade or business of transporting persons or property.

(iv) APPLICATION OF SUBPARAGRAPH.—This subparagraph shall not apply to any property which is described in subparagraph (C).

(C) CERTAIN AIRCRAFT.—The term "qualified property" includes property—

(i) which meets the requirements of subparagraph (A)(ii) and subclauses (II) and (III) of subparagraph (B)(i),

(ii) which is an aircraft which is not a transportation property (as defined in subparagraph (B)(iii)) other than for agricultural or firefighting purposes,

(iii) which is purchased and on which such purchaser, at the time of the contract for purchase, has made a nonrefundable deposit of the lesser of—

(I) 10 percent of the cost, or

(II) $100,000, and

(iv) which has—

(I) an estimated production period exceeding 4 months, and

(II) a cost exceeding $200,000.

(D) EXCEPTION FOR ALTERNATIVE DEPRECIATION PROPERTY.—The term "qualified property" shall not include any property to which the alternative depreciation system under subsection (g) applies, determined—

(i) without regard to paragraph (7) of subsection (g) (relating to election to have system apply), and

(ii) after application of section 280F(b) (relating to listed property with limited business use).

(E) SPECIAL RULES.—

(i) SELF-CONSTRUCTED PROPERTY.—In the case of a taxpayer manufacturing, constructing, or producing property for the taxpayer's own use, the requirements of subclause (III) of subparagraph (B)(i) shall be treated as met if the taxpayer begins manufacturing, constructing, or producing the property before January 1, 2027.

(ii) ACQUISITION REQUIREMENTS.—An acquisition of property meets the requirements of this clause if—

(I) such property was not used by the taxpayer at any time prior to such acquisition, and

(II) the acquisition of such property meets the requirements of paragraphs (2)(A), (2)(B), (2)(C), and (3) of section 179(d).

(iii) SYNDICATION.—For purposes of subparagraph (A)(ii), if—

(I) property is used by a lessor of such property and such use is the lessor's first use of such property,

(II) such property is sold by such lessor or any subsequent purchaser within 3 months after the date such property was originally placed in service (or, in the case of multiple units of property subject to the same lease, within 3 months after the date the final unit is placed in service, so long as the period between the time the first unit is placed in service and the time the last unit is placed in service does not exceed 12 months), and

(III) the user of such property after the last sale during such 3-month period remains the same as when such property was originally placed in service,

such property shall be treated as originally placed in service not earlier than the date of such last sale.

(F) COORDINATION WITH SECTION 280F.—For purposes of section 280F—

(i) AUTOMOBILES.—In the case of a passenger automobile (as defined in section 280F(d)(5)) which is qualified property, the Secretary shall increase the limitation under section 280F(a)(1)(A)(i) by $8,000.

(ii) LISTED PROPERTY.—The deduction allowable under paragraph (1) shall be taken into account in computing any recapture amount under section 280F(b)(2).

(iii) PHASE DOWN.—In the case of a passenger automobile acquired by the taxpayer before September 28, 2017, and placed in service by the taxpayer after September 27, 2017, clause (i) shall be applied by substituting for "$8,000"—

(I) in the case of an automobile placed in service during 2018, $6,400, and

(II) in the case of an automobile placed in service during 2019, $4,800.

(G) DEDUCTION ALLOWED IN COMPUTING MINIMUM TAX.—For purposes of determining alternative minimum taxable income under section 55, the deduction under section 167 for qualified property shall be determined without regard to any adjustment under section 56.

(H) PRODUCTION PLACED IN SERVICE.—For purposes of subparagraph (A)—

(i) a qualified film or television production shall be considered to be placed in service at the time of initial release or broadcast, and

(ii) a qualified live theatrical production shall be considered to be placed in service at the time of the initial live staged performance.

(5) SPECIAL RULES FOR CERTAIN PLANTS BEARING FRUITS AND NUTS.—

(A) IN GENERAL.—In the case of any specified plant which is planted before January 1, 2027, or is grafted before such date to a plant that has already been planted, by the taxpayer in the ordinary course of the taxpayer's farming business (as defined in section 263A(e)(4)) during a taxable year for which the taxpayer has elected the application of this paragraph—

(i) a depreciation deduction equal to the applicable percentage of the adjusted basis of such specified plant shall be allowed under section 167(a) for the taxable year in which such specified plant is so planted or grafted, and

(ii) the adjusted basis of such specified plant shall be reduced by the amount of such deduction.

(B) SPECIFIED PLANT.—For purposes of this paragraph, the term "specified plant" means—

(i) any tree or vine which bears fruits or nuts, and

(ii) any other plant which will have more than one crop or yield of fruits or nuts and which generally has a pre-productive period of more than 2 years from the time of planting or grafting to the time at which such plant begins bearing a marketable crop or yield of fruits or nuts.

Such term shall not include any property which is planted or grafted outside of the United States.

(C) ELECTION REVOCABLE ONLY WITH CONSENT.—An election under this paragraph may be revoked only with the consent of the Secretary.

(D) ADDITIONAL DEPRECIATION MAY BE CLAIMED ONLY ONCE.—If this paragraph applies to any specified plant, such specified plant shall not be treated as qualified property in the taxable year in which placed in service.

(E) DEDUCTION ALLOWED IN COMPUTING MINIMUM TAX.—Rules similar to the rules of paragraph (2)(G) shall apply for purposes of this paragraph.

(6) APPLICABLE PERCENTAGE.—For purposes of this subsection—

(A) IN GENERAL.—Except as otherwise provided in this paragraph, the term "applicable percentage" means—

(i) in the case of property placed in service after September 27, 2017, and before January 1, [2023] *2026*, 100 percent, *and*

[(ii) in the case of property placed in service after December 31, 2022, and before January 1, 2024, 80 percent,

[(iii) in the case of property placed in service after December 31, 2023, and before January 1, 2025, 60 percent,

[(iv) in the case of property placed in service after December 31, 2024, and before January 1, 2026, 40 percent, and]

[(v)] *(ii)* in the case of property placed in service after December 31, 2025, and before January 1, 2027, 20 percent.

(B) RULE FOR PROPERTY WITH LONGER PRODUCTION PERIODS.—In the case of property described in subparagraph (B) or (C) of paragraph (2), the term "applicable percentage" means—

(i) in the case of property placed in service after September 27, 2017, and before January 1, [2024] *2027*, 100 percent, *and*

[(ii) in the case of property placed in service after December 31, 2023, and before January 1, 2025, 80 percent,

[(iii) in the case of property placed in service after December 31, 2024, and before January 1, 2026, 60 percent,

[(iv) in the case of property placed in service after December 31, 2025, and before January 1, 2027, 40 percent, and]

[(v)] *(ii)* in the case of property placed in service after December 31, 2026, and before January 1, 2028, 20 percent.

(C) RULE FOR PLANTS BEARING FRUITS AND NUTS.—In the case of a specified plant described in paragraph (5), the term "applicable percentage" means—

(i) in the case of a plant which is planted or grafted after September 27, 2017, and before January 1, [2023] *2026*, 100 percent, *and*

[(ii) in the case of a plant which is planted or grafted after December 31, 2022, and before January 1, 2024, 80 percent,

[(iii) in the case of a plant which is planted or grafted after December 31, 2023, and before January 1, 2025, 60 percent,

[(iv) in the case of a plant which is planted or grafted after December 31, 2024, and before January 1, 2026, 40 percent, and]

[(v)] *(ii)* in the case of a plant which is planted or grafted after December 31, 2025, and before January 1, 2027, 20 percent.

(7) ELECTION OUT.—If a taxpayer makes an election under this paragraph with respect to any class of property for any taxable year, paragraphs (1) and (2)(F) shall not apply to any qualified property in such class placed in service during such taxable year. An election under this paragraph may be revoked only with the consent of the Secretary.

(8) PHASE DOWN.—In the case of qualified property acquired by the taxpayer before September 28, 2017, and placed in service by the taxpayer after September 27, 2017, paragraph (6) shall be applied by substituting for each percentage therein—

(A) "50 percent" in the case of—

(i) property placed in service before January 1, 2018, and

(ii) property described in subparagraph (B) or (C) of paragraph (2) which is placed in service in 2018,

(B) "40 percent" in the case of—

(i) property placed in service in 2018 (other than property described in subparagraph (B) or (C) of paragraph (2)), and

(ii) property described in subparagraph (B) or (C) of paragraph (2) which is placed in service in 2019,

(C) "30 percent" in the case of—

(i) property placed in service in 2019 (other than property described in subparagraph (B) or (C) of paragraph (2)), and

(ii) property described in subparagraph (B) or (C) of paragraph (2) which is placed in service in 2020, and

(D) "0 percent" in the case of—

(i) property placed in service after 2019 (other than property described in subparagraph (B) or (C) of paragraph (2)), and

(ii) property described in subparagraph (B) or (C) of paragraph (2) which is placed in service after 2020.

(9) EXCEPTION FOR CERTAIN PROPERTY.—The term "qualified property" shall not include—

(A) any property which is primarily used in a trade or business described in clause (iv) of section 163(j)(7)(A), or

(B) any property used in a trade or business that has had floor plan financing indebtedness (as defined in paragraph (9) of section 163(j)), if the floor plan financing interest related to such indebtedness was taken into account under paragraph (1)(C) of such section.

(10) SPECIAL RULE FOR PROPERTY PLACED IN SERVICE DURING CERTAIN PERIODS.—

(A) IN GENERAL.—In the case of qualified property placed in service by the taxpayer during the first taxable year ending after September 27, 2017, if the taxpayer elects to have this paragraph apply for such taxable year, paragraphs (1)(A) and (5)(A)(i) shall be applied by substituting "50 percent" for "the applicable percentage".

(B) FORM OF ELECTION.—Any election under this paragraph shall be made at such time and in such form and manner as the Secretary may prescribe.

(l) SPECIAL ALLOWANCE FOR SECOND GENERATION BIOFUEL PLANT PROPERTY.—

(1) ADDITIONAL ALLOWANCE.—In the case of any qualified second generation biofuel plant property—

(A) the depreciation deduction provided by section 167(a) for the taxable year in which such property is placed in service shall include an allowance equal to 50 percent of the adjusted basis of such property, and

(B) the adjusted basis of such property shall be reduced by the amount of such deduction before computing the amount otherwise allowable as a depreciation deduction under this chapter for such taxable year and any subsequent taxable year.

(2) QUALIFIED SECOND GENERATION BIOFUEL PLANT PROPERTY.—The term "qualified second generation biofuel plant property" means property of a character subject to the allowance for depreciation—

(A) which is used in the United States solely to produce second generation biofuel (as defined in section 40(b)(6)(E)),

(B) the original use of which commences with the taxpayer after the date of the enactment of this subsection,

(C) which is acquired by the taxpayer by purchase (as defined in section 179(d)) after the date of the enactment of this subsection, but only if no written binding contract for the acquisition was in effect on or before the date of the enactment of this subsection, and

(D) which is placed in service by the taxpayer before January 1, 2021.

(3) EXCEPTIONS.—

(A) BONUS DEPRECIATION PROPERTY UNDER SUBSECTION (K).—Such term shall not include any property to which subsection (k) applies.

(B) ALTERNATIVE DEPRECIATION PROPERTY.—Such term shall not include any property described in subsection (k)(2)(D).

(C) TAX-EXEMPT BOND-FINANCED PROPERTY.—Such term shall not include any property any portion of which is financed with the proceeds of any obligation the interest on which is exempt from tax under section 103.

(D) ELECTION OUT.—If a taxpayer makes an election under this subparagraph with respect to any class of property for any taxable year, this subsection shall not apply

to all property in such class placed in service during such taxable year.

(4) SPECIAL RULES.—For purposes of this subsection, rules similar to the rules of subsection (k)(2)(E) shall apply.

(5) ALLOWANCE AGAINST ALTERNATIVE MINIMUM TAX.—For purposes of this subsection, rules similar to the rules of subsection (k)(2)(G) shall apply.

(6) RECAPTURE.—For purposes of this subsection, rules similar to the rules under section 179(d)(10) shall apply with respect to any qualified second generation biofuel plant property which ceases to be qualified second generation biofuel plant property.

(7) DENIAL OF DOUBLE BENEFIT.—Paragraph (1) shall not apply to any qualified second generation biofuel plant property with respect to which an election has been made under section 179C (relating to election to expense certain refineries).

(m) SPECIAL ALLOWANCE FOR CERTAIN REUSE AND RECYCLING PROPERTY.—

(1) IN GENERAL.—In the case of any qualified reuse and recycling property—

(A) the depreciation deduction provided by section 167(a) for the taxable year in which such property is placed in service shall include an allowance equal to 50 percent of the adjusted basis of the qualified reuse and recycling property, and

(B) the adjusted basis of the qualified reuse and recycling property shall be reduced by the amount of such deduction before computing the amount otherwise allowable as a depreciation deduction under this chapter for such taxable year and any subsequent taxable year.

(2) QUALIFIED REUSE AND RECYCLING PROPERTY.—For purposes of this subsection—

(A) IN GENERAL.—The term "qualified reuse and recycling property" means any reuse and recycling property—

(i) to which this section applies,

(ii) which has a useful life of at least 5 years,

(iii) the original use of which commences with the taxpayer after August 31, 2008, and

(iv) which is—

(I) acquired by purchase (as defined in section 179(d)(2)) by the taxpayer after August 31, 2008, but only if no written binding contract for the acquisition was in effect before September 1, 2008, or

(II) acquired by the taxpayer pursuant to a written binding contract which was entered into after August 31, 2008.

(B) EXCEPTIONS.—

(i) BONUS DEPRECIATION PROPERTY UNDER SUBSECTION (K).—The term "qualified reuse and recycling property" shall not include any property to which subsection (k) (determined without regard to paragraph (4) thereof) applies.

(ii) ALTERNATIVE DEPRECIATION PROPERTY.—The term "qualified reuse and recycling property" shall not

include any property to which the alternative depreciation system under subsection (g) applies, determined without regard to paragraph (7) of subsection (g) (relating to election to have system apply).

(iii) ELECTION OUT.—If a taxpayer makes an election under this clause with respect to any class of property for any taxable year, this subsection shall not apply to all property in such class placed in service during such taxable year.

