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HOUSE OF REPRESENTATIVES
REPORT
118–128

SMALL BUSINESS JOBS 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. 3937]

The Committee on Ways and Means, to whom was referred the bill (H.R. 3937) to amend the Internal Revenue Code of 1986 to promote the establishment and growth of small businesses, having considered the same, reports favorably thereon with an amendment and recommends that the bill as amended do pass.

CONTENTS

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 "Small Business Jobs 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. 2. INCREASE IN THRESHOLD FOR REQUIRING INFORMATION REPORTING WITH RESPECT TO CERTAIN PAYEES.

(a) IN GENERAL.—Sections 6041(a) is amended by striking "$600" and inserting "$5,000".

(b) INFLATION ADJUSTMENT.—Section 6041 is amended by adding at the end the following new subsection:

"(h) INFLATION ADJUSTMENT.—In the case of any calendar year after 2024, the dollar amount in subsection (a) shall be increased by an amount equal to—

"(1) such dollar amount, multiplied by

"(2) the cost-of-living adjustment determined under section 1(f)(3) for such calendar year, determined by substituting 'calendar year 2023' for 'calendar year 2016' in subparagraph (A)(ii) thereof.

If any increase under the preceding sentence is not a multiple of $100, such increase shall be rounded to the nearest multiple of $100.".

(c) APPLICATION TO REPORTING ON REMUNERATION FOR SERVICES AND DIRECT SALES.—Section 6041A is amended—

(1) in subsection (a)(2), by striking "is $600 or more" and inserting "equals or exceeds the dollar amount in effect for such calendar year under section 6041(a)", and

(2) in subsection (b)(1)(B), by striking "is $5,000 or more" and inserting "equals or exceeds the dollar amount in effect for such calendar year under section 6041(a)".

(d) APPLICATION TO BACKUP WITHHOLDING.—Section 3406(b)(6) is amended—

(1) by striking "$600" in subparagraph (A) and inserting "the dollar amount in effect for such calendar year under section 6041(a)", and

(2) by striking "ONLY WHERE AGGREGATE FOR CALENDAR YEAR IS $600 OR MORE" in the heading and inserting "ONLY IF IN EXCESS OF THRESHOLD".

(e) CONFORMING AMENDMENTS.—

(1) The heading of section 6041(a) is amended by striking "OF $600 OR MORE" and inserting "EXCEEDING THRESHOLD".

(2) Section 6041(a) is amended by striking "taxable year" and inserting "calendar year".

(f) EFFECTIVE DATE.—The amendments made by this section shall apply with respect to payments made after December 31, 2023.

SEC. 3. RESTORATION OF REPORTING RULE FOR THIRD PARTY NETWORK TRANSACTIONS.

(a) DE MINIMIS EXCEPTION FOR THIRD PARTY SETTLEMENT ORGANIZATIONS.—Section 6050W(e) is amended to read as follows:

"(e) EXCEPTION FOR DE MINIMIS PAYMENTS BY THIRD PARTY SETTLEMENT ORGANIZATIONS.—A third party settlement organization shall be required to report any information under subsection (a) with respect to third party network transactions of any participating payee only if—

"(1) the amount which would otherwise be reported under subsection (a)(2) with respect to such transactions exceeds $20,000, and

"(2) the aggregate number of such transactions exceeds 200.".

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to returns for calendar years beginning after December 31, 2021.

SEC. 4. MODIFICATIONS TO EXCLUSION FOR GAIN FROM QUALIFIED SMALL BUSINESS STOCK.

(a) PHASED INCREASE IN EXCLUSION FOR GAIN FROM QUALIFIED SMALL BUSINESS STOCK.—

(1) IN GENERAL.—Section 1202(a)(1) is amended—

(A) by striking "50 percent" and inserting "the applicable percentage", and

(B) by striking "held for more than 5 years" and inserting "held for at least 3 years".

(2) APPLICABLE PERCENTAGE.—Section 1202(a) is amended by adding at the end the following new paragraph:

"(5) APPLICABLE PERCENTAGE.—Except as provided in paragraphs (3) and (4), the applicable percentage under paragraph (1) shall be determined under the following table:

"Years stock held:	Applicable percentage:
3 years	50%
4 years	75%
5 years or more	100%".

(3) CONTINUED TREATMENT AS NOT ITEM OF TAX PREFERENCE.—

(A) IN GENERAL.—Section 57(a)(7) is amended by striking "An amount" and inserting "In the case of stock acquired on or before the date of the enactment of the Creating Small Business Jobs Act of 2010, an amount".

(B) CONFORMING AMENDMENT.—Section 1202(a)(4) is amended—

(i) by striking ", and" at the end of subparagraph (B) and inserting a period, and

(ii) by striking subparagraph (C).

(4) OTHER CONFORMING AMENDMENTS.—

(A) Section 1202(a)(4) is amended by inserting "and before the date of the enactment of the Small Business Jobs Act" after "Act of 2010".

(B) Paragraphs (3) and (4) of section 1202(a) are each amended by inserting "held for more than 5 years and" after "In the case of qualified small business stock".

(C) Section 1202(a)(3)(A) of such Code is amended to read as follows:

"(A) the applicable percentage under paragraph (1) shall be 75 percent, and",

(D) Section 1202(a)(4)(A) is amended to read as follows:

"(A) the applicable percentage under paragraph (1) shall be 100 percent, and".

(E) Section 1202(b)(2) is amended by striking "more than 5 years" and inserting "at least 3 years".

(F) Section 1202(g)(2)(A) is amended by striking "more than 5 years" and inserting "at least 3 years".

(G) Section 1202(j)(1)(A) is amended by striking "more than 5 years" and inserting "at least 3 years".

(b) TACKING HOLDING PERIOD OF CONVERTIBLE DEBT INSTRUMENTS.—

(1) IN GENERAL.—Section 1202(f) is amended—

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

(B) by striking "CONVERSION OF OTHER STOCK.—If any stock" and inserting the following: "CONVERSION.—

"(1) OTHER STOCK.—If any stock", and

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

"(2) CONVERTIBLE DEBT INSTRUMENTS.—

"(A) IN GENERAL.—If any stock in a corporation is acquired by the taxpayer, without recognition of gain, solely through the conversion of a qualified convertible debt instrument—

"(i) the stock so acquired shall be treated as qualified small business stock in the hands of the taxpayer, and

"(ii) the stock so acquired shall be treated as having been held during the period during which the qualified convertible debt instrument was held.

"(B) QUALIFIED CONVERTIBLE DEBT INSTRUMENT.—For purposes of this paragraph, the term 'qualified convertible debt instrument' means any bond or other evidence of indebtedness—

"(i) which is originally issued by the corporation to the taxpayer,

"(ii) the issuer of which—

"(I) from issuance until conversion, is a qualified small business, and

"(II) during substantially all of the taxpayer's holding period of such bond or evidence of indebtedness, the corporation meets the active business requirements of subsection (e), and

"(iii) which is convertible into stock in the corporation.".

(c) GAIN EXCLUSION ALLOWED WITH RESPECT TO QUALIFIED SMALL BUSINESS STOCK IN CORPORATION.—

(1) IN GENERAL.—Section 1202(c) is amended—

(A) by striking "C corporation" in paragraph (1) and inserting "corporation", and

(B) by striking "and such corporation is a C corporation" in paragraph (2)(A).

(2) QUALIFIED SMALL BUSINESS DEFINITION.—Section 1202(d)(1) is amended by striking "which is a C corporation".

(3) CLARIFICATION OF AGGREGATION RULES APPLICABLE TO S CORPORATIONS.—Section 1202(d)(3) is amended by adding at the end the following new subparagraph:

"(C) CLARIFICATION WITH RESPECT TO S CORPORATIONS.—Any determination of the members of a controlled group of corporations under this paragraph shall include taking into account any stock ownership in an S corporation.".

(4) TREATMENT OF PASSIVE LOSSES.—Section 469(g)(1) is amended by adding at the end the following new subparagraph:

"(D) CERTAIN DISPOSITIONS OF SMALL BUSINESS STOCK.—In the case a disposition any gain from which is excluded from gross income under section 1202, subparagraph (A) shall not apply.".

(5) SPECIAL RULES RELATING TO S CORPORATIONS.—Section 1202(e) is amended by adding at the end the following new paragraph:

"(9) APPLIED AT S CORPORATION LEVEL.—In the case of an S corporation, the requirements of this subsection shall be applied at the corporate level.".

(d) EFFECTIVE DATES.—

(1) IN GENERAL.—Except as otherwise provided in this subsection, the amendments made by this section shall apply to stock acquired after the date of the enactment of this Act.

(2) CONTINUED TREATMENT AS NOT ITEM OF TAX PREFERENCE.—The amendments made by subsection (a)(3) shall take effect as if included in the enactment of section 2011 the Creating Small Business Jobs Act of 2010.

(3) TACKING HOLDING PERIOD OF CONVERTIBLE DEBT INSTRUMENTS.—The amendments made by subsection (b) shall apply to debt instruments originally issued after the date of the enactment of this Act.

SEC. 5. INCREASE IN LIMITATIONS ON EXPENSING OF DEPRECIABLE BUSINESS ASSETS.

(a) IN GENERAL.—Section 179(b) is amended—

(1) by striking "$1,000,000" in paragraph (1) and inserting "$2,500,000", and

(2) by striking "$2,500,000" in paragraph (2) and inserting "$4,000,000".

(b) INFLATION ADJUSTMENT.—Section 179(b)(6) is amended—

(1) by striking "2018" and inserting "2024 (2018 in the case of the dollar amount in paragraph (5)(A))", and

(2) by striking "'calendar year 2017" and inserting "'calendar year 2024' ('calendar year 2017' in the case of the dollar amount in paragraph (5)(A))".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to property placed in service in taxable years beginning after December 31, 2023.

SEC. 6. ESTABLISHMENT OF SPECIAL RULES FOR CAPITAL GAINS INVESTED IN RURAL OPPORTUNITY ZONES.

(a) IN GENERAL.—Subchapter Z of chapter 1 is amended by adding at the end the following new section:

"SEC. 1400Z–3. SPECIAL RULES FOR CAPITAL GAINS INVESTED IN RURAL OPPORTUNITY ZONES.

"(a) IN GENERAL.—

"(1) TREATMENT OF GAINS.—In the case of capital gain from the sale to, or exchange with, an unrelated person of any property held by the taxpayer, at the election of the taxpayer—

"(A) gross income for the taxable year shall not include so much of such gain as does not exceed the aggregate amount invested by the taxpayer in a qualified rural opportunity fund during the 180-day period beginning on the date of such sale or exchange,

"(B) the amount of gain excluded by subparagraph (A) shall be included in gross income as provided by subsection (b), and

"(C) subsection (c) shall apply.

"(2) ELECTION.—No election may be made under paragraph (1)—

"(A) with respect to a sale or exchange if an election previously made with respect to such sale or exchange is in effect, or

"(B) with respect to any sale or exchange after December 31, 2032.

"(b) DEFERRAL OF GAIN INVESTED IN QUALIFIED RURAL OPPORTUNITY ZONE PROPERTY.—

"(1) YEAR OF INCLUSION.—Gain to which subsection (a)(1)(B) applies shall be included in income in the taxable year which includes the earlier of—

"(A) the date on which such investment is sold or exchanged, or

"(B) December 31, 2032.

"(2) AMOUNT INCLUDIBLE.—

"(A) IN GENERAL.—The amount of gain included in gross income under subsection (a)(1)(A) shall be the excess of—

"(i) the lesser of the amount of gain excluded under paragraph (1) or the fair market value of the investment as determined as of the date described in paragraph (1), over

"(ii) the taxpayer's basis in the investment.

"(B) DETERMINATION OF BASIS QUALIFIED RURAL OPPORTUNITY ZONE PROPERTY.—

"(i) IN GENERAL.—Except as otherwise provided in this clause or subsection (c), the taxpayer's basis in the investment shall be zero.

"(ii) INCREASE FOR GAIN RECOGNIZED UNDER SUBSECTION (A)(1)(B).—The basis in the investment shall be increased by the amount of gain recognized by reason of subsection (a)(1)(B) with respect to such property.

"(iii) INVESTMENTS HELD FOR 5 YEARS.—In the case of any investment held for at least 5 years, the basis of such investment shall be increased by an amount equal to 10 percent of the amount of gain deferred by reason of subsection (a)(1)(A).

"(iv) INVESTMENTS HELD FOR 7 YEARS.—In the case of any investment held by the taxpayer for at least 7 years, in addition to any adjustment made under clause (iii), the basis of such property shall be increased by an amount equal to 5 percent of the amount of gain deferred by reason of subsection (a)(1)(A).

"(c) SPECIAL RULE FOR INVESTMENTS HELD FOR AT LEAST 10 YEARS.—In the case of any investment held by the taxpayer for at least 10 years and with respect to which the taxpayer makes an election under this subsection, the basis of such property shall be equal to the fair market value of such investment on the date that the investment is sold or exchanged.

"(d) QUALIFIED RURAL OPPORTUNITY FUND.—For purposes of this section—

"(1) IN GENERAL.—The term 'qualified rural opportunity fund' means any investment vehicle which is organized as a corporation or a partnership for the purpose of investing in qualified rural opportunity zone property (other than another qualified rural opportunity fund) that holds at least 90 percent of its assets in qualified rural opportunity zone property, determined by the average of the percentage of qualified rural opportunity zone property held in the fund as measured—

"(A) on the last day of the first 6-month period of the taxable year of the fund, and

"(B) on the last day of the taxable year of the fund.

"(2) QUALIFIED RURAL OPPORTUNITY ZONE PROPERTY.—

"(A) IN GENERAL.—The term 'qualified rural opportunity zone property' means property which is—

"(i) qualified rural opportunity zone stock,

"(ii) qualified rural opportunity zone partnership interest, or

"(iii) qualified rural opportunity zone business property.

"(B) QUALIFIED RURAL OPPORTUNITY ZONE STOCK.—

"(i) IN GENERAL.—Except as provided in clause (ii), the term 'qualified rural opportunity zone stock' means any stock in a domestic corporation if—

"(I) such stock is acquired by the qualified rural opportunity fund after December 31, 2023, at its original issue (directly or through an underwriter) from the corporation solely in exchange for cash,

"(II) as of the time such stock was issued, such corporation was a qualified rural opportunity zone business (or, in the case of a new corporation, such corporation was being organized for purposes of being a qualified rural opportunity zone business), and

"(III) during substantially all of the qualified rural opportunity fund's holding period for such stock, such corporation qualified as a qualified rural opportunity zone business.

"(ii) REDEMPTIONS.—A rule similar to the rule of section 1202(c)(3) shall apply for purposes of this paragraph.

"(C) QUALIFIED RURAL OPPORTUNITY ZONE PARTNERSHIP INTEREST.—The term 'qualified rural opportunity zone partnership interest' means any capital or profits interest in a domestic partnership if—

"(i) such interest is acquired by the qualified rural opportunity fund after December 31, 2023, from the partnership solely in exchange for cash,

"(ii) as of the time such interest was acquired, such partnership was a qualified rural opportunity zone business (or, in the case of a new partnership, such partnership was being organized for purposes of being a qualified rural opportunity zone business), and

"(iii) during substantially all of the qualified rural opportunity fund's holding period for such interest, such partnership qualified as a qualified rural opportunity zone business.