(C) SPECIAL RULE FOR SELF-CONSTRUCTED PROPERTY.—In the case of a taxpayer manufacturing, constructing, or producing property for the taxpayer's own use, the requirements of clause (iv) of subparagraph (A) shall be treated as met if the taxpayer begins manufacturing, constructing, or producing the property after August 31, 2008.

(D) DEDUCTION ALLOWED IN COMPUTING MINIMUM TAX.—For purposes of determining alternative minimum taxable income under section 55, the deduction under subsection (a) for qualified reuse and recycling property shall be determined under this section without regard to any adjustment under section 56.

(3) DEFINITIONS.—For purposes of this subsection—

(A) REUSE AND RECYCLING PROPERTY.—

(i) IN GENERAL.—The term "reuse and recycling property" means any machinery and equipment (not including buildings or real estate), along with all appurtenances thereto, including software necessary to operate such equipment, which is used exclusively to collect, distribute, or recycle qualified reuse and recyclable materials.

(ii) EXCLUSION.—Such term does not include rolling stock or other equipment used to transport reuse and recyclable materials.

(B) QUALIFIED REUSE AND RECYCLABLE MATERIALS.—

(i) IN GENERAL.—The term "qualified reuse and recyclable materials" means scrap plastic, scrap glass, scrap textiles, scrap rubber, scrap packaging, recovered fiber, scrap ferrous and nonferrous metals, or electronic scrap generated by an individual or business.

(ii) ELECTRONIC SCRAP.—For purposes of clause (i), the term "electronic scrap" means—

(I) any cathode ray tube, flat panel screen, or similar video display device with a screen size greater than 4 inches measured diagonally, or

(II) any central processing unit.

(C) RECYCLING OR RECYCLE.—The term "recycling" or "recycle" means that process (including sorting) by which worn or superfluous materials are manufactured or processed into specification grade commodities that are suitable for use as a replacement or substitute for virgin materials in manufacturing tangible consumer and commercial products, including packaging.

* * * * * * *

SEC. 174. AMORTIZATION OF RESEARCH AND EXPERIMENTAL EXPENDITURES.

(a) IN GENERAL.—In the case of a taxpayer's specified research or experimental expenditures for any taxable year—

(1) except as provided in paragraph (2), no deduction shall be allowed for such expenditures, and

(2) the taxpayer shall—

(A) charge such expenditures to capital account, and

(B) be allowed an amortization deduction of such expenditures ratably over the 5-year period (15-year period in the case of any specified research or experimental expenditures which are attributable to foreign research (within the meaning of section 41(d)(4)(F))) beginning with the midpoint of the taxable year in which such expenditures are paid or incurred.

(b) SPECIFIED RESEARCH OR EXPERIMENTAL EXPENDITURES.—For purposes of this section, the term "specified research or experimental expenditures" means, with respect to any taxable year, research or experimental expenditures which are paid or incurred by the taxpayer during such taxable year in connection with the taxpayer's trade or business.

(c) SPECIAL RULES.—

(1) LAND AND OTHER PROPERTY.—This section shall not apply to any expenditure for the acquisition or improvement of land, or for the acquisition or improvement of property to be used in connection with the research or experimentation and of a character which is subject to the allowance under section 167 (relating to allowance for depreciation, etc.) or section 611 (relating to allowance for depletion); but for purposes of this section allowances under section 167, and allowances under section 611, shall be considered as expenditures.

(2) EXPLORATION EXPENDITURES.—This section shall not apply to any expenditure paid or incurred for the purpose of ascertaining the existence, location, extent, or quality of any deposit of ore or other mineral (including oil and gas).

(3) SOFTWARE DEVELOPMENT.—For purposes of this section, any amount paid or incurred in connection with the development of any software shall be treated as a research or experimental expenditure.

(d) TREATMENT UPON DISPOSITION, RETIREMENT, OR ABANDONMENT.—If any property with respect to which specified research or experimental expenditures are paid or incurred is disposed, retired, or abandoned during the period during which such expenditures are allowed as an amortization deduction under this section, no deduction shall be allowed with respect to such expenditures on account of such disposition, retirement, or abandonment and such amortization deduction shall continue with respect to such expenditures.

(e) COORDINATION WITH CERTAIN OTHER PROVISIONS.—

(1) COORDINATION WITH ALTERNATIVE MINIMUM TAX.—Sections 56(b)(2) and 59(e)(2)(B) shall not apply to specified research or experimental expenditures to which this section applies.

(2) COORDINATION WITH BASIS ADJUSTMENT RULES.—Section 1016(a)(14) shall be applied by substituting "an amortization

deduction under section 174(a)" for "deductions as deferred expenses under section 174(b)(1)".

(3) COORDINATION WITH LONG-TERM CONTRACT RULES.—For purposes of determining percentage of completion under section 460(b)(1)(A), the amortization deduction under subsection (a) shall be taken into account as a cost allocated to the contract.

(f) SUSPENSION OF APPLICATION.—This section shall apply to amounts paid or incurred in taxable years beginning after December 31, 2025 (and shall not apply to amounts paid or incurred in taxable years beginning on or before such date).

SEC. 174A. TEMPORARY RULES FOR RESEARCH AND EXPERIMENTAL EXPENDITURES.

(a) TREATMENT AS EXPENSES.—Notwithstanding section 263, there shall be allowed as a deduction any research or experimental expenditures which are paid or incurred by the taxpayer during the taxable year in connection with the taxpayer's trade or business.

(b) AMORTIZATION OF CERTAIN RESEARCH AND EXPERIMENTAL EXPENDITURES.—

(1) IN GENERAL.—At the election of the taxpayer, made in accordance with regulations or other guidance provided by the Secretary, research or experimental expenditures which—

(A) are paid or incurred by the taxpayer in connection with his trade or business, and

(B) would (but for subsection (a)) be chargeable to capital account but not chargeable to property of a character which is subject to the allowance under section 167 (relating to allowance for depreciation, etc.) or section 611 (relating to allowance for depletion),

may be treated as deferred expenses to which subsection (a) does not apply. In computing taxable income, such deferred expenses shall be allowed as a deduction ratably over such period of not less than 60 months as may be selected by the taxpayer (beginning with the month in which the taxpayer first realizes benefits from such expenditures). Such deferred expenses are expenditures properly chargeable to capital account for purposes of section 1016(a)(1) (relating to adjustments to basis of property).

(2) TIME FOR AND SCOPE OF ELECTION.—The election provided by paragraph (1) may be made for any taxable year, but only if made not later than the time prescribed by law for filing the return for such taxable year (including extensions thereof). The method so elected, and the period selected by the taxpayer, shall be adhered to in computing taxable income for the taxable year for which the election is made and for all subsequent taxable years unless, with the approval of the Secretary, a change to a different method (or to a different period) is authorized with respect to part or all of such expenditures. The election shall not apply to any expenditure paid or incurred during any taxable year before the taxable year for which the taxpayer makes the election.

(c) ELECTION TO CAPITALIZE EXPENSES.—In the case of a taxpayer which elects (at such time and in such manner as the Secretary may provide) the application of this subsection, subsections (a) and (b) shall not apply. Such election shall not apply to any expenditure paid or incurred during any taxable year before the taxable year for which the taxpayer makes the election and may be made with re-

spect to part of the expenditures paid or incurred during any taxable year only with the approval of the Secretary.

(d) LAND AND OTHER PROPERTY.—This section shall not apply to any expenditure for the acquisition or improvement of land, or for the acquisition or improvement of property to be used in connection with the research or experimentation and of a character which is subject to the allowance under section 167 (relating to allowance for depreciation, etc.) or section 611 (relating to allowance for depletion); but for purposes of this section allowances under section 167, and allowances under section 611, shall be considered as expenditures.

(e) EXPLORATION EXPENDITURES.—This section shall not apply to any expenditure paid or incurred for the purpose of ascertaining the existence, location, extent, or quality of any deposit of ore or other mineral (including oil and gas).

(f) SOFTWARE DEVELOPMENT.—For purposes of this section, any amount paid or incurred in connection with the development of any software shall be treated as a research or experimental expenditure.

(g) ONLY REASONABLE RESEARCH EXPENDITURES ELIGIBLE.—This section shall apply to a research or experimental expenditure only to the extent that the amount thereof is reasonable under the circumstances.

(h) COORDINATION WITH RESEARCH CREDIT.—

(1) IN GENERAL.—Section 41(d)(1)(A) shall be applied by substituting "expenses under section 174A" for "specified research or experimental expenditures under section 174".

(2) DENIAL OF DOUBLE BENEFIT.—

(A) IN GENERAL.—Section 280C(c) shall not apply and the amount taken into account under this section as research or experimental expenditures shall be reduced by the amount of the credit allowable under section 41(a).

(B) ELECTION OF REDUCED CREDIT.—

(i) IN GENERAL.—In the case of any taxable year for which an election is made under this subparagraph—

(I) subparagraph (A) shall not apply, and

(II) the amount of the credit under section 41(a) shall be the amount determined under clause (ii).

(ii) AMOUNT OF REDUCED CREDIT.—The amount of credit determined under this clause for any taxable year shall be the amount equal to the excess of—

(I) the amount of credit determined under section 41(a) without regard to this subparagraph, over

(II) the product of the amount described in subclause (I), multiplied by the rate of tax under section 11(b).

(iii) ELECTION.—An election under this subparagraph for any taxable year shall be made not later than the time for filing the return of tax for such year (including extensions), shall be made on such return, and shall be made in such manner as the Secretary may prescribe. Such an election, once made, shall be irrevocable.

(C) CONTROLLED GROUPS.—Paragraph (3) of section 280C(b) shall apply for purposes of this paragraph.

(i) COORDINATION WITH LONG-TERM CONTRACT RULES.—For purposes of determining percentage of completion under section 460(b)(1)(A), any research or experimental expenditures paid or incurred by the taxpayer in connection with the taxpayer's trade or business shall be taken into account as a cost allocated to the contract for the taxable year in which so paid or incurred.

(j) COORDINATION WITH CERTAIN OTHER PROVISIONS.—A reference to the corresponding provision of this section shall be treated as included in any reference to section 174 in section 56(b), 59(e), 144(a), 168(i), 170(e), 195(c), 263(a), 263A(c), 469(c), 543(d), 864(g), 993(d), 1016(a)(14), 1202(a), or 1298(e).

(k) TERMINATION.—

(1) IN GENERAL.—This section shall not apply to amounts paid or incurred in taxable years beginning after December 31, 2025.

(2) CHANGE IN METHOD OF ACCOUNTING.—Paragraph (1) (and the corresponding application of section 174) shall be treated as a change in method of accounting for purposes of section 481 and—

(A) such change shall be treated as initiated by the taxpayer,

(B) such change shall be treated as made with the consent of the Secretary, and

(C) such change shall be applied only on a cut-off basis for any research or experimental expenditures paid or incurred in taxable years beginning after December 31, 2025, and no adjustment under section 481(a) shall be made.

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Subtitle D—Miscellaneous Excise Taxes

Chapter		Sec.
31.	Retail excise taxes	4001
*	* * * * * *	
50B.	*Acquisition of United States agricultural interests by disqualified persons.*	*5000E*
*	* * * * * *	

CHAPTER 38—ENVIRONMENTAL TAXES

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Subchapter A—TAX ON PETROLEUM

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SEC. 4611. IMPOSITION OF TAX.

(a) GENERAL RULE.—There is hereby imposed a tax at the rate specified in subsection (c) on—

(1) crude oil received at a United States refinery, and

(2) petroleum products entered into the United States for consumption, use, or warehousing.

(b) TAX ON CERTAIN USES AND EXPORTATION.—

(1) IN GENERAL.—If—

(A) any domestic crude oil is used in or exported from the United States, and

(B) before such use or exportation, no tax was imposed on such crude oil under subsection (a),

then a tax at the rate specified in subsection (c) is hereby imposed on such crude oil.

(2) EXCEPTION FOR USE ON PREMISES WHERE PRODUCED.—Paragraph (1) shall not apply to any use of crude oil for extracting oil or natural gas on the premises where such crude oil was produced.

(c) RATE OF TAX.—

(1) IN GENERAL.—The rate of the taxes imposed by this section is the sum of—

(A) the Hazardous Substance Superfund financing rate, and

(B) the Oil Spill Liability Trust Fund financing rate.

(2) RATES.—For purposes of paragraph (1)—

(A) the Hazardous Substance Superfund financing rate is 16.4 cents a barrel, and

(B) the Oil Spill Liability Trust Fund financing rate is—

(i) in the case of crude oil received or petroleum products entered before January 1, 2017, 8 cents a barrel, and

(ii) in the case of crude oil received or petroleum products entered after December 31, 2016, 9 cents a barrel.

(3) ADJUSTMENT FOR INFLATION.—

(A) IN GENERAL.—In the case of a year beginning after 2023, the amount in paragraph (2)(A) shall be increased by an amount equal to—

(i) such amount, multiplied by

(ii) the cost-of-living adjustment determined under section 1(f)(3) for the calendar year, determined by substituting "calendar year 2022" for "calendar year 2016" in subparagraph (A)(ii) thereof.

(B) ROUNDING.—If any amount as adjusted under subparagraph (A) is not a multiple of $0.01, such amount shall be rounded to the next lowest multiple of $0.01.

(d) PERSONS LIABLE FOR TAX.—

(1) CRUDE OIL RECEIVED AT REFINERY.—The tax imposed by subsection (a)(1) shall be paid by the operator of the United States refinery.

(2) IMPORTED PETROLEUM PRODUCT.—The tax imposed by subsection (a)(2) shall be paid by the person entering the product for consumption, use, or warehousing.

(3) TAX ON CERTAIN USES OR EXPORTS.—The tax imposed by subsection (b) shall be paid by the person using or exporting the crude oil, as the case may be.

(e) APPLICATION OF HAZARDOUS SUBSTANCE SUPERFUND FINANCING RATE.—The Hazardous Substance Superfund financing rate under this section shall not apply after December 31, 2022.