"(D) QUALIFIED RURAL OPPORTUNITY ZONE BUSINESS PROPERTY.—

"(i) IN GENERAL.—The term 'qualified rural opportunity zone business property' means tangible property used in a trade or business of the qualified rural opportunity fund if—

"(I) such property was acquired by the qualified rural opportunity fund by purchase (as defined in section 179(d)(2)) after December 31, 2023,

"(II) the original use of such property in the qualified rural opportunity zone commences with the qualified rural opportunity fund or the qualified rural opportunity fund substantially improves the property, and

"(III) during substantially all of the qualified rural opportunity fund's holding period for such property, substantially all of the use of such property was in a qualified rural opportunity zone.

"(ii) SUBSTANTIAL IMPROVEMENT.—For purposes of subparagraph (A)(ii), property shall be treated as substantially improved by the qualified rural opportunity fund only if, during any 30-month period beginning after the date of acquisition of such property, additions to basis with respect to such property in the hands of the qualified rural opportunity fund exceed an amount equal to the adjusted basis of such property at the beginning of such 30-month period in the hands of the qualified rural opportunity fund.

"(iii) RELATED PARTY.—For purposes of subparagraph (A)(i), the related person rule of section 179(d)(2) shall be applied pursuant to subsection (e)(2) in lieu of the application of such rule in section 179(d)(2)(A).

"(3) QUALIFIED RURAL OPPORTUNITY ZONE BUSINESS.—

"(A) IN GENERAL.—The term 'qualified rural opportunity zone business' means a trade or business—

"(i) in which substantially all of the tangible property owned or leased by the taxpayer is qualified rural opportunity zone business

property (determined by substituting 'qualified rural opportunity zone business' for 'qualified rural opportunity fund' each place it appears in paragraph (2)(D)),

"(ii) which satisfies the requirements of paragraphs (2), (4), and (8) of section 1397C(b), and

"(iii) which is not described in section 144(c)(6)(B).

"(B) SPECIAL RULE.—For purposes of subparagraph (A), tangible property that ceases to be a qualified rural opportunity zone business property shall continue to be treated as a qualified rural opportunity zone business property for the lesser of—

"(i) 5 years after the date on which such tangible property ceases to be so qualified, or

"(ii) the date on which such tangible property is no longer held by the qualified rural opportunity zone business.

"(4) QUALIFIED RURAL OPPORTUNITY ZONE.—

"(A) IN GENERAL.—The term 'qualified rural opportunity zone' means any population census tract which—

"(i) is located in a rural county, and

"(ii) is in persistent poverty (as determined by the Bureau of the Census using the same methodology and data as used for purposes of the May 2023 report of such Bureau entitled 'Persistent Poverty in Counties and Census Tracts').

"(B) RURAL COUNTY.—The term 'rural county' means any county if more than 50 percent of the census blocks which comprise such county are rural blocks (as determined by the Bureau of the Census as of the date of the enactment of this Act). A rule similar to section 143(k)(2)(D) shall apply for purposes of the preceding sentence.

"(e) APPLICABLE RULES.—

"(1) TREATMENT OF INVESTMENTS WITH MIXED FUNDS.—In the case of any investment in a qualified rural opportunity fund only a portion of which consists of investments of gain to which an election under subsection (a) is in effect—

"(A) such investment shall be treated as 2 separate investments, consisting of—

"(i) one investment that only includes amounts to which the election under subsection (a) applies, and

"(ii) a separate investment consisting of other amounts, and

"(B) subsections (a), (b), and (c) shall only apply to the investment described in subparagraph (A)(i).

"(2) RELATED PERSONS.—For purposes of this section, persons are related to each other if such persons are described in section 267(b) or 707(b)(1), determined by substituting '20 percent' for '50 percent' each place it occurs in such sections.

"(3) DECEDENTS.—In the case of a decedent, amounts recognized under this section shall, if not properly includible in the gross income of the decedent, be includible in gross income as provided by section 691.

"(4) REGULATIONS.—The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of this section, including—

"(A) rules for the certification of qualified rural opportunity funds for the purposes of this section,

"(B) rules to ensure a qualified rural opportunity fund has a reasonable period of time to reinvest the return of capital from investments in qualified rural opportunity zone stock and qualified rural opportunity zone partnership interests, and to reinvest proceeds received from the sale or disposition of qualified rural opportunity zone property, and

"(C) rules to prevent abuse.

"(f) FAILURE OF QUALIFIED RURAL OPPORTUNITY FUND TO MAINTAIN INVESTMENT STANDARD.—

"(1) IN GENERAL.—If a qualified rural opportunity fund fails to meet the 90-percent requirement of subsection (d)(1), the qualified rural opportunity fund shall pay a penalty for each month it fails to meet the requirement in an amount equal to the product of—

"(A) the excess of—

"(i) the amount equal to 90 percent of its aggregate assets, over

"(ii) the aggregate amount of qualified rural opportunity zone property held by the fund, multiplied by

"(B) the underpayment rate established under section 6621(a)(2) for such month.

"(2) SPECIAL RULE FOR PARTNERSHIPS.—In the case that the qualified rural opportunity fund is a partnership, the penalty imposed by paragraph (1) shall be

taken into account proportionately as part of the distributive share of each partner of the partnership.

"(3) REASONABLE CAUSE EXCEPTION.—No penalty shall be imposed under this subsection with respect to any failure if it is shown that such failure is due to reasonable cause.".

(b) CLERICAL AMENDMENT.—The table of sections for subchapter Z of chapter 1 is amended by adding at the end the following new item:

"Sec. 1400Z–3. Special rules for capital gains invested in rural opportunity zones.".

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

SEC. 7. REPORTING ON QUALIFIED OPPORTUNITY FUNDS AND QUALIFIED RURAL OPPORTUNITY FUNDS.

(a) IN GENERAL.—

(1) FILING REQUIREMENTS FOR FUNDS AND INVESTORS.—Subpart A of part III of subchapter A of chapter 61 is amended by inserting after section 6039J the following new sections:

"SEC. 6039K. RETURNS WITH RESPECT TO QUALIFIED OPPORTUNITY FUNDS AND QUALIFIED RURAL OPPORTUNITY FUNDS.

"(a) IN GENERAL.—Every qualified opportunity fund shall file an annual return (at such time and in such manner as the Secretary may prescribe) containing the information described in subsection (b).

"(b) INFORMATION FROM QUALIFIED OPPORTUNITY FUNDS.—The information described in this subsection is—

"(1) the name, address, and taxpayer identification number of the qualified opportunity fund,

"(2) whether the qualified opportunity fund is organized as a corporation or a partnership,

"(3) the value of the total assets held by the qualified opportunity fund as of each date described in section 1400Z–2(d)(1),

"(4) the value of all qualified opportunity zone property held by the qualified opportunity fund on each such date,

"(5) with respect to each investment held by the qualified opportunity fund in qualified opportunity zone stock or a qualified opportunity zone partnership interest—

"(A) the name, address, and taxpayer identification number of the corporation in which such stock is held or the partnership in which such interest is held, as the case may be,

"(B) each North American Industry Classification System (NAICS) code that applies to the trades or businesses conducted by such corporation or partnership,

"(C) the population census tracts in which the qualified opportunity zone business property of such corporation or partnership is located,

"(D) the amount of the investment in such stock or partnership interest as of each date described in section 1400Z–2(d)(1),

"(E) the value of tangible property held by such corporation or partnership on each such date which is owned by such corporation or partnership,

"(F) the value of tangible property held by such corporation or partnership on each such date which is leased by such corporation or partnership,

"(G) the approximate number of residential units (if any) for any real property held by such corporation or partnership, and

"(H) the approximate average monthly number of full-time equivalent employees of such corporation or partnership for the year (within numerical ranges identified by the Secretary) or such other indication of the employment impact of such corporation or partnership as determined appropriate by the Secretary,

"(6) with respect to the items of qualified opportunity zone business property held by the qualified opportunity fund—

"(A) the North American Industry Classification System (NAICS) code that applies to the trades or businesses in which such property is held,

"(B) the population census tract in which the property is located,

"(C) whether the property is owned or leased,

"(D) the aggregate value of the items of qualified opportunity zone property held by the qualified opportunity fund as of each date described in section 1400Z–2(d)(1), and

"(E) in the case of real property, number of residential units (if any),

"(7) the approximate average monthly number of full-time equivalent employees for the year of the trades or businesses of the qualified opportunity fund

in which qualified opportunity zone business property is held (within numerical ranges identified by the Secretary) or such other indication of the employment impact of such trades or businesses as determined appropriate by the Secretary,

"(8) with respect to each person who disposed of an investment in the qualified opportunity fund during the year—

"(A) the name and taxpayer identification number of such person,

"(B) the date or dates on which the investment disposed was acquired, and

"(C) the date or dates on which any such investment was disposed and the amount of the investment disposed, and

"(9) such other information as the Secretary may require.

"(c) STATEMENT REQUIRED TO BE FURNISHED TO INVESTORS.—Every person required to make a return under subsection (a) shall furnish to each person whose name is required to be set forth in such return by reason of subsection (b)(8) a written statement showing—

"(1) the name, address and phone number of the information contact of the person required to make such return, and

"(2) the information required to be shown on such return by reason of subsection (b)(8) with respect to the person whose name is required to be so set forth.

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

"(1) IN GENERAL.—Any term used in this section which is also used in subchapter Z of chapter 1 shall have the meaning given such term under such subchapter.

"(2) FULL-TIME EQUIVALENT EMPLOYEES.—The term 'full-time equivalent employees' means, with respect to any month, the sum of—

"(A) the number of full-time employees (as defined in section 4980H(c)(4)) for the month, plus

"(B) the number of employees determined (under rules similar to the rules of section 4980H(c)(2)(E)) by dividing the aggregate number of hours of service of employees who are not full-time employees for the month by 120.

"(e) APPLICATION TO QUALIFIED RURAL OPPORTUNITY FUNDS.—Every qualified rural opportunity fund shall file the annual return required under subsection (a), and the statements required under subsection (c), applied—

"(1) by substituting 'qualified rural opportunity' for 'qualified opportunity' each place it appears, and

"(2) by substituting 'section 1400Z–3(d)(1)' for 'section 1400Z–2(d)(1)' each place it appears.

"SEC. 6039L. INFORMATION REQUIRED FROM QUALIFIED OPPORTUNITY ZONE BUSINESSES AND QUALIFIED RURAL OPPORTUNITY ZONE BUSINESSES.

"(a) IN GENERAL.—Every applicable qualified opportunity zone business shall furnish to the qualified opportunity fund described in subsection (b) a written statement in such manner and setting forth such information as the Secretary may by regulations prescribe for purposes of enabling such qualified opportunity fund to meet the requirements of section 6039K(b)(5).

"(b) APPLICABLE QUALIFIED OPPORTUNITY ZONE BUSINESS.—For purposes of subsection (a), the term 'applicable qualified opportunity zone business' means any qualified opportunity zone business—

"(1) which is a trade or business of a qualified opportunity fund,

"(2) in which a qualified opportunity fund holds qualified opportunity zone stock, or

"(3) in which a qualified opportunity fund holds a qualified opportunity zone partnership interest.

"(c) OTHER TERMS.—Any term used in this section which is also used in subchapter Z of chapter 1 shall have the meaning given such term under such subchapter.

"(d) APPLICATION TO QUALIFIED RURAL OPPORTUNITY FUNDS.—Every qualified rural opportunity zone business (as defined in subsection (b) determined after application of the substitutions described in this sentence) shall furnish the written statement required under subsection (a), applied by substituting 'qualified rural opportunity' for 'qualified opportunity' each place it appears.".

(2) PENALTIES.—

(A) IN GENERAL.—Part II of subchapter B of chapter 68 is amended by inserting after section 6725 the following new section:

"SEC. 6726. FAILURE TO COMPLY WITH INFORMATION REPORTING REQUIREMENTS RELATING TO QUALIFIED OPPORTUNITY FUNDS AND QUALIFIED RURAL OPPORTUNITY FUNDS.

"(a) IN GENERAL.—In the case of any person required to file a return under section 6039K fails to file a complete and correct return under such section in the time and in the manner prescribed therefor, such person shall pay a penalty of $500 for each day during which such failure continues.

"(b) LIMITATION.—

"(1) IN GENERAL.—The maximum penalty under this section on failures with respect to any 1 return shall not exceed $10,000.

"(2) LARGE QUALIFIED OPPORTUNITY FUNDS.—In the case of any failure described in subsection (a) with respect to a fund the gross assets of which (determined on the last day of the taxable year) are in excess of $10,000,000, paragraph (1) shall be applied by substituting '$50,000' for '$10,000'.

"(c) PENALTY IN CASES OF INTENTIONAL DISREGARD.—If a failure described in subsection (a) is due to intentional disregard, then—

"(1) subsection (a) shall be applied by substituting '$2,500' for '$500',

"(2) subsection (b)(1) shall be applied by substituting '$50,000' for '$10,000', and

"(3) subsection (b)(2) shall be applied by substituting '$250,000' for '$50,000'.

"(d) INFLATION ADJUSTMENT.—

"(1) IN GENERAL.—In the case of any failure relating to a return required to be filed in a calendar year beginning after 2023, each of the dollar amounts in subsections (a), (b), and (c) shall be increased by an amount equal to such dollar amount multiplied by 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.

"(2) ROUNDING.—

"(A) IN GENERAL.—If the $500 dollar amount in subsection (a) and (c)(1) or the $2,500 amount in subsection (c)(1), after being increased under paragraph (1), is not a multiple of $10, such dollar amount shall be rounded to the next lowest multiple of $10.

"(B) ASSET THRESHOLD.—If the $10,000,000 dollar amount in subsection (b)(2), after being increased under paragraph (1), is not a multiple of $10,000, such dollar amount shall be rounded to the next lowest multiple of $10,000.

"(C) OTHER DOLLAR AMOUNTS.—If any dollar amount in subsection (b) or (c) (other than any amount to which subparagraph (A) or (B) applies), after being increased under paragraph (1), is not a multiple of $1,000, such dollar amount shall be rounded to the next lowest multiple of $1,000.".

(B) INFORMATION REQUIRED TO BE SENT TO OTHER TAXPAYERS.—Section 6724(d)(2) is amended—

(i) by striking "or" at the end of subparagraph (II),

(ii) by striking the period at the end of the first subparagraph (JJ) (relating to section 6226) and inserting a comma,

(iii) by redesignating the second subparagraph (JJ) (relating to section 6050Y) as subparagraph (KK),

(iv) by striking the period at the end of subparagraph (KK) (as redesignated by clause (iii)) and inserting a comma, and

(v) by inserting after subparagraph (KK) (as so redesignated) the following new subparagraphs:

"(LL) section 6039K(c) (relating to disposition of qualified opportunity fund investments), or

"(MM) section 6039L (relating to information required from certain qualified opportunity zone businesses and qualified rural opportunity zone businesses).".