(f) APPLICATION OF OIL SPILL LIABILITY TRUST FUND FINANCING RATE.—

(1) IN GENERAL.—Except as provided in paragraph (2), the Oil Spill Liability Trust Fund financing rate under subsection

(c) shall apply on and after April 1, 2006, or if later, the date which is 30 days after the last day of any calendar quarter for which the Secretary estimates that, as of the close of that quarter, the unobligated balance in the Oil Spill Liability Trust Fund is less than $2,000,000,000.

(2) TERMINATION.—The Oil Spill Liability Trust Fund financing rate shall not apply after December 31, 2025.

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CHAPTER 50B—ACQUISITION OF UNITED STATES AGRICULTURAL INTERESTS BY DISQUALIFIED PERSONS

Sec. 5000E. Imposition of tax on acquisition of United States agricultural interests by disqualified persons.

SEC. 5000E. IMPOSITION OF TAX ON ACQUISITION OF UNITED STATES AGRICULTURAL INTERESTS BY DISQUALIFIED PERSONS.

(a) IN GENERAL.—In the case of any acquisition of any United States agricultural interest by any disqualified person, there is hereby imposed on such person a tax equal to 60 percent of the amount paid for such interest.

(b) DISQUALIFIED PERSON.—For purposes of this section—

(1) IN GENERAL.—The term "disqualified person" means—

(A) any citizen of a country of concern (other than a citizen, or lawful permanent resident, of the United States and other than an individual domiciled in Taiwan possessing a valid identification card or number issued by the government of Taiwan),

(B) any entity domiciled in a country of concern (other than an entity domiciled in Taiwan),

(C) any country of concern and any political subdivision, agency, or instrumentality thereof, and

(D) except as provided in paragraph (3), any entity if persons described in subparagraph (A), (B), or (C) (in the aggregate) 10-percent control such entity.

(2) COUNTRY OF CONCERN.—The term "country of concern" means any country the government of which is engaged in a long-term pattern or serious instances of conduct significantly adverse to the national security of the United States or the security and safety of United States persons, including the People's Republic of China, the Russian Federation, Iran, North Korea, Cuba, and the regime of Nicolas Maduro in Venezuela.

(3) EXCEPTION FOR CERTAIN PUBLICLY TRADED CORPORATIONS.—

(A) IN GENERAL.—An entity shall not be treated as described in paragraph (1)(D) if—

(i) such entity is a specified publicly traded corporation, or

(ii) specified publicly traded corporations (in the aggregate) control such entity.

(B) SPECIFIED PUBLICLY TRADED CORPORATION.—

(i) IN GENERAL.—The term "specified publicly traded corporation" means any corporation if—

(I) the stock of such corporation is regularly traded on an established securities market located in the United States, and

(II) specified disqualified persons do not (in the aggregate) control such corporation.

(ii) SPECIFIED DISQUALIFIED PERSONS.—The term "specified disqualified persons" means, with respect to any corporation referred to in clause (i), any person which—

(I) is described in subparagraph (A), (B), or (C) of paragraph (1), and

(II) 10-percent controls such corporation.

(c) PRORATED TAX ON ACQUISITIONS BY ENTITIES NOT MORE THAN 50 PERCENT CONTROLLED BY DISQUALIFIED PERSONS.—

(1) IN GENERAL.—In the case of any disqualified person described in subsection (b)(1)(D) with respect to which persons described in subparagraphs (A), (B), or (C) of subsection (b)(1) do not (in the aggregate) control such disqualified person, subsection (a) shall be applied by substituting "the applicable percentage of the amount" for "the amount".

(2) APPLICABLE PERCENTAGE.—For purposes of this section, the term "applicable percentage" means, with respect to any disqualified person to which paragraph (1) applies, the highest percentage which could be substituted for "50 percent" both places it appears in section 954(d)(3) without causing persons described in subparagraph (A), (B), or (C) of subsection (b)(1) (in the aggregate) to control (determined by taking into account such substitution) such disqualified person.

(d) CONTROL.—For purposes of this section—

(1) IN GENERAL.—The term "control" has the meaning given such term under section 954(d)(3), determined by treating the rules of section 958(a)(2) as applying to both foreign and domestic corporations, partnerships, trusts, and estates.

(2) 10-PERCENT CONTROL.—The term "10-percent control" means control (as defined in paragraph (1)), determined by substituting "10 percent" for "50 percent" both places it appears in section 954(d)(3).

(e) UNITED STATES AGRICULTURAL INTEREST.—For purposes of this section—

(1) IN GENERAL.—The term "United States agricultural interest" has the meaning which would be given the term "United States real property interest" by section 897(c) if—

(A) paragraph (1)(A)(i) were applied by substituting "an interest in agricultural land" for "an interest in real property" and all that follows,

(B) paragraph (1)(A)(ii) were applied by substituting "such corporation was not a United States real property holding corporation at the time of acquisition" for "such corporation" and all that follows,

(C) paragraph (1)(B) did not apply, and

(D) paragraph (3) were applied by substituting "at the time of acquisition" for "at some time during the shorter of the periods described in paragraph (1)(A)(ii)".

(2) AGRICULTURAL LAND.—For purposes of paragraph (1), the term "agricultural land" means—

(A) agricultural land as defined in section 9 of the Agricultural Foreign Investment Disclosure Act of 1978 (7 U.S.C. 3508), and

(B) land located in one or more States and used for livestock production purposes (determined under rules similar to the rules that apply under such section 9).

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Subtitle F—Procedure and Administration

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CHAPTER 61—INFORMATION AND RETURNS

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PART III—INFORMATION RETURNS

Sec.
6041. Information at source.

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Sec. 6050AA. Returns relating to acquisition of United States agricultural interests by disqualified persons.

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SEC. 6050AA. RETURNS RELATING TO ACQUISITION OF UNITED STATES AGRICULTURAL INTERESTS BY DISQUALIFIED PERSONS.

(a) IN GENERAL.—The required reporting person, with respect to any acquisition of any United States agricultural interest by a presumptively disqualified person to which section 5000E(a) applies, shall make a return at such time as the Secretary may provide setting forth—

(1) the name, address, and TIN of such presumptively disqualified person,

(2) a description of such United States agricultural interest (including the street address, if applicable), and

(3) the amount paid for such United States agricultural interest.

(b) STATEMENT TO BE FURNISHED TO PRESUMPTIVELY DISQUALIFIED PERSON.—Every person required to make a return under subsection (a) shall furnish, at such time as the Secretary may provide, to each presumptively disqualified person whose name is required to be set forth in such return a written statement showing—

(1) the name and address of the information contact of the required reporting person, and

(2) the information described in paragraphs (1), (2), and (3) of subsection (a) which relates to such disqualified person.

(c) REQUIRED REPORTING PERSON.—For purposes of this section, the term "required reporting person" means, with respect to any acquisition of any United States agricultural interest—

(1) the person (including any attorney or title company) responsible for closing the transaction in which such United States agricultural interest is acquired, or

(2) if no one is responsible for closing such transaction (or in such other cases as the Secretary may provide), the transferor of such United States agricultural interest.

(d) PRESUMPTIVELY DISQUALIFIED PERSON.—For purposes of this section, the term "presumptively disqualified person" means any person unless such person furnishes to the required reporting person an affidavit by the such person stating, under penalty of perjury, that such person is not a disqualified person (as defined in section 5000E(b)).

(e) REQUIREMENT TO REQUEST AFFIDAVIT.—If the required reporting person, with respect to any acquisition of any United States agricultural interest, has not, as of the time of such acquisition, been furnished the affidavit described in subsection (d) by the acquirer of such interest, such required reporting person shall furnish to such acquirer, at such time, a written statement informing such acquirer of the required reporting person's obligation to make the return described in subsection (a) with respect to such acquisition and including such other information as the Secretary may require.

(f) UNITED STATES AGRICULTURAL INTEREST.—For purposes of this section, the term "United States agricultural interest" has the meaning given such term in section 5000E.

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Subpart B—Information Concerning Transactions With Other Persons

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CHAPTER 63—ASSESSMENT

Subchapter B—DEFICIENCY PROCEDURES IN THE CASE OF INCOME, ESTATE, GIFT, AND CERTAIN EXCISE TAXES

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SEC. 6213. RESTRICTIONS APPLICABLE TO DEFICIENCIES; PETITION TO TAX COURT.

(a) TIME FOR FILING PETITION AND RESTRICTION ON ASSESSMENT.—Within 90 days, or 150 days if the notice is addressed to a person outside the United States, after the notice of deficiency authorized in section 6212 is mailed (not counting Saturday, Sunday, or a legal holiday in the District of Columbia as the last day), the taxpayer may file a petition with the Tax Court for a redetermination of the deficiency. Except as otherwise provided in section 6851, 6852, or 6861 no assessment of a deficiency in respect of any tax imposed by subtitle A, or B, chapter 41, 42, 43, or 44 and no levy or proceeding in court for its collection shall be made, begun, or prosecuted until such notice has been mailed to the taxpayer, nor until the expiration of such 90-day or 150-day period, as the case may be, nor, if a petition has been filed with the Tax Court, until the decision of the Tax Court has become final. Notwithstanding the provisions of section 7421(a), the making of such assessment or the beginning of such proceeding or levy during the time such prohibition is in force may be enjoined by a proceeding

in the proper court, including the Tax Court, and a refund may be ordered by such court of any amount collected within the period during which the Secretary is prohibited from collecting by levy or through a proceeding in court under the provisions of this subsection. The Tax Court shall have no jurisdiction to enjoin any action or proceeding or order any refund under this subsection unless a timely petition for a redetermination of the deficiency has been filed and then only in respect of the deficiency that is the subject of such petition. Any petition filed with the Tax Court on or before the last date specified for filing such petition by the Secretary in the notice of deficiency shall be treated as timely filed.

(b) EXCEPTIONS TO RESTRICTIONS ON ASSESSMENT.—

(1) ASSESSMENTS ARISING OUT OF MATHEMATICAL OR CLERICAL ERRORS.—If the taxpayer is notified that, on account of a mathematical or clerical error appearing on the return, an amount of tax in excess of that shown on the return is due, and that an assessment of the tax has been or will be made on the basis of what would have been the correct amount of tax but for the mathematical or clerical error, such notice shall not be considered as a notice of deficiency for the purposes of subsection (a) (prohibiting assessment and collection until notice of the deficiency has been mailed), or of section 6212(c)(1) (restricting further deficiency letters), or of section 6512(a) (prohibiting credits or refunds after petition to the Tax Court), and the taxpayer shall have no right to file a petition with the Tax Court based on such notice, nor shall such assessment or collection be prohibited by the provisions of subsection (a) of this section. Each notice under this paragraph shall set forth the error alleged and an explanation thereof.

(2) ABATEMENT OF ASSESSMENT OF MATHEMATICAL OR CLERICAL ERRORS.—

(A) REQUEST FOR ABATEMENT.—Notwithstanding section 6404(b), a taxpayer may file with the Secretary within 60 days after notice is sent under paragraph (1) a request for an abatement of any assessment specified in such notice, and upon receipt of such request, the Secretary shall abate the assessment. Any reassessment of the tax with respect to which an abatement is made under this subparagraph shall be subject to the deficiency procedures prescribed by this subchapter.

(B) STAY OF COLLECTION.—In the case of any assessment referred to in paragraph (1), notwithstanding paragraph (1), no levy or proceeding in court for the collection of such assessment shall be made, begun, or prosecuted during the period in which such assessment may be abated under this paragraph.

(3) ASSESSMENTS ARISING OUT OF TENTATIVE CARRYBACK OR REFUND ADJUSTMENTS.—If the Secretary determines that the amount applied, credited, or refunded under section 6411 is in excess of the overassessment attributable to the carryback or the amount described in section 1341(b)(1) with respect to which such amount was applied, credited, or refunded, he may assess without regard to the provisions of paragraph (2) the amount of the excess as a deficiency as if it were due to a mathematical or clerical error appearing on the return.

(4) ASSESSMENT OF AMOUNT PAID.—Any amount paid as a tax or in respect of a tax may be assessed upon the receipt of such payment notwithstanding the provisions of subsection (a). In any case where such amount is paid after the mailing of a notice of deficiency under section 6212, such payment shall not deprive the Tax Court of jurisdiction over such deficiency determined under section 6211 without regard to such assessment.

(5) CERTAIN ORDERS OF CRIMINAL RESTITUTION.—If the taxpayer is notified that an assessment has been or will be made pursuant to section 6201(a)(4)—

(A) such notice shall not be considered as a notice of deficiency for the purposes of subsection (a) (prohibiting assessment and collection until notice of the deficiency has been mailed), section 6212(c)(1) (restricting further deficiency letters), or section 6512(a) (prohibiting credits or refunds after petition to the Tax Court), and

(B) subsection (a) shall not apply with respect to the amount of such assessment.

(c) FAILURE TO FILE PETITION.—If the taxpayer does not file a petition with the Tax Court within the time prescribed in subsection (a), the deficiency, notice of which has been mailed to the taxpayer, shall be assessed, and shall be paid upon notice and demand from the Secretary.

(d) WAIVER OF RESTRICTIONS.—The taxpayer shall at any time (whether or not a notice of deficiency has been issued) have the right, by a signed notice in writing filed with the Secretary, to waive the restrictions provided in subsection (a) on the assessment and collection of the whole or any part of the deficiency.

(e) SUSPENSION OF FILING PERIOD FOR CERTAIN EXCISE TAXES.—The running of the time prescribed by subsection (a) for filing a petition in the Tax Court with respect to the taxes imposed by section 4941 (relating to taxes on self-dealing), 4942 (relating to taxes on failure to distribute income), 4943 (relating to taxes on excess business holdings), 4944 (relating to investments which jeopardize charitable purpose), 4945 (relating to taxes on taxable expenditures), 4951 (relating to taxes on self-dealing), or 4952 (relating to taxes on taxable expenditures), 4955 (relating to taxes on political expenditures), 4958 (relating to private excess benefit), 4971 (relating to excise taxes on failure to meet minimum funding standard), 4975 (relating to excise taxes on prohibited transactions) shall be suspended for any period during which the Secretary has extended the time allowed for making correction under section 4963(e).

(f) COORDINATION WITH TITLE 11.—

(1) SUSPENSION OF RUNNING OF PERIOD FOR FILING PETITION IN TITLE 11 CASES.—In any case under title 11 of the United States Code, the running of the time prescribed by subsection (a) for filing a petition in the Tax Court with respect to any deficiency shall be suspended for the period during which the debtor is prohibited by reason of such case from filing a petition in the Tax Court with respect to such deficiency, and for 60 days thereafter.

(2) CERTAIN ACTION NOT TAKEN INTO ACCOUNT.—For purposes of the second and third sentences of subsection (a), the filing of a proof of claim or request for payment (or the taking

of any other action) in a case under title 11 of the United States Code shall not be treated as action prohibited by such second sentence.

(g) DEFINITIONS.—For purposes of this section—

(1) RETURN.—The term "return" includes any return, statement, schedule, or list, and any amendment or supplement thereto, filed with respect to any tax imposed by subtitle A or B, or chapter 41, 42, 43, or 44.

(2) MATHEMATICAL OR CLERICAL ERROR.—The term "mathematical or clerical error" means—

(A) an error in addition, subtraction, multiplication, or division shown on any return,

(B) an incorrect use of any table provided by the Internal Revenue Service with respect to any return if such incorrect use is apparent from the existence of other information on the return,

(C) an entry on a return of an item which is inconsistent with another entry of the same or another item on such return,

(D) an omission of information which is required to be supplied on the return to substantiate an entry on the return,

(E) an entry on a return of a deduction or credit in an amount which exceeds a statutory limit imposed by subtitle A or B, or chapter 41, 42, 43, or 44, if such limit is expressed—

(i) as a specified monetary amount, or

(ii) as a percentage, ratio, or fraction,

and if the items entering into the application of such limit appear on such return,

(F) an omission of a correct taxpayer identification number required under section 32 (relating to the earned income credit) to be included on a return,

(G) an entry on a return claiming the credit under section 32 with respect to net earnings from self-employment described in section 32(c)(2)(A) to the extent the tax imposed by section 1401 (relating to self-employment tax) on such net earnings has not been paid,

(H) an omission of a correct TIN required under section 21 (relating to expenses for household and dependent care services necessary for gainful employment) or section 151 (relating to allowance of deductions for personal exemptions),

(I) an omission of a correct TIN required under section 24(e) (relating to child tax credit) to be included on a return,

(J) an omission of a correct TIN required under section 25A(g)(1) (relating to higher education tuition and related expenses) to be included on a return,

(K) an omission of information required by section 32(k)(2) (relating to taxpayers making improper prior claims of earned income credit) or an entry on the return claiming the credit under section 32 for a taxable year for which the credit is disallowed under subsection (k)(1) thereof,

(L) the inclusion on a return of a TIN required to be included on the return under section 21, 24, 32, 6428, or 6428A if—

(i) such TIN is of an individual whose age affects the amount of the credit under such section, and

(ii) the computation of the credit on the return reflects the treatment of such individual as being of an age different from the individual's age based on such TIN,

(M) the entry on the return claiming the credit under section 32 with respect to a child if, according to the Federal Case Registry of Child Support Orders established under section 453(h) of the Social Security Act, the taxpayer is a noncustodial parent of such child,

(N) an omission of any increase required under section 36(f) with respect to the recapture of a credit allowed under section 36,

(O) the inclusion on a return of an individual taxpayer identification number issued under section 6109(i) which has expired, been revoked by the Secretary, or is otherwise invalid,

(P) an omission of information required by section 24(g)(2) or an entry on the return claiming the credit under section 24 for a taxable year for which the credit is disallowed under subsection (g)(1) thereof,

(Q) an omission of information required by section 25A(b)(4)(B) or an entry on the return claiming the American Opportunity Tax Credit for a taxable year for which such credit is disallowed under section 25A(b)(4)(A),

(R) an omission of information or documentation required under section 25C(b)(6)(B) (relating to home energy audits) to be included on a return,

(S) an omission of a correct product identification number required under section 25C(h) (relating to credit for nonbusiness energy property) to be included on a return, *and*

(T) an omission of a correct vehicle identification number required under section 30D(f)(9) (relating to credit for new clean vehicles) to be included on a return**[**,**]**.

[(U) an omission of a correct vehicle identification number required under section 25E(d) (relating to credit for previously-owned clean vehicles) to be included on a return, and

[(V) an omission of a correct vehicle identification number required under section 45W(e) (relating to commercial clean vehicle credit) to be included on a return.**]**

A taxpayer shall be treated as having omitted a correct TIN for purposes of the preceding sentence if information provided by the taxpayer on the return with respect to the individual whose TIN was provided differs from the information the Secretary obtains from the person issuing the TIN.

(h) CROSS REFERENCES.—

(1) For assessment as if a mathematical error on the return, in the case of erroneous claims for income tax prepayment credits, see section 6201(a)(3).

(2) For assessments without regard to restrictions imposed by this section in the case of—

(A) Recovery of foreign income taxes, see section 905(c).

(B) Recovery of foreign estate tax, see section 2016.

(3) For provisions relating to application of this subchapter in the case of certain partnership items, etc., see section 6230(a).

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CHAPTER 65—ABATEMENTS, CREDITS, AND REFUNDS

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Subchapter B—RULES OF SPECIAL APPLICATION

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SEC. 6417. ELECTIVE PAYMENT OF APPLICABLE CREDITS.

(a) IN GENERAL.—In the case of an applicable entity making an election (at such time and in such manner as the Secretary may provide) under this section with respect to any applicable credit determined with respect to such entity, such entity shall be treated as making a payment against the tax imposed by subtitle A (for the taxable year with respect to which such credit was determined) equal to the amount of such credit.

(b) APPLICABLE CREDIT.—The term "applicable credit" means each of the following:

(1) So much of the credit for alternative fuel vehicle refueling property allowed under section 30C which, pursuant to subsection (d)(1) of such section, is treated as a credit listed in section 38(b).

(2) So much of the renewable electricity production credit determined under section 45(a) as is attributable to qualified facilities which are originally placed in service after December 31, 2022.

(3) So much of the credit for carbon oxide sequestration determined under section 45Q(a) as is attributable to carbon capture equipment which is originally placed in service after December 31, 2022.

(4) The zero-emission nuclear power production credit determined under section 45U(a).

(5) So much of the credit for production of clean hydrogen determined under section 45V(a) as is attributable to qualified clean hydrogen production facilities which are originally placed in service after December 31, 2012.

[(6) In the case of a tax-exempt entity described in clause (i), (ii), or (iv) of section 168(h)(2)(A), the credit for qualified commercial vehicles determined under section 45W by reason of subsection (d)(3) thereof.**]**

[(7)**]** *(6)* The credit for advanced manufacturing production under section 45X(a).

[(8) The clean electricity production credit determined under section 45Y(a).]

[(9)] *(7)* The clean fuel production credit determined under section 45Z(a).

[(10)] *(8)* The energy credit determined under section 48.

[(11)] *(9)* The qualifying advanced energy project credit determined under section 48C.

[(12) The clean electricity investment credit determined under section 48E.]

(c) APPLICATION TO PARTNERSHIPS AND S CORPORATIONS.—

(1) IN GENERAL.—In the case of any applicable credit determined with respect to any facility or property held directly by a partnership or S corporation, any election under subsection (a) shall be made by such partnership or S corporation. If such partnership or S corporation makes an election under such subsection (in such manner as the Secretary may provide) with respect to such credit—

(A) the Secretary shall make a payment to such partnership or S corporation equal to the amount of such credit,

(B) subsection (e) shall be applied with respect to such credit before determining any partner's distributive share, or shareholder's pro rata share, of such credit,

(C) any amount with respect to which the election in subsection (a) is made shall be treated as tax exempt income for purposes of sections 705 and 1366, and

(D) a partner's distributive share of such tax exempt income shall be based on such partner's distributive share of the otherwise applicable credit for each taxable year.

(2) COORDINATION WITH APPLICATION AT PARTNER OR SHAREHOLDER LEVEL.—In the case of any facility or property held directly by a partnership or S corporation, no election by any partner or shareholder shall be allowed under subsection (a) with respect to any applicable credit determined with respect to such facility or property.

(3) TREATMENT OF PAYMENTS TO PARTNERSHIPS AND S CORPORATIONS.—For purposes of section 1324 of title 31, United States Code, the payments under paragraph (1)(A) shall be treated in the same manner as a refund due from a credit provision referred to in subsection (b)(2) of such section.

(d) SPECIAL RULES.—For purposes of this section—

(1) APPLICABLE ENTITY.—

(A) IN GENERAL.—The term "applicable entity" means—

(i) any organization exempt from the tax imposed by subtitle A,

(ii) any State or political subdivision thereof,

(iii) the Tennessee Valley Authority,

(iv) an Indian tribal government (as defined in section 30D(g)(9)),

(v) any Alaska Native Corporation (as defined in section 3 of the Alaska Native Claims Settlement Act (43 U.S.C. 1602(m)), or

(vi) any corporation operating on a cooperative basis which is engaged in furnishing electric energy to persons in rural areas.

(B) ELECTION WITH RESPECT TO CREDIT FOR PRODUCTION OF CLEAN HYDROGEN.—If a taxpayer other than an entity described in subparagraph (A) makes an election under this subparagraph with respect to any taxable year in which such taxpayer has placed in service a qualified clean hydrogen production facility (as defined in section 45V(c)(3)), such taxpayer shall be treated as an applicable entity for purposes of this section for such taxable year, but only with respect to the credit described in subsection (b)(5).

(C) ELECTION WITH RESPECT TO CREDIT FOR CARBON OXIDE SEQUESTRATION.—If a taxpayer other than an entity described in subparagraph (A) makes an election under this subparagraph with respect to any taxable year in which such taxpayer has, after December 31, 2022, placed in service carbon capture equipment at a qualified facility (as defined in section 45Q(d)), such taxpayer shall be treated as an applicable entity for purposes of this section for such taxable year, but only with respect to the credit described in subsection (b)(3).

(D) ELECTION WITH RESPECT TO ADVANCED MANUFACTURING PRODUCTION CREDIT.—

(i) IN GENERAL.—If a taxpayer other than an entity described in subparagraph (A) makes an election under this subparagraph with respect to any taxable year in which such taxpayer has, after December 31, 2022, produced eligible components (as defined in section 45X(c)(1)), such taxpayer shall be treated as an applicable entity for purposes of this section for such taxable year, but only with respect to the credit described in subsection (b)(7).

(ii) LIMITATION.—

(I) IN GENERAL.—Except as provided in subclause (II), if a taxpayer makes an election under this subparagraph with respect to any taxable year, such taxpayer shall be treated as having made such election for each of the 4 succeeding taxable years ending before January 1, 2033.

(II) EXCEPTION.—A taxpayer may elect to revoke the application of the election made under this subparagraph to any taxable year described in subclause (I). Any such election, if made, shall apply to the applicable year specified in such election and each subsequent taxable year within the period described in subclause (I). Any election under this subclause may not be subsequently revoked.

(iii) PROHIBITION ON TRANSFER.—For any taxable year described in clause (ii)(I), no election may be made by the taxpayer under section 6418(a) for such taxable year with respect to eligible components for purposes of the credit described in subsection (b)(7).

(E) OTHER RULES.—

(i) IN GENERAL.—An election made under subparagraph (B), (C), or (D) shall be made at such time and in such manner as the Secretary may provide.

(ii) LIMITATION.—No election may be made under subparagraph (B), (C), or (D) with respect to any taxable year beginning after December 31, 2032.

(2) APPLICATION.—In the case of any applicable entity which makes the election described in subsection (a), any applicable credit shall be determined—

(A) without regard to paragraphs (3) and (4)(A)(i) of section 50(b), and

(B) by treating any property with respect to which such credit is determined as used in a trade or business of the applicable entity.

(3) ELECTIONS.—

(A) IN GENERAL.—

(i) DUE DATE.—Any election under subsection (a) shall be made not later than—

(I) in the case of any government, or political subdivision, described in paragraph (1) and for which no return is required under section 6011 or 6033(a), such date as is determined appropriate by the Secretary, or

(II) in any other case, the due date (including extensions of time) for the return of tax for the taxable year for which the election is made, but in no event earlier than 180 days after the date of the enactment of this section.

(ii) ADDITIONAL RULES.—Any election under subsection (a), once made, shall be irrevocable and shall apply (except as otherwise provided in this paragraph) with respect to any credit for the taxable year for which the election is made.

(B) RENEWABLE ELECTRICITY PRODUCTION CREDIT.—In the case of the credit described in subsection (b)(2), any election under subsection (a) shall—

(i) apply separately with respect to each qualified facility,

(ii) be made for the taxable year in which such qualified facility is originally placed in service, and

(iii) shall apply to such taxable year and to any subsequent taxable year which is within the period described in subsection (a)(2)(A)(ii) of section 45 with respect to such qualified facility.

(C) CREDIT FOR CARBON OXIDE SEQUESTRATION.—

(i) IN GENERAL.—In the case of the credit described in subsection (b)(3), any election under subsection (a) shall—

(I) apply separately with respect to the carbon capture equipment originally placed in service by the applicable entity during a taxable year, and

(II)(aa) in the case of a taxpayer who makes an election described in paragraph (1)(C), apply to the taxable year in which such equipment is placed in service and the 4 subsequent taxable

years with respect to such equipment which end before January 1, 2033, and

(bb) in any other case, apply to such taxable year and to any subsequent taxable year which is within the period described in paragraph (3)(A) or (4)(A) of section 45Q(a) with respect to such equipment.

(ii) PROHIBITION ON TRANSFER.—For any taxable year described in clause (i)(II)(aa) with respect to carbon capture equipment, no election may be made by the taxpayer under section 6418(a) for such taxable year with respect to such equipment for purposes of the credit described in subsection (b)(3).

(iii) REVOCATION OF ELECTION.—In the case of a taxpayer who makes an election described in paragraph (1)(C) with respect to carbon capture equipment, such taxpayer may, at any time during the period described in clause (i)(II)(aa), revoke the application of such election with respect to such equipment for any subsequent taxable years during such period. Any such election, if made, shall apply to the applicable year specified in such election and each subsequent taxable year within the period described in clause (i)(II)(aa). Any election under this subclause may not be subsequently revoked.