(3) ELECTRONIC FILING.—Section 6011(e) is amended by adding at the end the following new paragraph:

"(8) QUALIFIED OPPORTUNITY FUNDS AND QUALIFIED RURAL OPPORTUNITY FUNDS.—Notwithstanding paragraphs (1) and (2), any return filed by a qualified opportunity fund or qualified rural opportunity fund shall be filed on magnetic media or other machine-readable form.".

(4) CLERICAL AMENDMENTS.—

(A) The table of sections for subpart A of part III of subchapter A of chapter 61 is amended by inserting after the item relating to section 6039J the following new items:

"Sec. 6039K. Returns with respect to qualified opportunity funds and qualified rural opportunity funds.
"Sec. 6039L. Information required from certain qualified opportunity zone businesses and qualified rural opportunity zone businesses.".

(B) The table of sections for part II of subchapter B of chapter 68 is amended by inserting after the item relating to section 6725 the following new item:

"Sec. 6726. Failure to comply with information reporting requirements relating to qualified opportunity funds and qualified rural opportunity funds.".

(5) EFFECTIVE DATE.—The amendments made by this subsection shall apply to taxable years beginning after the date of the enactment of this Act.

(b) REPORTING OF DATA ON OPPORTUNITY ZONE AND RURAL OPPORTUNITY ZONE TAX INCENTIVES.—

(1) IN GENERAL.—As soon as practical after the date of the enactment of this Act, and annually thereafter, the Secretary of the Treasury, or the Secretary's delegate (referred to in this section as the "Secretary"), in consultation with the Director of the Bureau of the Census and such other agencies as the Secretary determines appropriate, shall make publicly available a report on qualified opportunity funds.

(2) INFORMATION INCLUDED.—The report required under paragraph (1) shall include, to the extent available, the following information:

(A) The number of qualified opportunity funds.

(B) The aggregate dollar amount of assets held in qualified opportunity funds.

(C) The aggregate dollar amount of investments made by qualified opportunity funds in qualified opportunity fund property, stated separately for each North American Industry Classification System (NAICS) code.

(D) The percentage of population census tracts designated as qualified opportunity zones that have received qualified opportunity fund investments.

(E) For each population census tract designated as a qualified opportunity zone, the approximate average monthly number of full-time equivalent employees of the qualified opportunity zone businesses in such qualified opportunity zone for the preceding 12-month period (within numerical ranges identified by the Secretary) or such other indication of the employment impact of such qualified opportunity fund businesses as determined appropriate by the Secretary.

(F) The percentage of the total amount of investments made by qualified opportunity funds in—

(i) qualified opportunity zone property which is real property; and

(ii) other qualified opportunity zone property.

(G) For each population census tract, the aggregate approximate number of residential units resulting from investments made by qualified opportunity funds in real property.

(H) The aggregate dollar amount of investments made by qualified opportunity funds in each population census tract.

(3) ADDITIONAL INFORMATION.—

(A) IN GENERAL.—Beginning with the report submitted under paragraph (1) for the 6th year after the date of the enactment of this Act, the Secretary shall include in such report the impacts and outcomes of a designation of a population census tract as a qualified opportunity zone as measured by economic indicators, such as job creation, poverty reduction, new business starts, and other metrics as determined by the Secretary.

(B) SEMI-DECENNIAL INFORMATION.—

(i) IN GENERAL.—In the case of any report submitted under paragraph (1) in the 6th year or the 11th year after the date of the enactment of this Act, the Secretary shall include the following information:

(I) For population census tracts designated as a qualified opportunity zone, a comparison (based on aggregate information) of the factors listed in clause (iii) between the 5-year period ending on the date of the enactment of Public Law 115–97 and the most recent 5-year period for which data is available.

(II) For population census tracts designated as a qualified opportunity zone, a comparison (based on aggregate information) of the factors listed in clause (iii) for the most recent 5-year period for which data is available between such population census tracts and a similar population census tracts that were not designated as a qualified opportunity zone.

(ii) CONTROL GROUPS.—For purposes of clause (i), the Secretary may combine population census tracts into such groups as the Secretary determines appropriate for purposes of making comparisons.

(iii) FACTORS LISTED.—The factors listed in this paragraph are the following:

(I) The unemployment rate.

(II) The number of persons working in the population census tract, including the percentage of such persons who were not residents in the population census tract in the preceding year.

(III) Individual, family, and household poverty rates.

(IV) Median family income of residents of the population census tract.

(V) Demographic information on residents of the population census tract, including age, income, education, race, and employment.

(VI) The average percentage of income of residents of the population census tract spent on rent annually.

(VII) The number of residences in the population census tract.

(VIII) The rate of home ownership in the population census tract.

(IX) The average value of residential property in the population census tract.

(X) The number of affordable housing units in the population census tract.

(XI) The number and percentage of residents in the population census tract that were not employed for the preceding year.

(XII) The number of new business starts in the population census tract.

(XIII) The distribution of employees in the population census tract by North American Industry Classification System (NAICS) code.

(4) PROTECTION OF IDENTIFIABLE RETURN INFORMATION.—In making reports required under this subsection, the Secretary—

(A) shall establish appropriate procedures to ensure that any amounts reported do not disclose taxpayer return information that can be associated with any particular taxpayer or competitive or proprietary information, and

(B) if necessary to protect taxpayer return information, may combine information required with respect to individual population census tracts into larger geographic areas.

(5) DEFINITIONS.—Any term used in this subsection which is also used in subchapter Z of chapter 1 of the Internal Revenue Code of 1986 shall have the meaning given such term under such subchapter.

(6) REPORTS ON QUALIFIED RURAL OPPORTUNITY FUNDS.—The Secretary shall make publicly available, with respect to qualified rural opportunity funds, separate reports as required under this subsection, applied—

(A) by substituting "qualified rural opportunity" for "qualified opportunity" each place it appears, and

(B) by substituting "the Small Business Jobs Act" for "Public Law 115–97".

I. SUMMARY AND BACKGROUND

A. PURPOSE AND SUMMARY

The bill, H.R. 3937, the "Small Business Jobs Act," as ordered reported by the Committee on Ways and Means on June 13, 2023, provides tax and administration relief for American workers and small businesses.

B. BACKGROUND AND NEED FOR LEGISLATION

This bill provides new measures designed to help small businesses navigate price spikes, worker shortages, and supply chain failures in the current economy. The legislation, called the "Small Business Jobs Act," cuts IRS red tape for small businesses and gig workers, helps small businesses raise capital, drives more investment and growth with new expensing provisions, and helps rural communities thrive.

ELIMINATES HEADACHES AND UNNECESSARY COSTS FOR SMALL BUSINESSES BY FIXING AN IRS REPORTING RULE THAT HAS NOT BEEN INFLATION-ADJUSTED IN ALMOST 70 YEARS

Currently, business owners are required to send tax forms to contractors that provide more than $600 of work to their business.

In the Ways and Means Committee field hearing in Peachtree City, Georgia, a small business owner reminded Congress that those rules have remained unchanged since 1954.

This provision offers relief to American workers and small businesses by increasing the reporting threshold for subcontract labor from $600 to $5,000.

STOPS THE ATTACK ON THE GIG ECONOMY AND ORDINARY AMERICANS BY REPEALING DEMOCRATS' NEW RULE THAT HAS THE IRS TARGETING THOSE WHO USE THIRD PARTY PLATFORMS AND CASH APPS FOR GIG WORK OR TO SELL ITEMS LIKE USED FURNISHING AND EVENT TICKETS

In 2021, Democrats reduced the IRS reporting threshold for these transactions from $20,000 to $600.

The Biden Administration knows this rule is unfair and unworkable, which is why they have already delayed implementation for 2023.

Repealing this rule will ensure Americans aren't saddled with a mountain of paperwork, confusion, or taxes that they don't owe.

INCREASES U.S. INNOVATION AND JOBS BY EXPANDING A CURRENT TAX INCENTIVE TO INCLUDE INVESTORS IN SMALL BUSINESSES AND STARTUPS ORGANIZED AS S CORPORATIONS

Currently, these tax benefits are available only to investors in companies organized as C Corporations—leaving out S Corporations, which represent nearly half of all U.S. business entities.

According to U.S. Census data, startup companies less than five years old create the majority of net new jobs in our economy, creating 1.7 million jobs per year.

ENCOURAGES INVESTMENT IN NEW EQUIPMENT AND PRODUCTION CAPACITY BY INCREASING IMMEDIATE EXPENSING FOR SMALL BUSINESSES TO $2.5 MILLION

Builds on a successful policy from the 2017 tax reform law, which doubled the small business expensing limit from $500,000 to $1 million.

With this provision, small businesses like farms and machine shops can afford new equipment and expand their businesses. Their investment raises productivity, boosts wages, and creates more jobs.

DELIVERS GREATER ECONOMIC DEVELOPMENT AND OPPORTUNITY WITH A NEW RURAL OPPORTUNITY ZONE PROGRAM THAT WILL REVITALIZE STRUGGLING COMMUNITIES

Opportunity Zones (OZs) were a major success from the 2017 tax reform law. They attracted investment and jobs to low-income communities across the country that were struggling to attract investment and capital.

While being the largest economic development program, investments have tended toward urban areas, which received 95 percent of OZ investment.

This provision will allow rural communities to benefit from the same recovery and development that OZs have delivered to urban areas.

C. Legislative History

Background

H.R. 3937 was introduced on June 9, 2023, and was referred to the Committee on Ways and Means.

Committee Hearings

On February 6, 2023, the Committee held a Field Hearing on the State of the American Economy: Appalachia in Petersburg, West Virginia.

On March 7, 2023, the Committee held a Field Hearing on the State of the American Economy: The Heartland in Yukon, Oklahoma.

On April 21, 2023, the Committee held a Field Hearing on the State of the American Economy: The South in Peachtree, Georgia.

Committee Action

The Committee on Ways and Means marked up H.R. 3937, the "Small Business Jobs 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. 3937:

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 21, 2023, entitled, "the State of the American Economy: The South".

II. EXPLANATION OF THE BILL

A. Increase in Threshold for Requiring Information Reporting With Respect to Certain Payees (sec. 2 of the bill and secs. 6041, 6041A, and 3406(b)(6) of the Code)

PRESENT LAW

Information reporting requirements

Present law requires persons to file an information return concerning certain transactions with other persons.[1] The person filing an information return (the "payor") is also required to provide the person for whom the information return is being filed (the "payee")

[1] Secs. 6041 through 6050Y.

with a written statement showing the information that was reported to the Internal Revenue Service ("IRS"), which generally includes aggregate payments made, and the contact information for the payor.[2] These returns are intended to assist taxpayers in preparing their income tax returns and to help the IRS determine whether such income tax returns are correct and complete.

For example, every person engaged in a trade or business who makes certain payments aggregating $600 or more in any taxable year to a single payee in the course of such trade or business must report those payments to the IRS.[3] This requirement applies to fixed or determinable payments of income as well as nonemployee compensation, generally reported on either Form 1099–MISC, *Miscellaneous Information*, or Form 1099–NEC, *Nonemployee Compensation*. In addition, any service recipient engaged in a trade or business and paying for services is required to make a return according to regulations when the aggregate of payments is $600 or more.[4] Government entities are specifically required to make an information return, reporting payments to corporations as well as individuals.[5]

However, these provisions discussed above do not cover payments for goods or certain enumerated types of payments that are subject to other specific reporting requirements, such as provisions covering dividends, interest, and royalties.[6] Treasury regulations generally provide further exceptions from the reporting of payments to corporations, exempt organizations, governmental entities, international organizations, and retirement plans.[7]

A person who is required to file information returns but who fails to do so by the due date for the returns, or includes on the returns incorrect information, or files incomplete returns generally is subject to a penalty of $250 for each return with respect to which such failure occurs, up to a maximum of $3,000,000 in any calendar year, adjusted for inflation.[8] Similar penalties apply to failures to furnish correct written statements to recipients of payments for which information reporting is required.[9] The failure to file and failure to furnish penalties are reduced for small businesses [10] and increased for failures due to intentional disregard.[11]

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[2] See, *e.g.*, sec. 6041(d).
[3] Sec. 6041.
[4] Sec. 6041A.
[5] Sec. 6041A(d)(3)(A).
[6] Section 6041(a) generally excepts from its scope most interest, royalties, and dividends, which are instead covered by sections 6049, 6050N, and 6042, respectively.
[7] Treas. Reg. sec. 1.6041–3. Certain for-profit health care provider corporations are not covered by this general exception, including those organizations providing billing services for such companies.
[8] Sec. 6721. These amounts are adjusted annually for inflation. For information returns required to be filed in calendar year 2023, the penalty amount is $290, up to a maximum of $3,532,500 per calendar year. For information returns required to be filed in calendar year 2024, the penalty amount is $310, up to a maximum of $3,783,000 per calendar year. The penalties are reduced if the failure is corrected within a specified amount of time. Sec. 6721(b). The penalties are waived if a person establishes that any failure was due to reasonable cause and not willful neglect. Sec. 6724(a).
[9] Sec. 6722. These amounts are also adjusted annually for inflation. For information statements required to be filed in calendar year 2023, the penalty amount is $290, up to a maximum of $3,532,500 per calendar year. For information statements required to be filed in calendar year 2024, the penalty amount is $310, up to a maximum of $3,783,000 per calendar year. The penalties are reduced if the failure is corrected within a specified amount of time. Sec. 6722(b). The penalties are waived if a person establishes that any failure was due to reasonable cause and not willful neglect. Sec. 6724(a).
[10] Secs. 6721(d) and 6722(d).
[11] Secs. 6721(e) and 6722(e).

Backup withholding

Generally, a payor is not required to withhold taxes from payments to the payee. However, a payor may be required to deduct and withhold income tax on certain "reportable payments" at a rate equal to 24 percent[12] if: (1) the payee fails to furnish his or her taxpayer identification number ("TIN") to the payor; (2) the IRS notifies the payor that the payee's TIN is incorrect; (3) a notified payee underreporting of reportable payments has occurred; or (4) a payee certification failure with respect to reportable payments has occurred.[13] The requirement to deduct and withhold in the case of a notified payee underreporting, or a payee certification failure, applies solely to reportable interest or dividend payments. These deduction and withholding requirements[14] are referred to as backup withholding.

Reportable payments are defined as any reportable interest or dividend payment and any other reportable payment.[15] A reportable interest or dividend payment means any payment of a kind, and to a payee, required to be shown on an information return required under any of the following sections: (i) 6049(a), relating to payments of interest, (ii) 6042(a), relating to payments of dividends, or (iii) 6044, relating to payments of patronage dividends, but only to the extent such payment is in money and only if 50 percent or more of such payment is in money. Any other reportable payment means any payment of a kind, and to a payee, required to be shown on a return required under any of the following sections: (i) 6041, relating to certain information at source, (ii) 6041A(a), relating to payments of remuneration for services, (iii) 6045, relating to returns of brokers, (iv) 6050A, relating to reporting requirements of certain fishing boat operators, but only to the extent such payment is in money and represents a share of the proceeds of the catch, (v) 6050N, relating to payments of royalties, or (vi) 6050W, relating to payments made in settlement of payment card and third party settlement transactions. Examples of payments that may be subject to backup withholding include interest, dividends, rents, royalties, commissions, non-employee compensation, and broker payments.