(D) CREDIT FOR PRODUCTION OF CLEAN HYDROGEN.—

(i) IN GENERAL.—In the case of the credit described in subsection (b)(5), any election under subsection (a) shall—

(I) apply separately with respect to each qualified clean hydrogen production facility,

(II) be made for the taxable year in which such facility is placed in service (or within the 1-year period subsequent to the date of enactment of this section in the case of facilities placed in service before December 31, 2022), and

(III)(aa) in the case of a taxpayer who makes an election described in paragraph (1)(B), apply to such taxable year and the 4 subsequent taxable years with respect to such facility which end before January 1, 2033, and

(bb) in any other case, apply to such taxable year and all subsequent taxable years with respect to such facility.

(ii) PROHIBITION ON TRANSFER.—For any taxable year described in clause (i)(III)(aa) with respect to a qualified clean hydrogen production facility, no election may be made by the taxpayer under section 6418(a) for such taxable year with respect to such facility for purposes of the credit described in subsection (b)(5).

(iii) REVOCATION OF ELECTION.—In the case of a taxpayer who makes an election described in paragraph (1)(B) with respect to a qualified clean hydrogen production facility, such taxpayer may, at any time dur-

ing the period described in clause (i)(III)(aa), revoke the application of such election with respect to such facility for any subsequent taxable years during such period. Any such election, if made, shall apply to the applicable year specified in such election and each subsequent taxable year within the period described in clause (i)(II)(aa). Any election under this subclause may not be subsequently revoked.

(E) CLEAN ELECTRICITY PRODUCTION CREDIT.—In the case of the credit described in subsection (b)(8), any election under subsection (a) shall—

(i) apply separately with respect to each qualified facility,

(ii) be made for the taxable year in which such facility is placed in service, and

(iii) shall apply to such taxable year and to any subsequent taxable year which is within the period described in subsection (b)(1)(B) of section 45Y with respect to such facility.

(4) TIMING.—The payment described in subsection (a) shall be treated as made on—

(A) in the case of any government, or political subdivision, described in paragraph (1) and for which no return is required under section 6011 or 6033(a), the later of the date that a return would be due under section 6033(a) if such government or subdivision were described in that section or the date on which such government or subdivision submits a claim for credit or refund (at such time and in such manner as the Secretary shall provide), and

(B) in any other case, the later of the due date (determined without regard to extensions) of the return of tax for the taxable year or the date on which such return is filed.

(5) ADDITIONAL INFORMATION.—As a condition of, and prior to, any amount being treated as a payment which is made by an applicable entity under subsection (a), the Secretary may require such information or registration as the Secretary deems necessary for purposes of preventing duplication, fraud, improper payments, or excessive payments under this section.

(6) EXCESSIVE PAYMENT.—

(A) IN GENERAL.—In the case of any amount treated as a payment which is made by the applicable entity under subsection (a), or the amount of the payment made pursuant to subsection (c), which the Secretary determines constitutes an excessive payment, the tax imposed on such entity by chapter 1 (regardless of whether such entity would otherwise be subject to tax under such chapter) for the taxable year in which such determination is made shall be increased by an amount equal to the sum of—

(i) the amount of such excessive payment, plus

(ii) an amount equal to 20 percent of such excessive payment.

(B) REASONABLE CAUSE.—Subparagraph (A)(ii) shall not apply if the applicable entity demonstrates to the satisfac-

tion of the Secretary that the excessive payment resulted from reasonable cause.

(C) EXCESSIVE PAYMENT DEFINED.—For purposes of this paragraph, the term "excessive payment" means, with respect to a facility or property for which an election is made under this section for any taxable year, an amount equal to the excess of—

(i) the amount treated as a payment which is made by the applicable entity under subsection (a), or the amount of the payment made pursuant to subsection (c), with respect to such facility or property for such taxable year, over

(ii) the amount of the credit which, without application of this section, would be otherwise allowable (as determined pursuant to paragraph (2) and without regard to section 38(c)) under this title with respect to such facility or property for such taxable year.

(e) DENIAL OF DOUBLE BENEFIT.—In the case of an applicable entity making an election under this section with respect to an applicable credit, such credit shall be reduced to zero and shall, for any other purposes under this title, be deemed to have been allowed to such entity for such taxable year.

(f) MIRROR CODE POSSESSIONS.—In the case of any possession of the United States with a mirror code tax system (as defined in section 24(k)), this section shall not be treated as part of the income tax laws of the United States for purposes of determining the income tax law of such possession unless such possession elects to have this section be so treated.

(g) BASIS REDUCTION AND RECAPTURE.—Except as otherwise provided in subsection (c)(2)(A), rules similar to the rules of section 50 shall apply for purposes of this section.

(h) REGULATIONS.—The Secretary shall issue such regulations or other guidance as may be necessary to carry out the purposes of this section, including guidance to ensure that the amount of the payment or deemed payment made under this section is commensurate with the amount of the credit that would be otherwise allowable (determined without regard to section 38(c)).

SEC. 6418. TRANSFER OF CERTAIN CREDITS.

(a) IN GENERAL.—In the case of an eligible taxpayer which elects to transfer all (or any portion specified in the election) of an eligible credit determined with respect to such taxpayer for any taxable year to a taxpayer (referred to in this section as the "transferee taxpayer") which is not related (within the meaning of section 267(b) or 707(b)(1)) to the eligible taxpayer, the transferee taxpayer specified in such election (and not the eligible taxpayer) shall be treated as the taxpayer for purposes of this title with respect to such credit (or such portion thereof).

(b) TREATMENT OF PAYMENTS MADE IN CONNECTION WITH TRANSFER.—With respect to any amount paid by a transferee taxpayer to an eligible taxpayer as consideration for a transfer described in subsection (a), such consideration—

(1) shall be required to be paid in cash,

(2) shall not be includible in gross income of the eligible taxpayer, and

(3) with respect to the transferee taxpayer, shall not be deductible under this title.

(c) APPLICATION TO PARTNERSHIPS AND S CORPORATIONS.—

(1) IN GENERAL.—In the case of any eligible credit determined with respect to any facility or property held directly by a partnership or S corporation, if such partnership or S corporation makes an election under subsection (a) (in such manner as the Secretary may provide) with respect to such credit—

(A) any amount received as consideration for a transfer described in such subsection shall be treated as tax exempt income for purposes of sections 705 and 1366, and

(B) a partner's distributive share of such tax exempt income shall be based on such partner's distributive share of the otherwise eligible credit for each taxable year.

(2) COORDINATION WITH APPLICATION AT PARTNER OR SHAREHOLDER LEVEL.—In the case of any facility or property held directly by a partnership or S corporation, no election by any partner or shareholder shall be allowed under subsection (a) with respect to any eligible credit determined with respect to such facility or property.

(d) TAXABLE YEAR IN WHICH CREDIT TAKEN INTO ACCOUNT.—In the case of any credit (or portion thereof) with respect to which an election is made under subsection (a), such credit shall be taken into account in the first taxable year of the transferee taxpayer ending with, or after, the taxable year of the eligible taxpayer with respect to which the credit was determined.

(e) LIMITATIONS ON ELECTION.—

(1) TIME FOR ELECTION.—An election under subsection (a) to transfer any portion of an eligible credit shall be made not later than the due date (including extensions of time) for the return of tax for the taxable year for which the credit is determined, but in no event earlier than 180 days after the date of the enactment of this section. Any such election, once made, shall be irrevocable.

(2) NO ADDITIONAL TRANSFERS.—No election may be made under subsection (a) by a transferee taxpayer with respect to any portion of an eligible credit which has been previously transferred to such taxpayer pursuant to this section.

(f) DEFINITIONS.—For purposes of this section—

(1) ELIGIBLE CREDIT.—

(A) IN GENERAL.—The term "eligible credit" means each of the following:

(i) So much of the credit for alternative fuel vehicle refueling property allowed under section 30C which, pursuant to subsection (d)(1) of such section, is treated as a credit listed in section 38(b).

(ii) The renewable electricity production credit determined under section 45(a).

(iii) The credit for carbon oxide sequestration determined under section 45Q(a).

(iv) The zero-emission nuclear power production credit determined under section 45U(a).

(v) The clean hydrogen production credit determined under section 45V(a).

(vi) The advanced manufacturing production credit determined under section 45X(a).

[(vii) The clean electricity production credit determined under section 45Y(a).]

[(viii)] *(vii)* The clean fuel production credit determined under section 45Z(a).

[(ix)] *(viii)* The energy credit determined under section 48.

[(x)] *(ix)* The qualifying advanced energy project credit determined under section 48C.

[(xi) The clean electricity investment credit determined under section 48E.]

(B) ELECTION FOR CERTAIN CREDITS.—In the case of any eligible credit described in clause (ii), (iii), [(v), or (vii)] *or (v)* of subparagraph (A), an election under subsection (a) shall be made—

(i) separately with respect to each facility for which such credit is determined, and

(ii) for each taxable year during the 10-year period beginning on the date such facility was originally placed in service (or, in the case of the credit described in clause (iii), for each year during the 12-year period beginning on the date the carbon capture equipment was originally placed in service at such facility).

(C) EXCEPTION FOR BUSINESS CREDIT CARRYFORWARDS OR CARRYBACKS.—The term "eligible credit" shall not include any business credit carryforward or business credit carryback determined under section 39.

(2) ELIGIBLE TAXPAYER.—The term "eligible taxpayer" means any taxpayer which is not described in section 6417(d)(1)(A).

(g) SPECIAL RULES.—For purposes of this section—

(1) ADDITIONAL INFORMATION.—As a condition of, and prior to, any transfer of any portion of an eligible credit pursuant to subsection (a), the Secretary may require such information (including, in such form or manner as is determined appropriate by the Secretary, such information returns) or registration as the Secretary deems necessary for purposes of preventing duplication, fraud, improper payments, or excessive payments under this section.

(2) EXCESSIVE CREDIT TRANSFER.—

(A) IN GENERAL.—In the case of any portion of an eligible credit which is transferred to a transferee taxpayer pursuant to subsection (a) which the Secretary determines constitutes an excessive credit transfer, the tax imposed on the transferee taxpayer by chapter 1 (regardless of whether such entity would otherwise be subject to tax under such chapter) for the taxable year in which such determination is made shall be increased by an amount equal to the sum of—

(i) the amount of such excessive credit transfer, plus

(ii) an amount equal to 20 percent of such excessive credit transfer.

(B) REASONABLE CAUSE.—Subparagraph (A)(ii) shall not apply if the transferee taxpayer demonstrates to the satis-

faction of the Secretary that the excessive credit transfer resulted from reasonable cause.

(C) EXCESSIVE CREDIT TRANSFER DEFINED.—For purposes of this paragraph, the term "excessive credit transfer" means, with respect to a facility or property for which an election is made under subsection (a) for any taxable year, an amount equal to the excess of—

(i) the amount of the eligible credit claimed by the transferee taxpayer with respect to such facility or property for such taxable year, over

(ii) the amount of such credit which, without application of this section, would be otherwise allowable under this title with respect to such facility or property for such taxable year.

(3) BASIS REDUCTION; NOTIFICATION OF RECAPTURE.—In the case of any election under subsection (a) with respect to any portion of an eligible credit described in clauses (ix) through (xi) of subsection (f)(1)(A)—

(A) subsection (c) of section 50 shall apply to the applicable investment credit property (as defined in subsection (a)(5) of such section) as if such eligible credit was allowed to the eligible taxpayer, and

(B) if, during any taxable year, the applicable investment credit property (as defined in subsection (a)(5) of section 50) is disposed of, or otherwise ceases to be investment credit property with respect to the eligible taxpayer, before the close of the recapture period (as described in subsection (a)(1) of such section)—

(i) such eligible taxpayer shall provide notice of such occurrence to the transferee taxpayer (in such form and manner as the Secretary shall prescribe), and

(ii) the transferee taxpayer shall provide notice of the recapture amount (as defined in subsection (c)(2) of such section), if any, to the eligible taxpayer (in such form and manner as the Secretary shall prescribe).

(4) PROHIBITION ON ELECTION OR TRANSFER WITH RESPECT TO PROGRESS EXPENDITURES.—This section shall not apply with respect to any amount of an eligible credit which is allowed pursuant to rules similar to the rules of subsections (c)(4) and (d) of section 46 (as in effect on the day before the date of the enactment of the Revenue Reconciliation Act of 1990).

(h) REGULATIONS.—The Secretary shall issue such regulations or other guidance as may be necessary to carry out the purposes of this section, including regulations or other guidance providing rules for determining a partner's distributive share of the tax exempt income described in subsection (c)(1).

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CHAPTER 68—ADDITIONS TO THE TAX, ADDITIONAL AMOUNTS, AND ASSESSABLE PENALTIES

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Subchapter B—ASSESSABLE PENALTIES

* * * * * * *

PART II—FAILURE TO COMPLY WITH CERTAIN INFORMATION REPORTING REQUIREMENTS

* * * * * * *

SEC. 6724. WAIVER; DEFINITIONS AND SPECIAL RULES.

(a) REASONABLE CAUSE WAIVER.—No penalty shall be imposed under this part with respect to any failure if it is shown that such failure is due to reasonable cause and not to willful neglect.

(b) PAYMENT OF PENALTY.—Any penalty imposed by this part shall be paid on notice and demand by the Secretary and in the same manner as tax.

(c) SPECIAL RULE FOR FAILURE TO MEET MAGNETIC MEDIA REQUIREMENTS.—No penalty shall be imposed under section 6721 solely by reason of any failure to comply with the requirements of the regulations prescribed under section 6011(e)(2), except to the extent that such a failure occurs with respect to more than the applicable number (determined under section 6011(e)(5) with respect to the calendar year to which such returns relate) of information returns or with respect to a return described in section 6011(e)(4).

(d) DEFINITIONS.—For purposes of this part—

(1) INFORMATION RETURN.—The term "information return" means—

(A) any statement of the amount of payments to another person required by—

(i) section 6041(a) or (b) (relating to certain information at source),

(ii) section 6042(a)(1) (relating to payments of dividends),

(iii) section 6044(a)(1) (relating to payments of patronage dividends),

(iv) section 6049(a) (relating to payments of interest),

(v) section 6050A(a) (relating to reporting requirements of certain fishing boat operators),

(vi) section 6050N(a) (relating to payments of royalties),

(vii) section 6051(d) (relating to information returns with respect to income tax withheld),

(viii) section 6050R (relating to returns relating to certain purchases of fish), or

(ix) section 110(d) (relating to qualified lessee construction allowances for short-term leases),

(B) any return required by—

(i) section 6041A(a) or (b) (relating to returns of direct sellers),

(ii) section 6043A(a) (relating to returns relating to taxable mergers and acquisitions),

(iii) section 6045(a) or (d) (relating to returns of brokers),

(iv) section 6045B(a) (relating to returns relating to actions affecting basis of specified securities),

(v) section 6050H(a) or (h)(1) (relating to mortgage interest received in trade or business from individuals),

(vi) section 6050I(a) or (g)(1) (relating to cash received in trade or business, etc.),

(vii) section 6050J(a) (relating to foreclosures and abandonments of security),

(viii) section 6050K(a) (relating to exchanges of certain partnership interests),

(ix) section 6050L(a) (relating to returns relating to certain dispositions of donated property),

(x) section 6050P (relating to returns relating to the cancellation of indebtedness by certain financial entities),

(xi) section 6050Q (relating to certain long-term care benefits),

(xii) section 6050S (relating to returns relating to payments for qualified tuition and related expenses),

(xiii) section 6050T (relating to returns relating to credit for health insurance costs of eligible individuals),

(xiv) section 6052(a) (relating to reporting payment of wages in the form of group-life insurance),

(xv) section 6050V (relating to returns relating to applicable insurance contracts in which certain exempt organizations hold interests),

(xvi) section 6053(c)(1) (relating to reporting with respect to certain tips),

(xvii) subsection (b) or (e) of section 1060 (relating to reporting requirements of transferors and transferees in certain asset acquisitions),

(xviii) section 4101(d) (relating to information reporting with respect to fuels taxes),

(xix) subparagraph (C) of section 338(h)(10) (relating to information required to be furnished to the Secretary in case of elective recognition of gain or loss),

(xx) section 264(f)(5)(A)(iv) (relating to reporting with respect to certain life insurance and annuity contracts),

(xxi) section 6050U (relating to charges or payments for qualified long-term care insurance contracts under combined arrangements),

(xxii) section 6039(a) (relating to returns required with respect to certain options),

(xxiii) section 6050W (relating to returns to payments made in settlement of payment card transactions),

(xxiv) section 6055 (relating to returns relating to information regarding health insurance coverage),

(xxv) section 6056 (relating to returns relating to certain employers required to report on health insurance coverage),

(xxvi) section 6050Y (relating to returns relating to certain life insurance contract transactions),

(xxvii) section 6045A(d) (relating to returns for certain digital assets), [or]

(xxviii) section 6050Z (relating to reports relating to long-term care premium statements), [and] *or*

(xxix) section 6050AA(a) (relating to returns relating to acquisition of United States agricultural interests by disqualified persons), and

(C) any statement of the amount of payments to another person required to be made to the Secretary under—

(i) section 408(i) (relating to reports with respect to individual retirement accounts or annuities), or

(ii) section 6047(d) (relating to reports by employers, plan administrators, etc.), and

(D) any statement required to be filed with the Secretary under section 6035.

Such term also includes any form, statement, or schedule required to be filed with the Secretary under chapter 4 or with respect to any amount from which tax was required to be deducted and withheld under chapter 3 (or from which tax would be required to be so deducted and withheld but for an exemption under this title or any treaty obligation of the United States).

(2) PAYEE STATEMENT.—The term "payee statement" means any statement required to be furnished under—

(A) section 6031(b) or (c), 6034A, or 6037(b) (relating to statements furnished by certain pass-thru entities),

(B) section 6039(b) (relating to information required in connection with certain options),

(C) section 6041(d) (relating to information at source),

(D) section 6041A(e) (relating to returns regarding payments of remuneration for services and direct sales),

(E) section 6042(c) (relating to returns regarding payments of dividends and corporate earnings and profits),

(F) subsections (b) and (d) of section 6043A (relating to returns relating to taxable mergers and acquisitions),

(G) section 6044(e) (relating to returns regarding payments of patronage dividends),

(H) section 6045(b) or (d) (relating to returns of brokers),

(I) section 6045A (relating to information required in connection with transfers of covered securities to brokers),

(J) subsections (c) and (e) of section 6045B (relating to returns relating to actions affecting basis of specified securities),

(K) section 6049(c) (relating to returns regarding payments of interest),

(L) section 6050A(b) (relating to reporting requirements of certain fishing boat operators),

(M) section 6050H(d) or (h)(2) (relating to returns relating to mortgage interest received in trade or business from individuals),

(N) section 6050I(e) or paragraph (4) or (5) of section 6050I(g) (relating to cash received in trade or business, etc.),

(O) section 6050J(e) (relating to returns relating to foreclosures and abandonments of security),

(P) section 6050K(b) (relating to returns relating to exchanges of certain partnership interests),

(Q) section 6050L(c) (relating to returns relating to certain dispositions of donated property),

(R) section 6050N(b) (relating to returns regarding payments of royalties),

(S) section 6050P(d) (relating to returns relating to the cancellation of indebtedness by certain financial entities),

(T) section 6050Q(b) (relating to certain long-term care benefits),

(U) section 6050R(c) (relating to returns relating to certain purchases of fish),

(V) section 6051 (relating to receipts for employees),

(W) section 6052(b) (relating to returns regarding payment of wages in the form of group-term life insurance),

(X) section 6053(b) or (c) (relating to reports of tips),

(Y) section 6048(b)(1)(B) (relating to foreign trust reporting requirements),

(Z) section 408(i) (relating to reports with respect to individual retirement plans) to any person other than the Secretary with respect to the amount of payments made to such person,

(AA) section 6047(d) (relating to reports by plan administrators) to any person other than the Secretary with respect to the amount of payments made to such person,

(BB) section 6050S(d) (relating to returns relating to qualified tuition and related expenses),

(CC) section 264(f)(5)(A)(iv) (relating to reporting with respect to certain life insurance and annuity contracts),

(DD) section 6050T (relating to returns relating to credit for health insurance costs of eligible individuals),

(EE) section 6050U (relating to charges or payments for qualified long-term care insurance contracts under combined arrangements),

(FF) section 6050W(f) (relating to returns relating to payments made in settlement of payment card transactions),

(GG) section 6055(c) (relating to statements relating to information regarding health insurance coverage),

(HH) section 6056(c) (relating to statements relating to certain employers required to report on health insurance coverage),

(II) section 6035 (other than a statement described in paragraph (1)(D)),

(JJ) section 6226(a)(2) (relating to statements relating to alternative to payment of imputed underpayment by partnership) or under any other provision of this title which provides for the application of rules similar to such section,

(KK) subsection (a)(2), (b)(2), or (c)(2) of section 6050Y (relating to returns relating to certain life insurance contract transactions), **[**or**]**

(LL) section 6050Z (relating to reports relating to long-term care premium statements)**[**.**]**, *or*

(MM) subsection (b) or (e) of section 6055AA (relating to statements relating to acquisition of United States agricultural interests by disqualified persons).

Such term also includes any form, statement, or schedule required to be furnished to the recipient of any amount from which tax was required to be deducted and withheld under chapter 3 or 4 (or from which tax would be required to be so deducted and withheld but for an exemption under this title or any treaty obligation of the United States).

(3) SPECIFIED INFORMATION REPORTING REQUIREMENT.—The term "specified information reporting requirement" means—

(A) the notice required by section 6050K(c)(1) (relating to requirement that transferor notify partnership of exchange),

(B) any requirement contained in the regulations prescribed under section 6109 that a person—

(i) include his TIN on any return, statement, or other document (other than an information return or payee statement),

(ii) furnish his TIN to another person, or

(iii) include on any return, statement, or other document (other than an information return or payee statement) made with respect to another person the TIN of such person,

(C) any requirement under section 6109(h) that—

(i) a person include on his return the name, address, and TIN of another person, or

(ii) a person furnish his TIN to another person.

(4) REQUIRED FILING DATE.—The term "required filing date" means the date prescribed for filing an information return with the Secretary (determined with regard to any extension of time for filing).

(e) SPECIAL RULE FOR CERTAIN PARTNERSHIP RETURNS.—If any partnership return under section 6031(a) is required under section 6011(e) to be filed on magnetic media or in other machine-readable form, for purposes of this part, each schedule required to be included with such return with respect to each partner shall be treated as a separate information return.

(f) SPECIAL RULE FOR RETURNS OF EDUCATIONAL INSTITUTIONS RELATED TO HIGHER EDUCATION TUITION AND RELATED EXPENSES.—No penalty shall be imposed under section 6721 or 6722 solely by reason of failing to provide the TIN of an individual on a return or statement required by section 6050S(a)(1) if the eligible educational institution required to make such return contemporaneously makes a true and accurate certification under penalty of perjury (and in such form and manner as may be prescribed by the Secretary) that it has complied with standards promulgated by the Secretary for obtaining such individual's TIN.

(g) SPECIAL RULE FOR REPORTING CERTAIN ADDITIONAL TAXES.—No penalty shall be imposed under section 6721 or 6722 if—

(1) a person makes a return or report under section 6047(d) or 408(i) with respect to any distribution,

(2) such distribution is made following a rollover, transfer, or exchange described in section 72(t)(4)(C) or section 72(q)(3)(C),

(3) in making such return or report the person relies upon a certification provided by the taxpayer that the distributions satisfy the requirements of section 72(t)(4)(C)(iii) or section 72(q)(3)(B)(iii), as applicable, and

(4) such person does not have actual knowledge that the distributions do not satisfy such requirements.

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Subtitle I—Trust Fund Code

CHAPTER 98—TRUST FUND CODE

* * * * * * *

Subchapter A—ESTABLISHMENT OF TRUST FUNDS

* * * * * * *

SEC. 9507. HAZARDOUS SUBSTANCE SUPERFUND.

(a) CREATION OF TRUST FUND.—There is established in the Treasury of the United States a trust fund to be known as the "Hazardous Substance Superfund" (hereinafter in this section referred to as the "Superfund"), consisting of such amounts as may be—

(1) appropriated to the Superfund as provided in this section,

(2) appropriated to the Superfund pursuant to section 517(b) of the Superfund Revenue Act of 1986, or

(3) credited to the Superfund as provided in section 9602(b).

(b) TRANSFERS TO SUPERFUND.—There are hereby appropriated to the Superfund amounts equivalent to—

(1) the taxes received in the Treasury under section 4611, 4661, or 4671 (relating to environmental taxes),

(2) amounts recovered on behalf of the Superfund under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (hereinafter in this section referred to as "CERCLA"),

(3) all moneys recovered or collected under section 311(b)(6)(B) of the Clean Water Act,

(4) penalties assessed under title I of CERCLA, and

(5) punitive damages under section 107(c)(3) of CERCLA.

In the case of the tax imposed by section 4611, paragraph (1) shall apply only to so much of such tax as is attributable to the Hazardous Substance Superfund financing rate under section 4611(c).

(c) EXPENDITURES FROM SUPERFUND.—

(1) IN GENERAL.—Amounts in the Superfund shall be available, as provided in appropriation Acts, only for purposes of making expenditures—

(A) to carry out the purposes of—

(i) paragraphs (1), (2), (5), and (6) of section 111(a) of CERCLA as in effect on the date of the enactment of the Superfund Amendments and Reauthorization Act of 1986,

(ii) section 111(c) of CERCLA (as so in effect), other than paragraphs (1) and (2) thereof, and

(iii) section 111(m) of CERCLA (as so in effect), or

(B) hereafter authorized by a law which does not authorize the expenditure out of the Superfund for a general purpose not covered by subparagraph (A) (as so in effect).

(2) EXCEPTION FOR CERTAIN TRANSFERS, ETC., OF HAZARDOUS SUBSTANCES.—No amount in the Superfund or derived from the Superfund shall be available or used for the transfer or disposal of hazardous waste carried out pursuant to a cooperative agreement between the Administrator of the Environmental Protection Agency and a State if the following conditions apply—

(A) the transfer or disposal, if made on December 13, 1985, would not comply with a State or local requirement,

(B) the transfer is to a facility for which a final permit under section 3005(a) of the Solid Waste Disposal Act was issued after January 1, 1983, and before November 1, 1984, and

(C) the transfer is from a facility identified as the McColl Site in Fullerton, California.

(d) AUTHORITY TO BORROW.—

(1) IN GENERAL.—There are authorized to be appropriated to the Superfund, as repayable advances, such sums as may be necessary to carry out the purposes of the Superfund.

(2) LIMITATION ON AGGREGATE ADVANCES.—The maximum aggregate amount of repayable advances to the Superfund which is outstanding at any one time shall not exceed an amount equal to the amount which the Secretary estimates will be equal to the sum of the amounts appropriated to the Superfund under subsection (b)(1) during the following 24 months.

(3) REPAYMENT OF ADVANCES.—

(A) IN GENERAL.—Advances made to the Superfund shall be repaid, and interest on such advances shall be paid, to the general fund of the Treasury when the Secretary determines that moneys are available for such purposes in the Superfund.

(B) FINAL REPAYMENT.—No advance shall be made to the Superfund after [December 31, 2032] *the date of the enactment of the Build It in America Act*, and all advances to such Fund shall be repaid [on or before such date] *as soon as practicable thereafter*.

(C) RATE OF INTEREST.—Interest on advances made to the Superfund shall be at a rate determined by the Secretary of the Treasury (as of the close of the calendar month preceding the month in which the advance is made) to be equal to the current average market yield on outstanding marketable obligations of the United States with remaining periods to maturity comparable to the anticipated period during which the advance will be outstanding and shall be compounded annually.

(e) LIABILITY OF UNITED STATES LIMITED TO AMOUNT IN TRUST FUND.—

(1) GENERAL RULE.—Any claim filed against the Superfund may be paid only out of the Superfund.

(2) COORDINATION WITH OTHER PROVISIONS.—Nothing in CERCLA or the Superfund Amendments and Reauthorization Act of 1986 (or in any amendment made by either of such Acts) shall authorize the payment by the United States Government of any amount with respect to any such claim out of any source other than the Superfund.