In general, a payment is determined to be a reportable payment, and therefore subject to backup withholding, without regard to any minimum amount that must be paid before an information return is required under the applicable information reporting statute.[16]

For payments required to be shown on a return under section 6041(a) or 6041A(a), relating to certain information at the source and payments of remuneration for services, a minimum amount generally must be paid before the payment is subject to backup withholding.[17] Such payments are treated as reportable payments, and therefore subject to backup withholding, only if (i) the aggregate amount of such payment and all previous payments described in section 6041(a) or 6041A(a) by the payor to the payee during such calendar year equals or exceeds $600, (ii) the payor was re-

[12] Sec. 3406(a)(1)(D). The backup withholding rate is the fourth lowest rate of tax applicable under section 1(c). In 2023, this rate is 24 percent.
[13] Sec. 3406(a)(1).
[14] Sec. 3406.
[15] Sec. 3406(b).
[16] Sec. 3406(b)(4).
[17] Sec. 3406(b)(6).

quired under section 6041(a) or 6041A(a) to file an information return for the preceding calendar year with respect to payments to the payee, or (iii) during the preceding calendar year, the payor made reportable payments to the payee with respect to which amounts were required to be deducted and withheld under the backup withholding requirements. Backup withholding generally applies only to payments made to U.S. persons who have failed to provide the payor with a valid IRS Form W–9, *Request for Taxpayer Identification Number and Certification*; however, it may also apply to certain payments made to persons in the absence of valid documentation of foreign status. Backup withholding does not apply to payments made to exempt recipients, including tax-exempt organizations, government entities, and certain other entities.[18] Thus, a payor of reportable payments generally must request that a U.S. payee (other than certain exempt recipients) furnish a Form W–9 providing that person's name and TIN.[19]

REASONS FOR CHANGE

The Committee notes that the thresholds for third party information reporting have not been fundamentally reviewed or adjusted for inflation since 1954. The Committee also notes that the penalties for failure to properly report are adjusted for inflation. The Committee believes that the compliance objectives of third party information reporting must be balanced with the resulting additional administrative burden, specifically that placed on small businesses. Thus, the Committee believes it is necessary to modernize the information reporting regime by updating the reporting thresholds to keep up with inflation and provide some relief for small businesses and individuals subject to these rules.

EXPLANATION OF PROVISION

The provision 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 provision 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. Under the provision, both the information reporting thresholds and the backup withholding thresholds are for transactions that equal or exceed $5,000 (indexed for inflation for calendar years after 2024).

EFFECTIVE DATE

The provision applies with respect to payments made after December 31, 2023.

[18] Sec. 3406(g); Treas. Reg. sec. 31.3406(g)–1.
[19] Treas. Reg. sec. 31.3406(h)–3.

B. Restoration of Reporting Rule for Third Party Network Transactions (sec. 3 of the bill and sec. 6050W(e) of the Code)

PRESENT LAW

Present law requires persons to file an information return concerning certain transactions with other persons.[20] The person filing an information return is also required to provide the person for whom the information return is being filed with a written statement showing the information that was reported to the IRS, which generally includes aggregate payments made, and the contact information for the payor.[21] These returns are intended to assist taxpayers in preparing their income tax returns and to help the IRS determine whether such income tax returns are correct and complete.

Returns relating to payments made in settlement of payment card and third party network transactions

Since 2012 (for payments received in 2011), payment settlement entities are required to report to the IRS and to businesses that receive these payments the gross amount of payments made in settlement of payment card transactions and third party network transactions.[22]

Specifically, any payment settlement entity making a payment to a participating payee in settlement of reportable payment transactions must report annually to the IRS and to the participating payee the gross amount of such reportable payment transactions, as well as the name, address, and TIN of the participating payee.[23] A "reportable payment transaction" means any payment card transaction and any third party network transaction.[24]

A "payment settlement entity" means, in the case of a payment card transaction, a merchant acquiring entity (defined below) and, in the case of a third party network transaction, the third party settlement organization.[25] A "participating payee" means, in the case of a payment card transaction, any person who accepts a payment card as payment and, in the case of a third party network transaction, any person who accepts payment from a third party organization in settlement of such transaction.[26] A "person" includes a governmental unit. A "person" generally does not include someone with a foreign address.[27]

Returns relating to payments made in settlement of payment card transactions

For purposes of the reporting requirement, the term "merchant acquiring entity" means a bank or other organization with the contractual obligation to make payment to participating payees in settlement of payment card transactions.[28] A "payment card trans-

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[20] Secs. 6041 through 6050Y.
[21] See, *e.g.*, sec. 6041(d).
[22] Sec. 6050W; Pub. L. No. 110–289 (2008), sec. 3091(a) enacted sec. 6050W, effective generally for returns for calendar years beginning after December 31, 2010.
[23] Sec. 6050W(a).
[24] Sec. 6050W(c)(1).
[25] Sec. 6050W(b).
[26] Sec. 6050W(d)(1).
[27] Sec. 6050W(d)(1)(B) and (C).
[28] Sec. 6050W(b)(2).

action" means any transaction in which a payment card is accepted as payment.[29] A "payment card" is defined as any card (*e.g.,* a credit card or debit card) which is issued pursuant to an agreement or arrangement which provides for: (1) one or more issuers of such cards; (2) a network of persons unrelated to each other, and to the issuer, who agree to accept such cards as payment; and (3) standards and mechanisms for settling the transactions between the merchant acquiring entities and the persons who agree to accept such cards as payment.[30] Thus, a bank that enrolls a business to accept credit cards and contracts with the business to make payment on credit card transactions must report to the IRS the business's gross credit card transactions for each calendar year on a Form 1099–K, *Payment Card and Third Party Network Transactions.* The bank also must provide a copy of the information return to the business.

Returns relating to payments made in settlement of third party network transactions

The statute also requires reporting on a third party network transaction. The term "third party network transaction" means any transaction which is settled through a third party payment network.[31] A "third party payment network" is defined as any agreement or arrangement: (1) that involves the establishment of accounts with a central organization by a substantial number of persons (generally considered to be more than 50) who are unrelated to such organization, provide goods or services, and agree to settle transactions for the provision of such goods or services pursuant to such agreement or arrangement; (2) that provides for standards and mechanisms for settling such transactions; and (3) that guarantees persons providing goods or services pursuant to such agreement or arrangement will be paid for providing such goods or services.[32]

In the case of a third party network transaction, the payment settlement entity is the third party settlement organization, which is defined as the central organization which has the contractual obligation to make payment to participating payees of third party network transactions.[33] Thus, an organization generally is required to report if it provides a network enabling buyers to transfer funds to sellers who have established accounts with the organization and have a contractual obligation to accept payment through the network. However, an organization operating a network which merely processes electronic payments (such as wire transfers, electronic checks, and direct deposit payments) between buyers and sellers, but does not have contractual agreements with sellers to use such network, is not required to report. Similarly, an agreement to transfer funds between two demand deposit accounts will not, by itself, constitute a third party network transaction.

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[29] For this purpose, the acceptance as payment of any account number or other indicia associated with a payment card also qualifies as a payment card transaction.
[30] Sec. 6050W(d)(2).
[31] Sec. 6050W(c)(3).
[32] Sec. 6050W(d)(3).
[33] Sec. 6050W(b)(3).

De minimis payment exception

A third party payment network does not include any agreement or arrangement that provides for the issuance of payment cards as defined by the provision.[34] In addition, there is an exception for *de minimis* payments that applies to payments made by third party settlement organizations but not to payments made by merchant acquiring entities. For calendar years beginning after December 31, 2021, a third party settlement organization is required to report third party network transactions with any participating payee that exceed a minimum threshold of $600 in aggregate payments.[35] There is not a threshold requirement for the number of transactions. In addition, third party network transactions only include transactions for the provision of goods or services. Reporting is not required for other transactions, including personal gifts, charitable contributions, and reimbursements.

The previous exception for de minimis payments for calendar years beginning prior to January 1, 2022, provided that a third party settlement organization was 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.

Rules regarding reporting requirements

There are also reporting requirements on intermediaries who receive payments from a payment settlement entity and distribute such payments to one or more participating payees.[36] Such intermediaries are treated as participating payees with respect to the payment settlement entity and as payment settlement entities with respect to the participating payees to whom the intermediary distributes payments. Thus, for example, in the case of a corporation that receives payment from a bank for credit card sales conducted at the corporation's independently-owned franchise stores, the bank is required to report to the corporation and to the IRS the gross amount of reportable payment transactions settled with respect to the corporation (notwithstanding the fact that the corporation does not accept payment cards and would not otherwise be treated as a participating payee). In turn, the corporation, as an intermediary, is required to report the gross amount of reportable payment transactions allocable to each franchise store. The bank has no reporting obligation with respect to payments made by the corporation to its franchise stores.

In addition, if a payment settlement entity contracts with a third-party facilitator to settle reportable payment transactions on behalf of the payment settlement entity, the third party facilitator is required to file the annual information return in lieu of the payment settlement entity.[37]

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[34] Sec. 6050W(d)(3).

[35] Sec. 6050W(e); Pub. L. No. 117–2, Title IX, sec. 9674, March 11, 2021, amending sec. 6050W(e), effective generally for returns for calendar years beginning after December 31, 2021. The Internal Revenue Service allowed third-party settlement organizations to delay implementation of the $600 aggregate payment threshold for calendar years beginning before January 1, 2023 under Notice 2023–10, 2023–3 I.R.B. 403, January 17, 2023.

[36] Sec. 6050W(b)(4).

[37] Sec. 6050W(b)(4)(B); Treas. Reg. sec. 1.6050W–1(d)(2).

The payment settlement entity is required to file information returns to the IRS on or before February 28 (March 31 if filing electronically) of the year following the calendar year for which the returns must be filed.[38] Statements are required to be furnished to the participating payees on or before January 31 of the year following the calendar year for which the return was required to be made.[39]

The Secretary has exercised authority under these rules to issue guidance to implement the reporting requirement, including rules to prevent the reporting of the same transaction more than once.[40]

The reportable payment transactions subject to information reporting generally are subject to backup withholding requirements. In addition, the information reporting penalties apply for any failure to file a correct information return or furnish a correct payee statement with respect to the reportable payment transactions. Any person who is required to file an information return or furnish a payee statement but who fails to do so on or before the prescribed due date is subject to a penalty that varies based on when, if at all, the correct information return is filed or furnished. Penalties are imposed for failure to file the information return,[41] or furnish payee statements.[42] No penalty is imposed if the failure is due to reasonable cause.[43] Both the failure to file and failure to furnish penalties are adjusted annually to account for inflation.

REASONS FOR CHANGE

The Committee believes that the previous de minimis reporting threshold should be reinstated because the lower threshold means that millions of individuals will receive Form 1099–Ks for the first time next year—often in instances where there is no tax liability, creating significant confusion and administrative challenges. For example, selling a used piece of furniture for less than the original purchase price will not create any taxable income. However, the Committee notes that these transactions may trigger reporting requirements if the previous threshold is not reinstated, yielding confusion for online platforms and taxpayers, which could result in overreporting of income and therefore overpayment of taxes as well as ineligibility for certain tax benefits. The Committee believes reverting back to the previous reporting threshold is necessary to prevent numerous individuals from having to hire tax professionals and keep onerous records and receipts or from being misled into thinking the arrival of a Form 1099–K represents taxable income they must report.

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[38] Treas. Reg. sec. 1.6050W–1(g). Taxpayers that file these information returns that report reportable payment transactions are entitled to a 30-day automatic extension of time to file. Treas. Reg. sec. 1.6081–8(a) (effective for requests for extension of time to file certain information returns due after December 31, 2016).

[39] Sec. 6050W(f); Treas. Reg. sec. 1.6050W–1(h).

[40] Treas. Reg. sec. 1.6050W–1(a)(4)(ii).

[41] Sec. 6721.

[42] Sec. 6722. Section 6723 also imposes a penalty for failure to comply timely with a specified information reporting requirement. However, this penalty applies in narrow circumstances and is unlikely to apply to payment settlement entities under section 6050W. See Treas. Reg. sec. 301.6723–1(a)(4).

[43] Sec. 6742(a).

EXPLANATION OF PROVISION

The provision 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.

The obligations of a merchant acquiring entity are unchanged. For example, if a business that provides a web-based rental platform for short-term travelers is considered a third party settlement organization, it does not have to provide a Form 1099–K to property owners participating on its web-based platform who have received payments of $20,000 or less. Alternatively, if a company is considered a merchant acquiring entity, it must issue a Form 1099–K to all participating payees who have received payments of any amount starting with the first dollar.

EFFECTIVE DATE

The provision applies to returns for calendar years beginning after December 31, 2021.

C. MODIFICATIONS TO EXCLUSION FOR GAIN FROM QUALIFIED SMALL BUSINESS STOCK (SEC. 4 OF THE BILL AND SEC. 1202 OF THE CODE)

PRESENT LAW

Exclusion for gain on sale of qualified small business stock

In general

A taxpayer other than a corporation may exclude a percentage of the gain from the sale of qualified small business stock acquired at original issue and held for at least five years.[44] In general, the percentage is 50 percent (60 percent for certain empowerment zone businesses) except as described below. The amount of gain eligible for the exclusion by an individual with respect to the stock of any C corporation is the greater of (1) ten times the taxpayer's basis in the stock, or (2) $10 million (reduced by the amount of eligible gain excluded by the taxpayer in prior years).[45] Accordingly, the amount of the exclusion as a percentage of cost basis is phased out for individuals who acquire more than $1 million of the qualified small business stock of any issuer. To qualify as a small business, before and immediately after the issuance, the aggregate gross assets (*i.e.,* cash plus aggregate adjusted basis of other property) held by the corporation may not exceed $50 million.[46] The corporation also must meet certain active trade or business requirements.[47] Only C corporation stock may qualify as qualified small business stock.[48] These rules are discussed further below.

The portion of the gain includible in taxable income is taxed at a maximum rate of 28 percent under the regular tax rates applica-

[44] Sec. 1202(a)(1) and (2) and 1202(b)(2).
[45] Sec. 1202(b)(1).
[46] Sec. 1202(d)(1)(A), (B).
[47] Sec. 1202(c)(2).
[48] Sec. 1202(c)(1).

ble to the net capital gain of individuals.[49] Seven percent of the excluded gain is an alternative minimum tax ("AMT") preference.[50]

Special rules for certain stock acquired after February 17, 2009

For qualified small business stock acquired after February 17, 2009, and before September 28, 2010, the percent of gain which may be excluded is increased to 75 percent ("75-percent exclusion rule").[51]

100-percent exclusion for certain stock acquired after September 27, 2010

For qualified small business stock acquired after September 27, 2010, the percent of gain which may be excluded is increased to 100 percent and the AMT preference does not apply ("100-percent exclusion rule").[52]

Rollover of gain from sale of small business stock

An individual may elect to roll over tax-free any gain realized on the sale of qualified small business stock held more than six months to the extent of the taxpayer's cost of purchasing other qualified small business stock within 60 days of the sale.[53]

Qualified small business and active business requirements

A qualified small business for purposes of the section 1202 exclusion means a domestic C corporation whose aggregate gross assets at all times after August 10, 1993, and before the issuance of the stock, do not exceed $50 million, and whose aggregate gross assets immediately after the stock issuance (taking into account amounts received in the issuance) does not exceed $50 million.[54]

Stock in a corporation is not treated as qualified small business stock unless (during substantially all of the taxpayer's holding period for the stock) the corporation meets active business requirements and is a C corporation.[55] The active business requirements[56] are met by a corporation[57] for any period if during the period the corporation uses at least 80 percent by value of its assets in the active conduct of one more qualified trades or businesses, which are defined by exclusion.[58]

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[49] Sec. 1(h)(4), (7).
[50] Sec. 57(a)(7).
[51] Sec. 1202(a)(3).
[52] Sec. 1202(a)(4). Qualified stock in empowerment zone businesses acquired after September 27, 2010, is subject to the 100-percent exclusion rule instead of the 60-percent exclusion rule. See sec. 1202(a)(4)(B).
[53] Sec. 1045(a).
[54] Sec. 1202(d). Aggregate gross assets means cash and the aggregated adjusted bases of other property of the corporation. Aggregation rules provide that all corporations that are members of the same parent-subsidiary controlled group are treated as one corporation for purposes of section 1202(d). A parent-subsidiary controlled group is defined by reference to section 1563(a), except that "more than 50 percent" is substituted for "at least 80 percent" in section 1563(a)(1) and section 1563(a)(4) does not apply. Sec. 1202(d)(3)(B).
[55] Sec. 1202(c)(2).
[56] Sec. 1202(e).
[57] It must be an eligible corporation, meaning it is not a domestic international sales corporation ("DISC") or former DISC, regulated investment company ("RIC"), real estate investment trust ("REIT"), real estate mortgage investment conduit ("REMIC"), or cooperative. Sec. 1202(e)(4).
[58] Excluded trades or businesses are: (A) any trade or business involving the performance of services in the fields of health, law, engineering, architecture, accounting, actuarial science, performing arts, consulting, athletics, financial services, brokerage services, or any trade or busi-

Continued

REASONS FOR CHANGE

The Committee recognizes that the qualified small business stock gain exclusion under section 1202 promotes the formation of new startup companies. According to the Business Dynamics Statistics (BDS) dataset maintained by the U.S. Census Bureau which tracks all U.S. companies over time, startup companies less than five years old have consistently created more than 1.7 million net new jobs per year, in contrast to older firms which (although these older firms employ more people) have tended to reduce employment on a net basis. In addition to creating a substantial number of net new jobs, startup companies founded within the last 30 to 50 years have become a substantial contributor to U.S. gross domestic product, employing millions of individuals. Through widespread ownership of these older startup companies' stock in retirement savings vehicles, the growth of these companies has benefited millions of Americans in retirement. The Committee believes that the rules under current law have not kept pace with the business startup ecosystem and recognizes the need to expand eligibility for the qualified small business stock gain exclusion.

The Committee believes that expanding eligibility for the qualified small business stock gain exclusion to more businesses will promote the formation of startup companies, lower the cost of financing for startup companies, create net new American jobs, and encourage innovation.

EXPLANATION OF PROVISION

The provision makes three modifications to the section 1202 gain exclusion.

Phased increase in exclusion for gain from qualified small business stock

The first modification shortens the holding period required to exclude any gain from the sale of qualified small business stock acquired after the date of enactment of the provision and allows 50 percent, 75 percent, or 100 percent of the gain to be excluded, depending on the holding period of the stock. Specifically, the exclusion percentage is 50 percent for such qualified small business stock held for at least three years, 75 percent for such qualified small business stock held for at least four years, and 100 percent for such qualified small business stock held for five years or more. Further, in the case of such qualified small business stock, the AMT preference[59] does not apply. The applicable percentages of gain which may be excluded are as follows.

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ness where the principal asset of such trade or business is the reputation or skill of one or more of its employees; (B) any banking, insurance, financing, leasing, investing, or similar business; (C) any farming business; (D) any business involving the production or extraction of products of a character with respect to which a deduction is allowable under section 613 or 613A; and (E) any business of operating a hotel, motel, restaurant, or similar business. Sec. 1202(e)(3).

[59] Alternative minimum taxable income ("AMTI") is equal to a taxpayer's regular taxable income modified by AMT tax preference items and various AMT adjustments. AMT tax preference items are deductions or exclusions that are allowed in computing regular taxable income but that are not allowed in computing AMTI (for example, the exclusion of gain from qualified small business stock). Secs. 55, 56, 57, and 58.

Stock acquisition date	Holding period	Exclusion percentage	AMT preference applies?
After the date of enactment of the provision	At least three years	50 percent	No
	At least four years	75 percent	No
	Five years or more	100 percent	No
After September 27, 2010, and on or before the date of enactment of the provision.	More than five years	100 percent	No
After February 17, 2009, and before September 28, 2010.	More than five years	75 percent	Yes
Before February 18, 2009	More than five years	50 percent [1]	Yes

[1] 60 percent for certain empowerment zone businesses.

Tacking holding period of convertible debt instruments

The second modification provides a holding period tacking rule with respect to a qualified convertible debt instrument. In the case of stock in a corporation acquired by the taxpayer without gain recognition solely through the conversion of a qualified convertible debt instrument, the stock is treated as having been held during the period that the qualified convertible debt instrument was held. If the bond or other evidence of indebtedness that is so converted is a qualified convertible debt instrument, then the stock so acquired is treated as qualified small business stock in the hands of the taxpayer. To be a qualified convertible debt instrument, a bond or other evidence of indebtedness must meet the requirements that it is originally issued by the corporation to the taxpayer and that it is convertible into stock of the corporation. It must also meet the requirements that the issuer of the bond or other evidence of indebtedness is a qualified small business from issuance until conversion, and that during substantially all of the period that the taxpayer holds the bond or evidence of indebtedness, the corporation meets the section 1202 active business requirements.

Gain exclusion allowed with respect to qualified small business stock in S corporations

The third modification under the provision extends the exclusion for section 1202 gains to stock in S corporations. Thus, stock of an S corporation can be qualified small business stock under section 1202 if the requirements of such section are met. Ownership of S corporation stock is taken into account in determining the aggregate gross assets of a controlled group of corporations.[60] If gain is excluded under section 1202 upon disposition of S corporation stock, the disposition is not a fully taxable transaction for purposes of the passive loss rule for dispositions of an entire interest in any passive activity.[61] Thus, suspended losses from the S corporation will not be allowed in full when the taxpayer disposes of the S corporation stock and excludes any gain under section 1202. The requirements of section 1202 are applied at the S corporation level.

[60] Sec. 1202(d)(1)–(3).

[61] Sec. 469(g)(1)(A). The passive loss rules of section 469 limit deductions and credits from passive trade or business activities. They apply to individuals, estates and trusts, and closely-held corporations. Deductions attributable to passive activities, to the extent they exceed income from passive activities, generally may not be deducted against other income. Sec. 469(a) and (d). Deductions and credits that are suspended under these rules are carried forward and treated as deductions and credits from passive activities in the next year. Sec. 469(b). The suspended losses from a passive activity are allowed in full when a taxpayer disposes of his entire interest in the passive activity to an unrelated person. Sec. 469(g).

EFFECTIVE DATE

The provision relating to the phased increase in the gain exclusion percentage is generally effective for stock acquired after the date of enactment. However, the continued exclusion of gain from the sale of qualified small business stock from treatment as an AMT preference is effective as if included in the enactment of section 2011 of the Creating Small Business Jobs Act of 2010[62] (*i.e.,* for stock issued after September 27, 2010).

The provision relating to tacking the holding period of certain convertible debt instruments is effective for debt instruments originally issued after the date of enactment.

The provision relating to allowing the section 1202 exclusion for gain on certain stock of an S corporation is effective for stock acquired after the date of enactment.

D. INCREASE IN LIMITATIONS ON EXPENSING OF DEPRECIABLE BUSINESS ASSETS (SEC. 5 OF THE BILL AND SEC. 179 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 such cost over time through annual deductions for depreciation or amortization.[63] The period for depreciation or amortization generally begins when the asset is placed in service by the taxpayer.[64] 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.[65]

Election to expense certain depreciable business assets

Subject to certain limitations, a taxpayer may elect under section 179 to deduct (or "expense") the cost of qualifying property, rather than to recover such costs through depreciation deductions.[66] The maximum amount a taxpayer may expense is $1,000,000 of the cost of qualifying property placed in service for the taxable year.[67] The $1,000,000 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 $2,500,000.[68]

The $1,000,000 and $2,500,000 amounts are indexed for inflation for taxable years beginning after 2018.[69] For taxable years beginning in 2023, the total amount that may be expensed is $1,160,000,

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[62] Title II of Pub. L. No. 111–240, September 27, 2010.

[63] 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.

[64] 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).

[65] Sec. 168.

[66] In the case of property purchased and placed in service by a partnership (or S corporation), the determination of whether the property is section 179 property is made at the partnership (or corporate) level, and the election to expense is made by the partnership (or S corporation). Treas. Reg. sec. 1.179–1(h).

[67] Sec. 179(b)(1).

[68] Sec. 179(b)(2).

[69] Sec. 179(b)(6).

and the phase-out threshold amount is $2,890,000.[70] For example, assume that during 2023 a calendar year taxpayer purchases and places in service $4,000,000 of section 179 property. The $1,160,000 section 179(b)(1) dollar amount for 2023 is reduced by the excess section 179 property cost amount of $1,110,000 ($4,000,000–$2,890,000). The taxpayer's 2023 section 179 expensing limitation is $50,000 ($1,160,000–$1,110,000).[71]

In general, qualifying property is defined as depreciable tangible personal property, off-the-shelf computer software, and qualified real property[72] that is purchased for use in the active conduct of a trade or business.[73] Qualifying property excludes any property described in section 50(b) (other than paragraph (2) thereof[74]).[75]

Qualified real property includes (1) qualified improvement property[76] and (2) any of the following improvements to nonresidential real property that are placed in service by the taxpayer after the date such nonresidential real property was first placed in service: roofs; heating, ventilation, and air-conditioning ("HVAC") property;[77] fire protection and alarm systems; and security systems.[78]

Passenger automobiles subject to the section 280F limitation are eligible for section 179 expensing only to the extent of the dollar limitations in section 280F.[79] For sport utility vehicles above the 6,000 pound weight rating and not more than the 14,000 pound weight rating, which are not subject to the limitation under section 280F, the maximum cost that may be expensed for any taxable year under section 179 is $25,000 (the "sport utility vehicle limitation").[80] The $25,000 amount is indexed for inflation for taxable years beginning after 2018. For taxable years beginning in 2023, the sport utility vehicle limitation is $28,900.[81]

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[70] Section 3.25 of Rev. Proc. 2022–38, 2022–45 I.R.B. 445.

[71] The taxpayer's remaining basis in the property may be eligible for bonus depreciation under section 168(k). See Treas. Reg. sec. 1.168(k)–1(a)(2)(iii).

[72] At the election of the taxpayer. Sec. 179(d)(1)(B)(ii). See sec. 3.02 of Rev. Proc. 2019–08, 2019–03 I.R.B. 347, for guidance regarding the election to treat qualified real property as section 179 property.

[73] Sec. 179(d)(1). If section 179 property is not used predominantly in a trade or business of the taxpayer at any time before the end of its recovery period, recapture rules apply. See sec. 179(d)(10) and Treas. Reg. sec. 1.179–1(e).

[74] Thus, section 179 property includes certain depreciable tangible personal property used predominantly to furnish lodging or in connection with furnishing lodging (e.g., beds and other furniture, refrigerators, ranges, and other equipment used in the living quarters of a lodging facility such as an apartment house, dormitory, or any other facility (or part of a facility) where sleeping accommodations are provided and let). See Treas. Reg. sec. 1.48–1(h).

[75] Sec. 179(d)(1) flush language. Property described in section 50(b) (other than paragraph (2) thereof) is generally property used outside the United States, property used by certain tax-exempt organizations, and property used by governmental units and foreign persons or entities (i.e., certain property not eligible for the investment tax credit).

[76] As defined in sec. 168(e)(6).

[77] HVAC property includes all components (whether in, on, or adjacent to the building) of a central air conditioning or heating system, including motors, compressors, pipes and ducts. Treas. Reg. sec. 1.48–1(e)(2). See also sec. 3.01(1)(b)(iii)(B) of Rev. Proc. 2019–08, 2019–03 I.R.B. 347.

[78] Sec. 179(e).

[79] For a description of section 280F, see Joint Committee on Taxation, *General Explanation of Public Law* 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.

[80] Sec. 179(b)(5). For this purpose, a sport utility vehicle is defined to exclude any vehicle that: (1) is designed for more than nine individuals in seating rearward of the driver's seat; (2) is equipped with an open cargo area, or a covered box not readily accessible from the passenger compartment, of at least six feet in interior length; or (3) has an integral enclosure, fully enclosing the driver compartment and load carrying device, does not have seating rearward of the driver's seat, and has no body section protruding more than 30 inches ahead of the leading edge of the windshield.

[81] Section 3.25 of Rev. Proc. 2022–38, 2022–45 I.R.B. 445.

The amount eligible to be expensed for a taxable year may not exceed the taxable income for such taxable year that is derived from the active conduct of a trade or business (determined without regard to section 179).[82] Any amount that is not allowed as a deduction because of the taxable income limitation may be carried forward to succeeding taxable years (subject to limitations). In the case of a partnership (or S corporation), the section 179 limitations are applied at the partnership (or corporate) and partner (or shareholder) levels.[83]

Amounts expensed under section 179 are allowed for both regular tax and the alternative minimum tax.[84] However, no general business credit under section 38 is allowed with respect to any amount for which a deduction is allowed under section 179.[85] In addition, if a corporation makes an election under section 179 to deduct expenditures, the full amount of the deduction does not reduce earnings and profits. Rather, the expenditures that are deducted under section 179 reduce corporate earnings and profits ratably over a five-year period.[86]

An expensing election is made under rules prescribed by the Secretary.[87] In general, any election made under section 179, and any specification contained therein, may be revoked by the taxpayer with respect to any property without the consent of the Commissioner.[88] Such revocation, once made, is irrevocable.

REASONS FOR CHANGE

The Committee believes that section 179 expensing provides two important benefits for small businesses. First, it lowers the cost of capital for certain property used in a trade or business. With a lower cost of capital, the Committee believes that small businesses will invest in more equipment, expand their businesses, and employ more workers. Second, it eliminates depreciation record-keeping requirements with respect to expensed property. In order to increase the value of these benefits and the number of eligible taxpayers that may receive these benefits, the provision increases both the amount allowed to be expensed under section 179 and the amount of the phase-out threshold. In addition, in order to counteract the negative effect of inflation on the limit and phase-out threshold of this provision for small businesses, the provision indexes such amounts for inflation.