(3) ORDER IN WHICH UNPAID CLAIMS ARE TO BE PAID.—If at any time the Superfund has insufficient funds to pay all of the claims payable out of the Superfund at such time, such claims shall, to the extent permitted under paragraph (1), be paid in full in the order in which they were finally determined.

* * * * * * *

PUBLIC LAW 115-97

AN ACT To provide for reconciliation pursuant to titles II and V of the concurrent resolution on the budget for fiscal year 2018

TITLE I

* * * * * * *

Subtitle C—Business-related Provisions

* * * * * * *

PART III—COST RECOVERY AND ACCOUNTING METHODS

Subpart A—Cost Recovery

* * * * * * *

SEC. 13206. AMORTIZATION OF RESEARCH AND EXPERIMENTAL EXPENDITURES.

(a) IN GENERAL.—Section 174 is amended to read as follows:

* * * * * * *".

[(b) CHANGE IN METHOD OF ACCOUNTING.—The amendments made by subsection (a) shall be treated as a change in method of accounting for purposes of section 481 of the Internal Revenue Code of 1986 and—

[(1) such change shall be treated as initiated by the taxpayer,

[(2) such change shall be treated as made with the consent of the Secretary, and

[(3) such change shall be applied only on a cut-off basis for any research or experimental expenditures paid or incurred in taxable years beginning after December 31, 2021, and no adjustments under section 481(a) shall be made.]

(c) CLERICAL AMENDMENT.—The table of sections for part VI of subchapter B of chapter 1 is amended by striking the item relating to section 174 and inserting the following new item:

"Sec. 174. Amortization of research and experimental expenditures.".

(d) CONFORMING AMENDMENTS.—

(1) Section 41(d)(1)(A) is amended by striking "expenses under section 174" and inserting "specified research or experimental expenditures under section 174".

(2) Subsection (c) of section 280C is amended—

(A) by striking paragraph (1) and inserting the following:

"(1) IN GENERAL.—If—

"(A) the amount of the credit determined for the taxable year under section 41(a)(1), exceeds

"(B) the amount allowable as a deduction for such taxable year for qualified research expenses or basic research expenses,

the amount chargeable to capital account for the taxable year for such expenses shall be reduced by the amount of such excess.",

(B) by striking paragraph (2),

(C) by redesignating paragraphs (3) (as amended by this Act) and (4) as paragraphs (2) and (3), respectively, and

(D) in paragraph (2), as redesignated by subparagraph (C), by striking "paragraphs (1) and (2)" and inserting "paragraph (1)".

(e) EFFECTIVE DATE.—The amendments made by this section shall apply to amounts paid or incurred in taxable years beginning after December 31, 2021.

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INFLATION REDUCTION ACT OF 2022

(Public Law 117-169)

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TITLE I—COMMITTEE ON FINANCE

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Subtitle D—Energy Security

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PART 4—CLEAN VEHICLES

SEC. 13401. CLEAN VEHICLE CREDIT.

(a) PER VEHICLE DOLLAR LIMITATION.—Section 30D(b) is amended by striking paragraphs (2) and (3) and inserting the following:

"(2) CRITICAL MINERALS.—In the case of a vehicle with respect to which the requirement described in subsection (e)(1)(A) is satisfied, the amount determined under this paragraph is $3,750.

"(3) BATTERY COMPONENTS.—In the case of a vehicle with respect to which the requirement described in subsection (e)(2)(A) is satisfied, the amount determined under this paragraph is $3,750.".

(b) FINAL ASSEMBLY.—Section 30D(d) is amended—

(1) in paragraph (1)—

(A) in subparagraph (E), by striking "and" at the end,

(B) in subparagraph (F)(ii), by striking the period at the end and inserting ", and", and

(C) by adding at the end the following:

"(G) the final assembly of which occurs within North America.",

(2) by adding at the end the following:

"(5) FINAL ASSEMBLY.—For purposes of paragraph (1)(G), the term 'final assembly' means the process by which a manufacturer produces a new clean vehicle at, or through the use of, a plant, factory, or other place from which the vehicle is delivered to a dealer or importer with all component parts necessary for the mechanical operation of the vehicle included with the vehicle, whether or not the component parts are permanently installed in or on the vehicle.".

(c) DEFINITION OF NEW CLEAN VEHICLE.—

(1) IN GENERAL.—Section 30D(d), as amended by the preceding provisions of this section, is amended—

(A) in the heading, by striking "Qualified Plug-in Electric Drive Motor" and inserting "Clean",

(B) in paragraph (1)—

(i) in the matter preceding subparagraph (A), by striking "qualified plug-in electric drive motor" and inserting "clean",

(ii) in subparagraph (C), by inserting "qualified" before "manufacturer",

(iii) in subparagraph (F)—

(I) in clause (i), by striking "4" and inserting "7", and

(II) in clause (ii), by striking "and" at the end,

(iv) in subparagraph (G), by striking the period at the end and inserting ", and", and

(v) by adding at the end the following:

"(H) for which the person who sells any vehicle to the taxpayer furnishes a report to the taxpayer and to the Secretary, at such time and in such manner as the Secretary shall provide, containing—

"(i) the name and taxpayer identification number of the taxpayer,

"(ii) the vehicle identification number of the vehicle, unless, in accordance with any applicable rules promulgated by the Secretary of Transportation, the vehicle is not assigned such a number,

"(iii) the battery capacity of the vehicle,

"(iv) verification that original use of the vehicle commences with the taxpayer, and

"(v) the maximum credit under this section allowable to the taxpayer with respect to the vehicle.",

(C) in paragraph (3)—

(i) in the heading, by striking "Manufacturer" and inserting "Qualified manufacturer",

(ii) by striking "The term 'manufacturer' has the meaning given such term in" and inserting "The term 'qualified manufacturer' means any manufacturer (within the meaning of the", and

(iii) by inserting ") which enters into a written agreement with the Secretary under which such manufacturer agrees to make periodic written reports to the Secretary (at such times and in such manner as the Secretary may provide) providing vehicle identification numbers and such other information related to each vehicle manufactured by such manufacturer as the Secretary may require" before the period at the end, and

(D) by adding at the end the following:

"(6) NEW QUALIFIED FUEL CELL MOTOR VEHICLE.—For purposes of this section, the term 'new clean vehicle' shall include any new qualified fuel cell motor vehicle (as defined in section 30B(b)(3)) which meets the requirements under subparagraphs (G) and (H) of paragraph (1).".

(2) CONFORMING AMENDMENTS.—Section 30D is amended—

(A) in subsection (a), by striking "new qualified plug-in electric drive motor vehicle" and inserting "new clean vehicle", and

(B) in subsection (b)(1), by striking "new qualified plug-in electric drive motor vehicle" and inserting "new clean vehicle".

(d) ELIMINATION OF LIMITATION ON NUMBER OF VEHICLES ELIGIBLE FOR CREDIT.—Section 30D is amended by striking subsection (e).

(e) CRITICAL MINERAL AND BATTERY COMPONENT REQUIREMENTS.—

(1) IN GENERAL.—Section 30D, as amended by the preceding provisions of this section, is amended by inserting after subsection (d) the following:

"(e) CRITICAL MINERAL AND BATTERY COMPONENT REQUIREMENTS.—

"(1) CRITICAL MINERALS REQUIREMENT.—

"(A) IN GENERAL.—The requirement described in this subparagraph with respect to a vehicle is that, with respect to the battery from which the electric motor of such vehicle draws electricity, the percentage of the value of the applicable critical minerals (as defined in section 45X(c)(6)) contained in such battery that were—

"(i) extracted or processed—

"(I) in the United States, or

"(II) in any country with which the United States has a free trade agreement in effect, or

"(ii) recycled in North America,is equal to or greater than the applicable percentage (as certified by the qualified manufacturer, in such form or manner as prescribed by the Secretary).

"(B) APPLICABLE PERCENTAGE.—For purposes of subparagraph (A), the applicable percentage shall be—

"(i) in the case of a vehicle placed in service after the date on which the proposed guidance described in paragraph (3)(B) is issued by the Secretary and before January 1, 2024, 40 percent,

"(ii) in the case of a vehicle placed in service during calendar year 2024, 50 percent,

"(iii) in the case of a vehicle placed in service during calendar year 2025, 60 percent,

"(iv) in the case of a vehicle placed in service during calendar year 2026, 70 percent, and

"(v) in the case of a vehicle placed in service after December 31, 2026, 80 percent.

"(2) BATTERY COMPONENTS.—

"(A) IN GENERAL.—The requirement described in this subparagraph with respect to a vehicle is that, with respect to the battery from which the electric motor of such vehicle draws electricity, the percentage of the value of the components contained in such battery that were manufactured or assembled in North America is equal to or greater than the applicable percentage (as certified by the qualified manufacturer, in such form or manner as prescribed by the Secretary).

"(B) APPLICABLE PERCENTAGE.—For purposes of subparagraph (A), the applicable percentage shall be—

"(i) in the case of a vehicle placed in service after the date on which the proposed guidance described in paragraph (3)(B) is issued by the Secretary and before January 1, 2024, 50 percent,

"(ii) in the case of a vehicle placed in service during calendar year 2024 or 2025, 60 percent,

"(iii) in the case of a vehicle placed in service during calendar year 2026, 70 percent,

"(iv) in the case of a vehicle placed in service during calendar year 2027, 80 percent,

"(v) in the case of a vehicle placed in service during calendar year 2028, 90 percent,

"(vi) in the case of a vehicle placed in service after December 31, 2028, 100 percent.

"(3) REGULATIONS AND GUIDANCE.—

"(A) IN GENERAL.—The Secretary shall issue such regulations or other guidance as the Secretary determines necessary to carry out the purposes of this subsection, including regulations or other guidance which provides for requirements for recordkeeping or information reporting for purposes of administering the requirements of this subsection.

"(B) DEADLINE FOR PROPOSED GUIDANCE.—Not later than December 31, 2022, the Secretary shall issue proposed guidance with respect to the requirements under this subsection.".

(2) EXCLUDED ENTITIES.—Section 30D(d), as amended by the preceding provisions of this section, is amended by adding at the end the following:

"(7) EXCLUDED ENTITIES.—For purposes of this section, the term 'new clean vehicle' shall not include—

"(A) any vehicle placed in service after December 31, 2024, with respect to which any of the applicable critical minerals contained in the battery of such vehicle (as described in subsection (e)(1)(A)) were extracted, processed, or recycled by a foreign entity of concern (as defined in section 40207(a)(5) of the Infrastructure Investment and Jobs Act (42 U.S.C. 18741(a)(5))), or

"(B) any vehicle placed in service after December 31, 2023, with respect to which any of the components contained in the battery of such vehicle (as described in subsection (e)(2)(A)) were manufactured or assembled by a foreign entity of concern (as so defined).".

(f) SPECIAL RULES.—Section 30D(f) is amended by adding at the end the following:

"(8) ONE CREDIT PER VEHICLE.—In the case of any vehicle, the credit described in subsection (a) shall only be allowed once with respect to such vehicle, as determined based upon the vehicle identification number of such vehicle.

"(9) VIN REQUIREMENT.—No credit shall be allowed under this section with respect to any vehicle unless the taxpayer includes the vehicle identification number of such vehicle on the return of tax for the taxable year.

"(10) LIMITATION BASED ON MODIFIED ADJUSTED GROSS INCOME.—

"(A) IN GENERAL.—No credit shall be allowed under subsection (a) for any taxable year if—

"(i) the lesser of—

"(I) the modified adjusted gross income of the taxpayer for such taxable year, or

"(II) the modified adjusted gross income of the taxpayer for the preceding taxable year, exceeds

"(ii) the threshold amount.

"(B) THRESHOLD AMOUNT.—For purposes of subparagraph (A)(ii), the threshold amount shall be—

"(i) in the case of a joint return or a surviving spouse (as defined in section 2(a)), $300,000,

"(ii) in the case of a head of household (as defined in section 2(b)), $225,000, and

"(iii) in the case of a taxpayer not described in clause (i) or (ii), $150,000.

"(C) MODIFIED ADJUSTED GROSS INCOME.—For purposes of this paragraph, the term 'modified adjusted gross income' means adjusted gross income increased by any amount excluded from gross income under section 911, 931, or 933.

"(11) MANUFACTURER'S SUGGESTED RETAIL PRICE LIMITATION.—

"(A) IN GENERAL.—No credit shall be allowed under subsection (a) for a vehicle with a manufacturer's suggested retail price in excess of the applicable limitation.

"(B) APPLICABLE LIMITATION.—For purposes of subparagraph (A), the applicable limitation for each vehicle classification is as follows:

"(i) VANS.—In the case of a van, $80,000.

"(ii) SPORT UTILITY VEHICLES.—In the case of a sport utility vehicle, $80,000.

"(iii) PICKUP TRUCKS.—In the case of a pickup truck, $80,000.

"(iv) OTHER.—In the case of any other vehicle, $55,000.

"(C) REGULATIONS AND GUIDANCE.—For purposes of this paragraph, the Secretary shall prescribe such regulations or other guidance as the Secretary determines necessary for determining vehicle classifications using criteria similar to that employed by the Environmental Protection Agency and the Department of the Energy to determine size and class of vehicles.".

(g) TRANSFER OF CREDIT.—

(1) IN GENERAL.—Section 30D is amended by striking subsection (g) and inserting the following:

"(g) TRANSFER OF CREDIT.—

"(1) IN GENERAL.—Subject to such regulations or other guidance as the Secretary determines necessary, if the taxpayer who acquires a new clean vehicle elects the application of this subsection with respect to such vehicle, the credit which would (but for this subsection) be allowed to such taxpayer with respect to such vehicle shall be allowed to the eligible entity specified in such election (and not to such taxpayer).