EXPLANATION OF PROVISION

The provision increases the maximum amount a taxpayer may expense under section 179 to $2,500,000, and increases the phase-out threshold amount to $4,000,000. Thus, the provision provides that the maximum amount a taxpayer may expense for taxable

[82] Sec. 179(b)(3). See also Treas. Reg. sec. 1.179–2(c)(6)(iv) (wages, salaries, tips, and other compensation received by a taxpayer as an employee are included in the taxpayer's aggregate amount of taxable income derived from the active conduct of a trade or business).

[83] Sec. 179(d)(8).

[84] See the Senate Finance Committee Report to Accompany H.R. 3838, Tax Reform Act of 1986, S. Rep. No. 99 313, May 29, 1985, p. 522. See also the Instructions for Form 6251, *Alternative Minimum Tax—Individuals* (2022), p. 5.

[85] Sec. 179(d)(9).

[86] Sec. 312(k)(3)(B).

[87] Sec. 179(c)(1). Such election may be made on an amended return. See sec. 3.02 of Rev. Proc. 2017–33, 2017–19 I.R.B. 1236; and sec. 3.02 of Rev. Proc. 2019–08, 2019–03 I.R.B. 347.

[88] Sec. 179(c)(2).

years beginning after 2023 is $2,500,000 of the cost of section 179 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 section 179 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.

For example, assume that during 2024 a calendar year taxpayer purchases and places in service $4,500,000 of section 179 property. The $2,500,000 section 179(b)(1) dollar amount for 2024 will be reduced by the excess section 179 property cost amount of $500,000 ($4,500,000–$4,000,000 limitation). Thus, the taxpayer's 2024 section 179 expensing limitation will be $2,000,000 ($2,500,000 dollar limitation–$500,000 excess). The remaining $2,500,000 ($4,500,000–$2,000,000 section 179 expense) may be eligible for bonus depreciation under section 168(k), depending on the types of assets placed in service.

EFFECTIVE DATE

The provision applies to property placed in service in taxable years beginning after December 31, 2023.

E. Establishment of Special Rules for Capital Gains Invested in Rural Opportunity Zones, and Reporting on Qualified Opportunity Funds and Qualified Rural Opportunity Funds (secs. 6 and 7 of the bill and new secs. 1400Z–3, 6039K, 6039L, and 6726 of the Code)

PRESENT LAW

Overview

Investments in qualified opportunity zones funds are entitled to three tax benefits, at the taxpayer's election: (1) a temporary deferral of the capital gain reinvested in the qualified opportunity zone (the "rollover gain"), (2) a permanent 10 or 15 percent reduction in the amount of such gain that must be recognized if the investment is held for five or seven years, respectively, and (3) a permanent exclusion of future gains resulting from the investment in the opportunity zone if the investment is held for at least 10 years.[89] To qualify, the rollover gain is generally required to be invested in the qualified opportunity fund during a 180-day period that begins on the date of the sale or exchange that generated the gain.

A qualified opportunity fund is an investment vehicle organized as a corporation or a partnership for the purpose of investing in qualified opportunity zone property. The number of communities designated as opportunity zones may be up to 25 percent of the total number of a State's low-income communities, as designated by the governor of a State.[90]

A taxpayer may elect to temporarily defer and partially exclude capital gains from gross income to the extent that the taxpayer invests the amount of those gains in a qualified opportunity fund. The maximum amount of the deferred gain is equal to the amount invested in a qualified opportunity fund by the taxpayer during the 180-day period beginning on the date of the asset sale that pro-

[89] Sec. 1400Z–2.
[90] Sec. 1400Z–1.

duced the gain to be deferred. Capital gains in excess of the deferred amount must be recognized and included in gross income as under present law.

In the case of any investment in a qualified opportunity fund, only a portion of which consists of the investment of gain with respect to which an election is made, such investment is treated as two separate investments, consisting of one investment that includes only amounts to which the election applies (herein "deferred-gain investment"), and a separate investment consisting of other amounts. The temporary deferral and permanent exclusion provisions do not apply to the separate investment. For example, if a taxpayer sells stock at a gain and invests the entire sales proceeds (capital and return of basis) in a qualified opportunity zone fund, an election may be made only with respect to the capital gain amount. No election may be made with respect to amounts attributable to a return of basis, and no special tax benefits apply to such amounts.

The basis of a deferred-gain investment in a qualified opportunity zone fund immediately after its acquisition is zero. If the deferred-gain investment in the qualified opportunity zone fund is held by the taxpayer for at least five years, the basis in the deferred-gain investment is increased by 10 percent of the original deferred gain. If the opportunity zone asset or investment is held by the taxpayer for at least seven years, the basis in the deferred gain investment is increased by an additional five percent of the original deferred gain. Some or all of the deferred gain is recognized on the earlier of (i) the date on which the qualified opportunity zone investment is disposed of, or (ii) December 31, 2026. The amount of gain recognized is the excess of (i) the lesser of the amount deferred or the current fair market value of the investment (taking into account any increases at the end of five or seven years), over (ii) the taxpayer's basis in the investment. The taxpayer's basis in the investment is increased by the amount of gain recognized. No election under the provision may be made after December 31, 2026, or with respect to a disposition if an election previously made is in effect.

The post-acquisition capital gains on deferred-gain investments in opportunity zone funds that are held for at least 10 years are excluded from gross income. Specifically, in the case of the sale or exchange of an investment in a qualified opportunity zone fund held for more than 10 years, a further election is allowed by the taxpayer to modify the basis of such deferred-gain investment in the hands of the taxpayer to be the fair market value of the deferred-gain investment at the date of such sale or exchange.

In the case of a fund organized as a pass-through entity, investors recognize gains and losses associated with both deferred-gain and nondeferred-gain investments in the fund, under the rules generally applicable to pass-through entities. Thus, for example, investor-partners in a fund organized as a partnership would recognize income and increase their basis with respect to their distributive share of the fund's taxable income.

Qualifying geography

In order to obtain the deferral and exclusion benefits of the qualified opportunity zones provisions, the taxpayer must invest in

qualified opportunity zones. The Code allows for the designation of certain low-income community population census tracts as qualified opportunity zones.

The term "low-income communities" has the same meaning as that used in the new markets tax credit provisions under section 45D. For both the new markets tax credit provisions and the opportunity zone provisions, a low-income community is either a population census tract that meets certain criteria, or specific areas designated by the Secretary. Specifically, a low-income community is a population census tract with either (1) a poverty rate of at least 20 percent, or (2) median family income which does not exceed 80 percent of the greater of metropolitan area median family income or statewide median family income (for a nonmetropolitan census tract, this does not exceed 80 percent of statewide median family income). In the case of a population census tract located within a high migration rural county, low-income is defined by reference to 85 percent (as opposed to 80 percent) of statewide median family income. For this purpose, a high migration rural county is any county that, during the 20-year period ending with the year in which the most recent census was conducted, has a net out-migration of inhabitants from the county of at least 10 percent of the population of the county at the beginning of such period.

The Secretary is also authorized to designate "targeted populations" as low-income communities. For this purpose, a "targeted population" is defined by reference to section 103(20) of the Riegle Community Development and Regulatory Improvement Act of 1994 (the "Act") to mean individuals, or an identifiable group of individuals, including an Indian tribe, who are low-income persons or otherwise lack adequate access to loans or equity investments. Section 103(17) of the Act provides that "low-income" means (1) for a targeted population within a metropolitan area, less than 80 percent of the area median family income; and (2) for a targeted population within a nonmetropolitan area, less than the greater of 80 percent of the area median family income or 80 percent of the statewide nonmetropolitan area median family income. A targeted population is not required to be within any census tract. In addition, a population census tract with a population of less than 2,000 is treated as a low-income community for purposes of the qualified opportunity zone rules if such tract is within an empowerment zone, the designation of which is in effect under section 1391, and is contiguous to one or more low-income communities.

In addition to low-income communities, a limited number of other census tracts that are not low-income communities can be so designated if they are contiguous to a designated low-income community and the median family income of such tracts does not exceed 125 percent of the median family income of the contiguous low-income community. The designation of a population census tract as a qualified opportunity zone remains in effect for the period beginning on the date of the designation and ending at the close of the tenth calendar year beginning on or after the date of designation.

The chief executive officer of the State, possession, or the District of Columbia (*i.e.*, Governor, or mayor in the case of the District of Columbia) may submit nominations for a limited number of qualified opportunity zones to the Secretary for certification and des-

ignation. If the number of low-income communities in a State is less than 100, the Governor may designate up to 25 tracts, otherwise the Governor may designate tracts not exceeding 25 percent of the number of low-income communities in the State. There is a special rule for Puerto Rico such that each population census tract in Puerto Rico that is a low-income community is deemed certified and designated as a qualified opportunity zone, effective on the date of enactment of Public Law 115–97 (*i.e.*, December 22, 2017).

Project structure and steps required to obtain benefits

As discussed, the opportunity zones provisions allow a taxpayer to make an election when investing in a qualified opportunity fund that results in three tax benefits. To take advantage of the election, a taxpayer generally sells capital assets then contributes the realized gain to a qualified opportunity fund within 180 days of the sale. The taxpayer can contribute funds in excess of the realized gain, but those funds will not be eligible for the tax benefits. The qualified opportunity fund contributes the amount received to a directly owned qualified opportunity zone business, a corporation in exchange for qualified opportunity zone stock, or a partnership in exchange for a qualified opportunity zone partnership interest.

A qualified opportunity fund is an investment vehicle organized as a corporation or a partnership for the purpose of investing in qualified opportunity zone property (other than another qualified opportunity fund) that holds at least 90 percent of its assets in qualified opportunity zone property. Qualified opportunity zone property means: (1) qualified opportunity zone stock, (2) qualified opportunity zone partnership interest, and (3) qualified opportunity zone business property.

If a qualified opportunity fund fails to meet the 90 percent requirement, unless the fund establishes reasonable cause, the fund is required to pay a monthly penalty equal to the excess of the amount equal to 90 percent of its aggregate assets, over the aggregate amount of qualified opportunity zone property held by the fund multiplied by the underpayment rate in the Code. If the fund is a partnership, the penalty is taken into account proportionately as part of each partner's distributive share.

Qualified opportunity zone stock consists of stock in a domestic corporation that is a qualified opportunity zone business. There are three requirements that must be met for property to be considered qualified opportunity zone stock. First, the stock must be acquired at original issuance (directly or indirectly through an underwriter) solely for cash after December 31, 2017. Second, the corporation must have been a qualified opportunity zone business when the stock was issued (or, for a new corporation, was being organized to be a qualified opportunity zone business). Third, the corporation must qualify as a qualified opportunity zone business during substantially all of the qualified opportunity fund's holding period for the stock.

Qualified opportunity zone partnership interest consists of capital or profits interests in a domestic partnership that is a qualified opportunity zone business. There are three requirements that must be met for property to be considered a qualified opportunity zone partnership interest. First, the interest must be acquired from the partnership solely for cash after December 31, 2017. Second, the

partnership must have been a qualified opportunity zone business when the interest was acquired (or, for a new partnership, was being organized to be a qualified opportunity zone business). Third, the partnership must qualify as a qualified opportunity zone business during substantially all of the qualified opportunity fund's holding period for the interest.

Qualified opportunity zone business property consists of tangible property used in the trade or business of a qualified opportunity fund or qualified opportunity zone business. There are three main requirements that must be met for property to be considered qualified opportunity zone business property. First, the property must be acquired by purchase after December 31, 2017. Second, the original use of the property in the qualified opportunity zone must begin with the qualified opportunity fund or qualified opportunity zone business, or the qualified opportunity fund or qualified opportunity zone business must substantially improve the property. Only new or substantially improved property qualifies as opportunity zone business property. Third, substantially all of the property must be in a qualified opportunity zone during substantially all of the qualified opportunity fund's or qualified opportunity zone business's holding period for the property. Property is treated as substantially improved only if capital expenditures on the property in the 30 months after acquisition exceed the property's adjusted basis on the date of acquisition.

A qualified opportunity zone business is any trade or business in which substantially all of the underlying value of the tangible property owned or leased by the business is qualified opportunity zone business property.

In addition, (1) at least 50 percent of the total gross income of the trade or business must be derived from the active conduct of business in the qualified opportunity zone, (2) a substantial portion of the business's intangible property must be used in the active conduct of business in the qualified opportunity zone, and (3) less than five percent of the average of the aggregate adjusted bases of the property of the business is attributable to nonqualified financial property. Nonqualified financial property means debt, stock, partnership interests, annuities, and derivative financial instruments (including options, futures, forward contracts, and notional principal contracts), other than (1) reasonable amounts of working capital held in cash, cash equivalents, or debt instruments with a term of no more than 18 months, and (2) accounts or notes receivable acquired in the ordinary course of a trade or business for services rendered or from the sale of inventory property.[91] The business cannot be a golf course, country club, massage parlor, hot tub or suntan facility, racetrack or other facility used for gambling, or store whose principal business is the sale of alcoholic beverages for consumption off premises.[92]

Tangible property that ceases to be qualified opportunity zone business property continues to be treated as qualified opportunity zone business property for the lesser of five years after the date on which such tangible property ceases to be so qualified, or the date

[91] Sec. 1397C(e).
[92] Treas. Reg. sec. 1.400Z2(d)–1.

on which such tangible property is no longer held by the qualified opportunity zone business.

Information reporting and data reporting

The Code does not specifically provide rules for information reporting or data reporting from qualified opportunity funds or qualified opportunity zone businesses. The Code provides the Secretary with the authority to prescribe regulations as necessary to carry out the purposes of the section, including (i) rules for the certification of qualified opportunity funds, (ii) rules to ensure a qualified opportunity fund has a reasonable period of time to reinvest the return of capital from investments in qualified opportunity zone stock and qualified opportunity zone partnership interests, and to reinvest proceeds received from the sale or disposition of qualified opportunity zone property, and (iii) rules to prevent abuse.[93]

REASONS FOR CHANGE

The Committee believes that the existing opportunity zone program too often neglects areas with persistent poverty in favor of those that are rapidly gentrifying. The opportunity zone tax incentives have the potential to unleash economic growth in high poverty communities across the country—communities that investors too often overlook. The Committee believes that tying these benefits to investments in rural communities will help restore the original promise of opportunity zones by steering private capital to reinvest in underserved communities that have been historically left behind. The Committee further believes that strong transparency and accountability measures are required such as taxpayer information reporting and data reporting by the Secretary to ensure the original program and its expansion to rural areas functions as intended.

EXPLANATION OF PROVISION

In general

The provision establishes a new type of opportunity zone, called a qualified rural opportunity zone. The provision also requires information reporting from qualified opportunity funds, qualified rural opportunity funds, qualified opportunity zone businesses, and qualified rural opportunity zone businesses, and imposes penalties for failing to comply with these requirements. Finally, the provision requires the Secretary to publicly report various data on qualified opportunity funds and qualified rural opportunity funds.

Qualified rural opportunity zones

The provision creates a new category of qualified opportunity zones called qualified rural opportunity zones. Qualified rural op-

[93] Sec. 1400Z–2(e)(4). Three forms require reporting relating to opportunity zones: Form 8996, *Qualified Opportunity Fund*, Form 8949, *Sales and Other Dispositions of Capital Assets, and Form 8997, Initial and Annual Statement of Qualified Opportunity Fund Investments*. A corporation or partnership organized as a qualified opportunity fund uses Form 8996 to certify that it is organized to invest in qualified opportunity zone property and to report that the qualified opportunity fund meets the investment standard of the Code or to calculate the penalty if it fails to meet the investment standard. Taxpayers use Form 8949 to report the election to defer capital gain invested in a qualified opportunity fund. Taxpayers use Form 8997 to report qualified opportunity fund investments held at the beginning and end of the year, capital gains for the year that were deferred, and investments disposed of during the year.

portunity zones are defined as any population census tract if: (i) such census tract is located in a rural county, and (ii) is in persistent poverty (as determined by the Bureau of the Census using the same methodology and data as used in the May 2023 report of such Bureau entitled "Persistent Poverty in Counties and Census Tracts"). Where any portion of a State is not within a county, the Secretary shall designate an area which is the equivalent of a county under a rule similar to section 143(k)(2)(D). The term "rural county" means any county if more than 50 percent of the census blocks which comprise such county are rural blocks (as determined by the Bureau of the Census as of the date of enactment of this provision).

As with qualified opportunity zones, investments in qualified rural opportunity zones funds are entitled to three tax benefits, at the taxpayer's election: (1) a temporary deferral of the capital gain reinvested in the qualified opportunity zone (the "rollover gain"), (2) a permanent 10 or 15 percent reduction in the amount of such gain that must be recognized if the investment is held for five or seven years, respectively, and (3) a permanent exclusion of future gains resulting from the investment in the opportunity zone if the investment is held for at least 10 years. To qualify, the rollover gain is generally required to be invested in the qualified rural opportunity fund during a 180-day period that begins on the date of the sale or exchange that generated the gain.

Under the provision, there are three main differences between the rules for qualified opportunity zones and those for qualified rural opportunity zones. First, the qualified opportunity zone rules provide that some or all of the deferred gain is recognized on the earlier of the date on which the qualified opportunity zone investment is disposed of or December 31, 2026. The qualified opportunity zone rules also provide that no election may be made after December 31, 2026. The qualified rural opportunity zone rules, on the other hand, provide that some or all of the deferred gain is recognized on the earlier of the date on which the qualified opportunity zone investment is disposed of or December 31, 2032. In addition, the qualified rural opportunity zones rules provide that no election may be made after December 31, 2032.

Second is the difference in the date by which stock, a partnership interest, and property must be acquired to qualify as qualified rural opportunity zone stock, qualified rural opportunity zone partnership interest and qualified rural opportunity zone business property, respectively. For purposes of the qualified opportunity zone rules, stock is to be acquired at original issuance (directly or indirectly through an underwriter) solely for cash after December 31, 2017, a partnership interest is to be acquired from the partnership solely for cash after December 31, 2017, and property is to be acquired by purchase after December 31, 2017. In contrast, for purposes of the qualified rural opportunity zone rules, stock, a partnership interest, and property is required to be acquired after December 31, 2023.

Third, in order to obtain the deferral and exclusion benefits of the qualified rural opportunity zones provisions, the taxpayer must invest in qualified rural opportunity zones. Unlike the rules with respect to qualified opportunity zones, however, the provision does not provide for the chief executive officer of the State to submit

nominations for qualified rural opportunity zones to the Secretary for certification and designation.

Information reporting requirements for qualified opportunity funds, qualified rural opportunity funds, qualified opportunity zone businesses, and qualified rural opportunity zone businesses

The provision requires information reporting from (i) qualified opportunity funds and qualified rural opportunity funds, and (ii) qualified opportunity zone businesses and qualified rural opportunity zone businesses. The provision requires that the qualified opportunity funds and qualified rural opportunity funds electronically file their returns. The provision states that any term used in these information reporting sections has the same meaning as used in current law governing qualified opportunity zones.

Qualified opportunity funds

The provision requires every qualified opportunity fund to file an annual return (at such time and in such manner as the Secretary may prescribe) containing the following information:

- the name, address, and TIN of the qualified opportunity fund;
- whether the qualified opportunity fund is organized as a corporation or a partnership;
- the value of the total assets held by the qualified opportunity fund as of each date described in section 1400Z–2(d)(1);
- the value of all qualified opportunity zone property held by the qualified opportunity fund on each such date;
- with respect to each investment held by the qualified opportunity fund in qualified opportunity zone stock or a qualified opportunity zone partnership interest:
  - the name, address, and TIN of the corporation in which such stock is held or the partnership in which such interest is held,
  - each North American Industry Classification System ("NAICS") Code that applies to the trades or businesses conducted by such corporation or partnership,
  - the population census tracts in which the qualified opportunity zone business property of such corporation or partnership is located,
  - the amount of the investment in such stock or partnership interest as of each date described in section 1400Z–2(d)(1),
  - the value of tangible property held by such corporation or partnership on each date which is owned by such corporation or partnership,
  - the approximate number of residential units (if any) for any real property held by such corporation or partnership, and
  - the approximate average monthly number of full-time equivalent employees of such corporation or partnership for the year (within numerical ranges identified by the Secretary) or such other indication of the employment impact of such corporation or partnership as determined appropriate by the Secretary;

- with respect to the items of qualified opportunity zone business property held by the qualified opportunity fund:
  - the NAICS Code that applies to the trades or businesses in which such property is held,
  - the population census tract in which the property is located,
  - whether the property is owned or leased,
  - the aggregate value of the items of qualified opportunity zone property held by the qualified opportunity fund as of such date described in section 1400Z–2(d)(1), and
  - in the case of real property, number of residential units (if any);
- the approximate average monthly number of full-time equivalent employees for the year of the trades or businesses of the qualified opportunity fund in which qualified opportunity zone business property is held (within numerical ranges identified by the Secretary) or such other indication of the employment impact of such trades or businesses as determined appropriate by the Secretary;
- with respect to each person who disposed of an investment in the qualified opportunity fund during the year:
  - the name and TIN of such person,
  - the date(s) on which the investment disposed was acquired, and
  - the date(s) on which any such investment was disposed and the amount of the investment disposed; and
- such other information as the Secretary may require.

For purposes of this information reporting requirement, the term "full-time equivalent employees" means with respect to any month, the sum of: (i) the number of full-time employees (as defined in section 4980H(c)(4)), for the month plus (ii) the number of employees determined (under rules similar to the rules of section 4980H(e)(2)(E)) by dividing the aggregate number of hours of service of employees who are not full-time employees for the month by 120.

Every qualified opportunity fund required to file an information return with the IRS as discussed above is also required to provide a written statement to each person whose name is required to be provided on the return because the person disposed of an investment in the qualified opportunity fund during the year. The written statement is required to show:

- the name, address and phone number of the information contact of the qualified opportunity fund required to file the return, and
- the following information with respect to the person who disposed of the investment:
  - the name and TIN of the person,
  - the date(s) on which the investment disposed was acquired, and
  - the date(s) on which any such investment was disposed of and the amount of the investment disposed of.

The provision treats this statement as a payee statement under the Code, subject to information reporting penalties as discussed below.

Qualified rural opportunity funds

The provision applies the above information reporting requirements for qualified opportunity funds to qualified rural opportunity funds. Thus, qualified rural opportunity funds are required to file an annual return with the IRS and provide statements to persons who dispose of their investment in the qualified rural opportunity fund during the year.

Qualified opportunity zone businesses

The provision requires every applicable qualified opportunity zone business to provide to the qualified opportunity fund a written statement in such manner and setting forth such information as the Secretary may prescribe for purposes of enabling the qualified opportunity fund to meet its information return reporting requirements. The term "applicable qualified opportunity zone business" means any qualified opportunity zone business: (i) which is a trade or business of a qualified opportunity fund, (ii) in which a qualified opportunity fund holds qualified opportunity zone stock, or (iii) in which a qualified opportunity fund holds a qualified opportunity zone partnership interest. The provision treats this statement as a payee statement under the Code, subject to information reporting penalties as discussed below.

Qualified rural opportunity zone businesses

The provision applies the information reporting requirements for qualified opportunity zone businesses to qualified rural opportunity zone businesses. Thus, applicable qualified rural opportunity zone businesses are required to provide to the qualified rural opportunity fund a written statement in such manner and setting for such information as the Secretary may prescribe.

Penalties for failure to comply with information reporting requirements for qualified opportunity funds and qualified rural opportunity funds

The provision provides penalties for qualified opportunity funds and qualified rural opportunity funds that do not comply with appropriate information reporting requirements. The provision also provides penalties for qualified opportunity zone businesses and qualified rural opportunity zone businesses that do not furnish the required statements to the qualified opportunity funds and the qualified rural opportunity funds.

Qualified opportunity funds

Any qualified opportunity fund that fails to file a complete and correct information return in the time and manner required must pay a penalty of $500 per day, subject to a maximum penalty with respect to one return of $10,000. The maximum penalty is increased to $50,000 for qualified opportunity funds with gross assets (determined on the last day of the taxable year) in excess of $10,000,000 ("large funds"). For intentional disregard of the reporting information requirements, the penalty is $2,500 per day, subject to a maximum penalty of $50,000, or $250,000 in the case of large funds. The penalty amounts are subject to inflation adjustments for returns required to be filed after calendar year 2023.

Qualified opportunity funds and qualified opportunity fund businesses

The provision also provides penalties for: (i) failure of the qualified opportunity fund to provide the written statement to each person whose name is required to be provided on the return because the person disposed of an investment in the qualified opportunity fund during the year, and (ii) failure of the qualified opportunity zone business to provide the written statement in such manner and setting forth such information as the Secretary may prescribe for purposes of enabling the qualified opportunity fund to meet its information return reporting requirements. The provision treats these statements as payee statements under the Code, and as such, subjects the qualified opportunity fund and the qualified opportunity fund business to the current information reporting penalties for failures relating to payee statements.[94]

Qualified rural opportunity funds and qualified rural opportunity zone businesses

The provision also imposes the penalties discussed above on the qualified rural opportunity funds for (i) failure to file a complete and correct information return in the time and manner required, and (ii) failure to provide the written statement to each person whose name is required to be provided on the return because the person disposed of an investment in the qualified rural opportunity fund during the year. And the provision imposes the penalties discussed above on the qualified rural opportunity zone businesses for failure of the qualified rural opportunity zone business to provide the written statement in such manner and setting forth such information as the Secretary may prescribe for purposes of enabling the qualified rural opportunity fund to meet its information return reporting requirements.

Reporting of data on opportunity zone tax incentives

As soon as practical after the date of enactment, and annually thereafter, the Secretary or the Secretary's delegate, in consultation with the Director of the Bureau of the Census and such other agencies as the Secretary determines, are required to publish a report on qualified opportunity funds. The report is required to include the following information:

(i) the number of qualified opportunity funds;

(ii) the aggregate dollar amount of assets held in qualified opportunity funds;

(iii) the aggregate dollar amount of investments made by qualified opportunity funds in qualified opportunity fund property, stated separately for each NAICS Code;

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[94] A person who fails to furnish correct written statements to recipients of payments for which information reporting is required is subject to a penalty of $250 for each statement with respect to which such a failure occurs, up to a maximum of $3,000,000 in any calendar year, adjusted for inflation. Sec. 6722. These amounts are subject to inflation adjustments under section 6722(f). For information statements due in calendar year 2023, the penalty amount is $290, up to a maximum of $3,532,500 per year. For information statements due in calendar year 2024, the penalty amount is $310, up to a maximum of $3,783,000 per year. The penalties are reduced if the failure is corrected within a specific amount of time. Sec. 6722(b). The penalties are waived if a person establishes that any failure was due to reasonable cause and not willful neglect. Sec. 6724(a). These failure to furnish penalties are reduced for small businesses (sec. 6722(d)) and increased for failures due to intentional disregard (sec. 6722(e)).

(iv) the percentage of population census tracts designated as qualified opportunity zones that have received qualified opportunity fund investments;

(v) for each population census tract designated as a qualified opportunity zone, the approximate average monthly number of full-time equivalent employees of the qualified opportunity zone businesses in such qualified opportunity zone for the preceding 12-month period (within numerical wages identified by the Secretary) or other indication of the employment impact of such qualified opportunity fund businesses as determined by the Secretary;

(vi) the percentage of the total amount of investments made by qualified opportunity funds in (1) qualified opportunity zone property which is real property, and (2) other qualified opportunity zone property;

(vii) for each population census tract, the aggregate approximate number of residential units resulting from investments made by qualified opportunity funds in real property; and

(viii) the aggregate dollar amount of investments made by qualified opportunity funds in each population census tract.

In addition to the report described above, for the sixth year after the date of enactment, the Secretary is required to include in the report the impacts and outcomes of a designation of a population census tract as a qualified opportunity zone as measured by economic indicators, such as job creation, poverty reduction, new business starts, and other metrics as determined by the Secretary.

Also, in the sixth year or the 11th year after the date of enactment, the Secretary is required to include in the report, for population census tracts designated as a qualified opportunity zone, a comparison (based on aggregate information) of the factors described below: (i) between the five-year period ending on the date of the enactment of Public Law 115–97 (*i.e.*, December 22, 2017) and the most recent five-year period for which data is available; and (ii) for the most recent five-year period for which data is available between such population census tracts and similar population census tracts that were not designated as a qualified opportunity zone. The Secretary is permitted to combine population census tracts into such groups as the Secretary determines appropriate for purposes of making comparisons.

The factors are:

(i) the unemployment rate;

(ii) the number of persons working in the population census tract, including the percentage of such persons who were not residents in the population census tract in the preceding year;

(iii) individual, family, and household poverty rates;

(iv) median family income of residents of the population census tract;

(v) demographic information on residents of the population census tract, including age, income, education, race, and employment;

(vi) the average percentage of income of residents of the population census tract spent on rent annually;

(vii) the number of residences in the population census tract;

(viii) the rate of home ownership in the population census tract;

(ix) the average value of residential property in the population census tract;

(x) the number of affordable housing units in the population census tract;

(xi) the number and percentage of residents in the population census tract that were not employed for the preceding year;

(xii) the number of new business starts in the population census tract; and

(xiii) the distribution of employees in the population census tract by NAICS Code.

The provision requires the Secretary to establish appropriate procedures to ensure that any amounts reported do not disclose taxpayer return information that can be associated with any particular taxpayer or competitive or proprietary information, and if necessary to protect taxpayer return information, allows the Secretary to combine information required with respect to individual population census tracts into larger geographic areas.

Reporting of data on rural opportunity zone tax incentives

The provision requires the Secretary to separately publish the same reports for qualified rural opportunity funds as those required above for qualified opportunity funds. For this purpose, the date of enactment of the provision is substituted for the date of enactment of Public Law 115–97 (*i.e.*, December 22, 2017).

EFFECTIVE DATES

The provision establishing qualified rural opportunity zones applies to amounts invested after the date of enactment.