"(2) ELIGIBLE ENTITY.—For purposes of this subsection, the term 'eligible entity' means, with respect to the vehicle for which the credit is allowed under subsection (a), the dealer which sold such vehicle to the taxpayer and has—

"(A) subject to paragraph (4), registered with the Secretary for purposes of this paragraph, at such time, and in such form and manner, as the Secretary may prescribe,

"(B) prior to the election described in paragraph (1) and not later than at the time of such sale, disclosed to the taxpayer purchasing such vehicle—

"(i) the manufacturer's suggested retail price,

"(ii) the value of the credit allowed and any other incentive available for the purchase of such vehicle, and

"(iii) the amount provided by the dealer to such taxpayer as a condition of the election described in paragraph (1),

"(C) not later than at the time of such sale, made payment to such taxpayer (whether in cash or in the form of a partial payment or down payment for the purchase of such vehicle) in an amount equal to the credit otherwise allowable to such taxpayer, and

"(D) with respect to any incentive otherwise available for the purchase of a vehicle for which a credit is allowed under this section, including any incentive in the form of a rebate or discount provided by the dealer or manufacturer, ensured that—

"(i) the availability or use of such incentive shall not limit the ability of a taxpayer to make an election described in paragraph (1), and

"(ii) such election shall not limit the value or use of such incentive.

"(3) TIMING.—An election described in paragraph (1) shall be made by the taxpayer not later than the date on which the vehicle for which the credit is allowed under subsection (a) is purchased.

"(4) REVOCATION OF REGISTRATION.—Upon determination by the Secretary that a dealer has failed to comply with the requirements described in paragraph (2), the Secretary may revoke the registration (as described in subparagraph (A) of such paragraph) of such dealer.

"(5) TAX TREATMENT OF PAYMENTS.—With respect to any payment described in paragraph (2)(C), such payment—

"(A) shall not be includible in the gross income of the taxpayer, and

"(B) with respect to the dealer, shall not be deductible under this title.

"(6) APPLICATION OF CERTAIN OTHER REQUIREMENTS.—In the case of any election under paragraph (1) with respect to any vehicle—

"(A) the requirements of paragraphs (1) and (2) of subsection (f) shall apply to the taxpayer who acquired the vehicle in the same manner as if the credit determined under this section with respect to such vehicle were allowed to such taxpayer,

"(B) paragraph (6) of such subsection shall not apply, and

"(C) the requirement of paragraph (9) of such subsection (f) shall be treated as satisfied if the eligible entity provides the vehicle identification number of such vehicle to the Secretary in such manner as the Secretary may provide.

"(7) ADVANCE PAYMENT TO REGISTERED DEALERS.—

"(A) IN GENERAL.—The Secretary shall establish a program to make advance payments to any eligible entity in an amount equal to the cumulative amount of the credits allowed under subsection (a) with respect to any vehicles sold by such entity for which an election described in paragraph (1) has been made.

"(B) EXCESSIVE PAYMENTS.—Rules similar to the rules of section 6417(d)(6) shall apply for purposes of this paragraph.

"(C) TREATMENT OF ADVANCE PAYMENTS.—For purposes of section 1324 of title 31, United States Code, the payments under subparagraph (A) shall be treated in the same manner as a refund due from a credit provision referred to in subsection (b)(2) of such section.

"(8) DEALER.—For purposes of this subsection, the term 'dealer' means a person licensed by a State, the District of Columbia, the Commonwealth of Puerto Rico, any other territory or possession of the United States, an Indian tribal government, or any Alaska Native Corporation (as defined in section 3 of the Alaska Native Claims Settlement Act (43 U.S.C. 1602(m)) to engage in the sale of vehicles.

"(9) INDIAN TRIBAL GOVERNMENT.—For purposes of this subsection, the term 'Indian tribal government' means the recognized governing body of any Indian or Alaska Native tribe,

band, nation, pueblo, village, community, component band, or component reservation, individually identified (including parenthetically) in the list published most recently as of the date of enactment of this subsection pursuant to section 104 of the Federally Recognized Indian Tribe List Act of 1994 (25 U.S.C. 5131).

"(10) RECAPTURE.—In the case of any taxpayer who has made an election described in paragraph (1) with respect to a new clean vehicle and received a payment described in paragraph (2)(C) from an eligible entity, if the credit under subsection (a) would otherwise (but for this subsection) not be allowable to such taxpayer pursuant to the application of subsection (f)(10), the tax imposed on such taxpayer under this chapter for the taxable year in which such vehicle was placed in service shall be increased by the amount of the payment received by such taxpayer.".

(2) CONFORMING AMENDMENTS.—Section 30D, as amended by the preceding provisions of this section, is amended—

(A) in subsection (d)(1)(H) of such section—

(i) in clause (iv), by striking "and" at the end,

(ii) in clause (v), by striking the period at the end and inserting ", and", and

(iii) by adding at the end the following:

"(vi) in the case of a taxpayer who makes an election under subsection (g)(1), any amount described in subsection (g)(2)(C) which has been provided to such taxpayer.", and

(B) in subsection (f)—

(i) by striking paragraph (3), and

(ii) in paragraph (8), by inserting ", including any vehicle with respect to which the taxpayer elects the application of subsection (g)" before the period at the end.

(h) TERMINATION.—Section 30D is amended by adding at the end the following:

"(h) TERMINATION.—No credit shall be allowed under this section with respect to any vehicle placed in service after December 31, 2032.".

(i) ADDITIONAL CONFORMING AMENDMENTS.—

(1) The heading of section 30D is amended by striking "new qualified plug-in electric drive motor vehicles" and inserting "clean vehicle credit".

(2) Section 30B is amended—

(A) in subsection (h)(8), by striking ", except that no benefit shall be recaptured if such property ceases to be eligible for such credit by reason of conversion to a qualified plug-in electric drive motor vehicle", and

(B) by striking subsection (i).

(3) Section 38(b)(30) is amended by striking "qualified plug-in electric drive motor" and inserting "clean".

(4) Section 6213(g)(2), as amended by the preceding provisions of this Act, is amended—

(A) in subparagraph (R), by striking "and" at the end,

(B) in subparagraph (S), by striking the period at the end and inserting ", and", and

(C) by inserting after subparagraph (S) the following:

"(T) an omission of a correct vehicle identification number required under section 30D(f)(9) (relating to credit for new clean vehicles) to be included on a return.".

(5) Section 6501(m) is amended by striking "30D(e)(4)" and inserting "30D(f)(6)".

(6) The table of sections for subpart B of part IV of subchapter A of chapter 1 is amended by striking the item relating to section 30D and inserting after the item relating to section 30C the following item:

"Sec. 30D. Clean vehicle credit.".

[(j) GROSS-UP OF DIRECT SPENDING.—Beginning in fiscal year 2023 and each fiscal year thereafter, the portion of any credit allowed to an eligible entity (as defined in section 30D(g)(2) of the Internal Revenue Code of 1986) pursuant to an election made under section 30D(g) of the Internal Revenue Code of 1986 that is direct spending shall be increased by 6.0445 percent.]

(k) EFFECTIVE DATES.—

(1) IN GENERAL.—Except as provided in paragraphs (2), (3), (4), and (5), the amendments made by this section shall apply to vehicles placed in service after December 31, 2022.

(2) FINAL ASSEMBLY.—The amendments made by subsection (b) shall apply to vehicles sold after the date of enactment of this Act.

(3) PER VEHICLE DOLLAR LIMITATION AND RELATED REQUIREMENTS.—The amendments made by subsections (a) and (e) shall apply to vehicles placed in service after the date on which the proposed guidance described in paragraph (3)(B) of section 30D(e) of the Internal Revenue Code of 1986 (as added by subsection (e)) is issued by the Secretary of the Treasury (or the Secretary's delegate).

(4) TRANSFER OF CREDIT.—The amendments made by subsection (g) shall apply to vehicles placed in service after December 31, 2023.

(5) ELIMINATION OF MANUFACTURER LIMITATION.—The amendment made by subsection (d) shall apply to vehicles sold after December 31, 2022.

(l) TRANSITION RULE.—Solely for purposes of the application of section 30D of the Internal Revenue Code of 1986, in the case of a taxpayer that—

(1) after December 31, 2021, and before the date of enactment of this Act, purchased, or entered into a written binding contract to purchase, a new qualified plug-in electric drive motor vehicle (as defined in section 30D(d)(1) of the Internal Revenue Code of 1986, as in effect on the day before the date of enactment of this Act), and

(2) placed such vehicle in service on or after the date of enactment of this Act,such taxpayer may elect (at such time, and in such form and manner, as the Secretary of the Treasury, or the Secretary's delegate, may prescribe) to treat such vehicle as having been placed in service on the day before the date of enactment of this Act.

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VII. DISSENTING VIEWS

H.R. 3938, the "Build It In America Act", has little to do with the creation of U.S. jobs and spurring domestic investments. What the legislation really accomplishes is providing tax cuts to wealthy businesses and shareholders. In many cases the proposals have, at best, tenuous connections to American workers or manufacturing. The bill would only temporarily extend three business-favorable Tax Cuts and Jobs Act (TCJA) provisions that expired in 2022, hiding the true cost of H.R. 3938's policy goals. It would override regulations issued by the Treasury Department and the IRS on requirements for claiming foreign tax credits. It would let big oil companies off the hook by repealing the Superfund tax. And, it contains an overbroad proposal to penalize individuals from certain "countries of concern" who purchase farmland in the U.S.—even if those individuals are lawfully in the U.S. and are in fact fleeing their countries to start a new life in America. The bill would attempt to do all this by repealing key provisions from the Inflation Reduction Act (IRA) that combat the climate crisis, strengthen American supply chains, and create high-paying, high-quality domestic jobs.

The fact that H.R. 3938 aims to reward large corporations and wealthy individuals is clear. According to the latest distributional data made available by the Joint Committee on Taxation (JCT), two-thirds of the benefits of the TCJA bonus depreciation provisions (i.e., both sections 168(k) and 179) accrue to the benefit of businesses with revenue in excess of $250 million. Half of the benefits of the TCJA section 163(j) interest limitation changes will accrue to businesses with revenue over $1 billion. The Superfund tax repeal benefits oil and petroleum companies—at the expense of everyday taxpayers, who would have to foot the bill for cleaning up the waste and pollution caused by these companies. While there is some bipartisan interest in examining and potentially extending some of the expiring TCJA provisions, any such legislation must be accompanied by provisions that significantly benefit low-and middle-income taxpayers and working families. For instance, Democrats continue to support expanding the Child Tax Credit, the Earned Income Tax Credit, and the Child and Dependent Care Credit. H.R. 3938—and, indeed, the entire suite of bills considered by the Committee—contained none of these proposals.

The fact that this bill is merely setting the stage for a multi-trillion-dollar tax cut is also clear. The temporary and retroactive business tax benefits contained in Title I of the bill are designed to minimize the actual cost of the provisions. According to analysis by JCT, making permanent the immediate deduction for research and experimental deduction would cost $276 billion over a 10-year budget window and making permanent the 168(k) "bonus depreciation" provisions would cost $325 billion over a 10-year budget window. According to calculations based on prior JCT estimates, mak-

ing permanent the 163(j) interest limitation changes would cost approximately $100 billion over a 10-year budget window. The actual cost of just these three provisions is $700 billion—a remarkably large tax cut, given the recent Republican-driven debt ceiling crisis and Republican-proposed spending cuts proffered in the name of fiscal austerity.

Finally, H.R. 3938 repeals many of the climate-related investment provisions in the IRA. These provisions contain first-of-their-kind requirements that have strengthened American supply chains and created high-quality, high-paying jobs. In less than a year, the U.S. has seen a significant increase in new battery manufacturing sites, electric vehicle manufacturing sites, and wind and solar manufacturing sites. A May 2023 study by ClimatePower found that clean energy companies announced 191 new clean energy projects in 41 states since the passage of IRA in August 2022.[1] These projects total $243 billion in investment and are creating 142,000 new domestic jobs. Another analysis commissioned by the BlueGreen Alliance from the University of Massachusetts Amherst found that the climate investments in the IRA will create an average of 1 million American jobs per year over the next decade, for a total of over 9 million jobs over the next decade.[2] That includes 1.7 million jobs from tax credits related to solar, wind, and other clean energy projects; 670,000 jobs from clean manufacturing credits for domestic wind turbine, solar panel, and battery manufacturing; 260,000 jobs from green vehicle tax credits and expanding access to EV charging; and 720,000 jobs from tax preferences that support residential and commercial building retrofits that boost energy efficiency. These are actual, real-world results that—despite its name and purported goals—H.R. 3938 simply does not deliver, and in fact seeks to reverse.

RICHARD E. NEAL,
Ranking Member.

RANKING MEMBER RICHARD E. NEAL OPENING STATEMENT COMMITTEE ON WAYS AND MEANS MARKUP OF H.R. 3938, TUESDAY, JUNE 13, 2023

One of the centerpieces of this legislation is the Republicans' reversal of a decision they made back in 2017, to hide the true cost of the TCJA. Republicans snuck in a provision that created a huge cliff, requiring research and development costs to be amortized over five years, and 15 years for research conducted abroad.

Now they want to revert back to the way things were. Generally, I'm fine with that, but the irony of their policy here needs to be pointed out.

Under this bill, foreign research, which currently must be depreciated over 15 years, is getting more of a benefit than domestic research, which only has to be depreciated over five.

We sat here in the hearing room a month ago for four hours, listening to my colleagues on the other side of the aisle wail and

[1] Climate Power, The Clean Energy Boom in the States (May 3, 2023), available at https://climatepower.us/wp-content/uploads/sites/23/2023/05/Clean-Energy-Boom-in-States.pdf.

[2] Robert Pollin, Chirag Lala, Shouvik Chakraborty, "Job Creation Estimates Through Proposed Inflation Reduction Act (Aug. 4, 2022), available at https://peri.umass.edu/publication/item/1633-job-creation-estimates-throughproposed-inflation-reduction-act.

moan about how Democrats' green energy provisions were benefitting CHINA. No matter what we did, my Republican colleagues would play "six degrees of separation" to try to connect it to CHINA.

Well here the connection is quite clear. Take two firms—a firm that is conducting R&D here in the United States, and a firm that is conducting R&D in China. Who gets the bigger tax benefit from this bill? The firm who is conducting their research in China.

So this amendment changes that. It provides that we do not change the rule that research expenses in the People's Republic of China are subject to 15-year depreciation. Our Republican colleagues accuse our side of the aisle of being "soft on China." So I assume they will gladly support this amendment.

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