The provision relating to information reporting requirements applies to calendar years beginning after the date of enactment.

The provision relating to data to be reported by the Secretary becomes effective on the date of enactment.

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. 3937, the "Small Business Jobs Act," on June 13, 2023.

The vote on the amendment offered by Mr. Beyer to the amendment in the nature of a substitute to H.R. 3937, which limit access to capital for small businesses by adding additional restrictions to taxpayers eligible for Section 1202 treatment was not agreed to by a roll call vote of 16 yeas to 23 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				Mr. Pascrell			
Dr. Wenstrup				Mr. Davis	X		
Mr. Arrington		X		Ms. Sánchez	X		
Dr. Ferguson		X		Mr. Higgins	X		

Representative	Yea	Nay	Present	Representative	Yea	Nay	Present
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. 3937, the "Small Business Jobs Act" on June 13, 2023.

H.R. 3937 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				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						

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. 3937, as reported.

The bill is estimated to have no effect on the Federal fiscal year budget receipts for the period 2023 through 2033.

ESTIMATED BUDGET EFFECTS OF H. R. 3937,
THE "SMALL BUSINESS JOBS 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
1. Increase in threshold requiring information reporting with respect to certain payees	pma 12/31/23	---	-609	-1,252	-1,319	-1,389	-1,461	-1,537	-1,616	-1,699	-1,785	-1,875	-6,030	-14,542
2. Restoration of reporting rule for third party network transactions	rfcyba 12/31/21	-145	-960	-780	-819	-860	-903	-948	-995	-1,045	-1,097	-1,152	-4,467	-9,705
3. Modifications to exclusion for gain from qualified small business stock	qsaa & cdoia DOE	7	71	72	48	-147	-645	-1,946	-2,102	-2,217	-2,331	-2,466	-594	-11,656
4. Increase in limitations on expensing of depreciable business assets	ppisi tyba 12/31/23	---	-4,625	-7,954	-6,119	-5,341	-4,522	-3,596	-3,115	-2,924	-2,905	-2,999	-28,561	-44,099
5. Establishment of special rules for capital gains invested in rural opportunity zones	aia DOE	---	-535	-728	-762	-1,013	-891	-905	-917	-929	-199	5,808	-3,928	-1,069
6. Reporting on qualified opportunity funds and qualified rural opportunity funds	[1]	*Negligible Revenue Effect*												
NET TOTAL		**-138**	**-6,658**	**-10,642**	**-8,971**	**-8,750**	**-8,422**	**-8,932**	**-8,745**	**-8,814**	**-8,317**	**-2,684**	**-43,580**	**-81,071**

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 for "Effective" column:
aia = amounts invested after
cdoia = convertible debt originally issued after
DOE = date of enactment
pma = payments made after
ppisi = property placed in service in
qsaa = qualified stock acquired after
rfcyba= returns for calendar years beginning after
tyba = taxable years beginning after

[1] The amendments made by this subsection shall apply to taxable years beginning after the date of the enactment of this Act and on the date of the enactment for the reporting of data.

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 each 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 each provision included in the complexity analysis.

List of Provisions in the Complexity Analysis

1. Increase in Threshold for Requiring Information Reporting With Respect to Certain Payees (sec. 2 of the bill)

Summary description of provision

The provision 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 provision 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.

Number of affected taxpayers

It is estimated that the provision will affect more than 10 percent of individual or small business tax returns.

Discussion

If greater reporting from unrelated third parties were available, it is possible that the IRS could more readily identify areas of underreported income of the payees. In general, the more payments to which information reporting and/or withholding applies, the greater the improvement in compliance. However, numerous critics have pointed to the fact that not raising the reporting thresholds for inflation since 1954 poses a disproportionate administrative burden on those required to comply with the reporting obligations, including small businesses. For a small business without sufficient personnel or an automated payroll system, meeting these reporting requirements may be time consuming and complicated. The payor must collect tax identification and other personal information from the payee and must remit a Form 1099 to both the payee and the IRS. Even for businesses with sufficient systems in place, the administrative costs of gathering tax information from a single payee might not justify the compliance gain, especially for low dollar, non-recurring transactions.

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.

2. Restoration of Reporting Rule for Third Party Network Transactions (sec. 3 of the bill)

Summary description of provision

The provision 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.

Number of affected taxpayers

It is estimated that the provision will affect more than 10 percent of individual or small business tax returns.

Discussion

If greater reporting from unrelated third parties were available, it is possible that the IRS could more readily identify areas of underreported income of the payees. In general, the more payments to which information reporting and/or withholding applies, the greater the improvement in compliance. However, proponents of the provision have noted that if the previous threshold is not reinstated, it could yield to confusion for online platforms and taxpayers with casual or low-level on-line activity, which could result in overreporting of income and therefore overpayment of taxes as well as ineligibility for certain tax benefits. They contend that aggregate reporting on a Form 1099–K of gross proceeds will create confusion for taxpayers who will have to report each sale or transaction independent of others to correctly calculate gain or loss. Proponents further content that the lower threshold may require taxpayers to hire tax professionals and keep onerous records and receipts or may mislead them into thinking the existence of a Form 1099–K represents taxable income they must report.

Comments from IRS and Treasury

3. Increase in Limitations on Expensing of Depreciable Business Assets (sec. 5 of the bill)

Summary description of provision

The provision 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.

Number of affected taxpayers

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

Discussion

While taxpayers purchasing section 179 property will still be required to complete and file Form 4562, *Depreciation and Amortization (Including Information on Listed Property)*, significantly less detail is required to be included on such form. Accordingly, the compliance burden of many taxpayers will be reduced.

Comments from IRS and Treasury

See insert B.

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 VI—ALTERNATIVE MINIMUM TAX

* * * * * * *

SEC. 57. ITEMS OF TAX PREFERENCE.

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

(1) DEPLETION.—With respect to each property (as defined in section 614), the excess of the deduction for depletion allowable under section 611 for the taxable year over the adjusted basis of the property at the end of the taxable year (determined without regard to the depletion deduction for the taxable year). This paragraph shall not apply to any deduction for depletion computed in accordance with section 613A(c).

(2) INTANGIBLE DRILLING COSTS.—

(A) IN GENERAL.—With respect to all oil, gas, and geothermal properties of the taxpayer, the amount (if any) by which the amount of the excess intangible drilling costs arising in the taxable year is greater than 65 percent of the net income of the taxpayer from oil, gas, and geothermal properties for the taxable year.

(B) EXCESS INTANGIBLE DRILLING COSTS.—For purposes of subparagraph (A), the amount of the excess intangible drilling costs arising in the taxable year is the excess of—

(i) the intangible drilling and development costs paid or incurred in connection with oil, gas, and geothermal wells (other than costs incurred in drilling a nonproductive well) allowable under section 263(c) or 291(b) for the taxable year, over

(ii) the amount which would have been allowable for the taxable year if such costs had been capitalized and straight line recovery of intangibles (as defined in subsection (b)) had been used with respect to such costs.

(C) NET INCOME FROM OIL, GAS, AND GEOTHERMAL PROPERTIES.—For purposes of subparagraph (A), the amount of the net income of the taxpayer from oil, gas, and geothermal properties for the taxable year is the excess of—

(i) the aggregate amount of gross income (within the meaning of section 613(a)) from all oil, gas, and geothermal properties of the taxpayer received or accrued by the taxpayer during the taxable year, over

(ii) the amount of any deductions allocable to such properties reduced by the excess described in subparagraph (B) for such taxable year.

(D) PARAGRAPH APPLIED SEPARATELY WITH RESPECT TO GEOTHERMAL PROPERTIES AND OIL AND GAS PROPERTIES.—

This paragraph shall be applied separately with respect to—

(i) all oil and gas properties which are not described in clause (ii), and

(ii) all properties which are geothermal deposits (as defined in section 613(e)(2)).

(E) EXCEPTION FOR INDEPENDENT PRODUCERS.—In the case of any oil or gas well—

(i) IN GENERAL.—This paragraph shall not apply to any taxpayer which is not an integrated oil company (as defined in section 291(b)(4)).

(ii) LIMITATION ON BENEFIT.—The reduction in alternative minimum taxable income by reason of clause (i) for any taxable year shall not exceed 40 percent of the alternative minimum taxable income for such year determined without regard to clause (i) and the alternative tax net operating loss deduction under section 56(a)(4).

(5) TAX-EXEMPT INTEREST.—

(A) IN GENERAL.—Interest on specified private activity bonds reduced by any deduction (not allowable in computing the regular tax) which would have been allowable if such interest were includible in gross income.

(B) TREATMENT OF EXEMPT-INTEREST DIVIDENDS.—Under regulations prescribed by the Secretary, any exempt-interest dividend (as defined in section 852(b)(5)(A)) shall be treated as interest on a specified private activity bond to the extent of its proportionate share of the interest on such bonds received by the company paying such dividend.

(C) SPECIFIED PRIVATE ACTIVITY BONDS.—

(i) IN GENERAL.—For purposes of this part, the term "specified private activity bond" means any private activity bond (as defined in section 141) which is issued after August 7, 1986, and the interest on which is not includible in gross income under section 103.

(ii) EXCEPTION FOR QUALIFIED 501(C)(3) BONDS.—For purposes of clause (i), the term "private activity bond" shall not include any qualified 501(c)(3) bond (as defined in section 145).

(iii) EXCEPTION FOR CERTAIN HOUSING BONDS.—For purposes of clause (i), the term "private activity bond" shall not include any bond issued after the date of the enactment of this clause if such bond is—

(I) an exempt facility bond issued as part of an issue 95 percent or more of the net proceeds of which are to be used to provide qualified residential rental projects (as defined in section 142(d)),

(II) a qualified mortgage bond (as defined in section 143(a)), or

(III) a qualified veterans' mortgage bond (as defined in section 143(b)).

The preceding sentence shall not apply to any refunding bond unless such preceding sentence applied to the refunded bond (or in the case of a series of refundings, the original bond).

(iv) EXCEPTION FOR REFUNDINGS.—For purposes of clause (i), the term "private activity bond" shall not include any refunding bond (whether a current or advance refunding) if the refunded bond (or in the case of a series of refundings, the original bond) was issued before August 8, 1986.

(v) CERTAIN BONDS ISSUED BEFORE SEPTEMBER 1, 1986.—For purposes of this subparagraph, a bond issued before September 1, 1986, shall be treated as issued before August 8, 1986, unless such bond would be a private activity bond if—

(I) paragraphs (1) and (2) of section 141(b) were applied by substituting "25 percent" for "10 percent" each place it appears,

(II) paragraphs (3), (4), and (5) of section 141(b) did not apply, and

(III) subparagraph (B) of section 141(c)(1) did not apply.

(vi) EXCEPTION FOR BONDS ISSUED IN 2009 AND 2010.—

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

(II) TREATMENT OF REFUNDING BONDS.—For purposes of subclause (I), a refunding bond (whether a current or advance refunding) shall be treated as issued on the date of the issuance of the refunded bond (or in the case of a series of refundings, the original bond).

(III) EXCEPTION FOR CERTAIN REFUNDING BONDS.—Subclause (II) shall not apply to any refunding bond which is issued to refund any bond which was issued after December 31, 2003, and before January 1, 2009.

(6) ACCELERATED DEPRECIATION OR AMORTIZATION ON CERTAIN PROPERTY PLACED IN SERVICE BEFORE JANUARY 1, 1987.—The amounts which would be treated as items of tax preference with respect to the taxpayer under paragraphs (2), (3), (4), and (12) of this subsection (as in effect on the day before the date of the enactment of the Tax Reform Act of 1986). The preceding sentence shall not apply to any property to which section 56(a)(1) or (5) applies.

(7) EXCLUSION FOR GAINS ON SALE OF CERTAIN SMALL BUSINESS STOCK.—[An amount] *In the case of stock acquired on or before the date of the enactment of the Creating Small Business Jobs Act of 2010, an amount* equal to 7 percent of the amount excluded from gross income for the taxable year under section 1202.

(b) STRAIGHT LINE RECOVERY OF INTANGIBLES DEFINED.—For purposes of paragraph (2) of subsection (a)—

(1) IN GENERAL.—The term "straight line recovery of intangibles", when used with respect to intangible drilling and development costs for any well, means (except in the case of an election under paragraph (2)) ratable amortization of such costs

over the 120-month period beginning with the month in which production from such well begins.

(2) ELECTION.—If the taxpayer elects with respect to the intangible drilling and development costs for any well, the term "straight line recovery of intangibles" means any method which would be permitted for purposes of determining cost depletion with respect to such well and which is selected by the taxpayer for purposes of subsection (a)(2).

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Subchapter B—COMPUTATION OF TAXABLE INCOME

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PART VI—ITEMIZED DEDUCTIONS FOR INDIVIDUALS AND CORPORATIONS

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SEC. 179. ELECTION TO EXPENSE CERTAIN DEPRECIABLE BUSINESS ASSETS.

(a) TREATMENT AS EXPENSES.—A taxpayer may elect to treat the cost of any section 179 property as an expense which is not chargeable to capital account. Any cost so treated shall be allowed as a deduction for the taxable year in which the section 179 property is placed in service.

(b) LIMITATIONS.—

(1) DOLLAR LIMITATION.—The aggregate cost which may be taken into account under subsection (a) for any taxable year shall not exceed **[**$1,000,000**]** *$2,500,000*.

(2) REDUCTION IN LIMITATION.—The limitation under paragraph (1) for any taxable year shall be reduced (but not below zero) by the amount by which the cost of section 179 property placed in service during such taxable year exceeds **[**$2,500,000**]** *$4,000,000*.

(3) LIMITATION BASED ON INCOME FROM TRADE OR BUSINESS.—

(A) IN GENERAL.—The amount allowed as a deduction under subsection (a) for any taxable year (determined after the application of paragraphs (1) and (2)) shall not exceed the aggregate amount of taxable income of the taxpayer for such taxable year which is derived from the active conduct by the taxpayer of any trade or business during such taxable year.

(B) CARRYOVER OF DISALLOWED DEDUCTION.—The amount allowable as a deduction under subsection (a) for any taxable year shall be increased by the lesser of—

(i) the aggregate amount disallowed under subparagraph (A) for all prior taxable years (to the extent not previously allowed as a deduction by reason of this subparagraph), or

(ii) the excess (if any) of—

(I) the limitation of paragraphs (1) and (2) (or if lesser, the aggregate amount of taxable income referred to in subparagraph (A)), over

(II) the amount allowable as a deduction under subsection (a) for such taxable year without regard to this subparagraph.

(C) COMPUTATION OF TAXABLE INCOME.—For purposes of this paragraph, taxable income derived from the conduct of a trade or business shall be computed without regard to the deduction allowable under this section.

(4) MARRIED INDIVIDUALS FILING SEPARATELY.—In the case of a husband and wife filing separate returns for the taxable year—

(A) such individuals shall be treated as 1 taxpayer for purposes of paragraphs (1) and (2), and

(B) unless such individuals elect otherwise, 50 percent of the cost which may be taken into account under subsection (a) for such taxable year (before application of paragraph (3)) shall be allocated to each such individual.

(5) LIMITATION ON COST TAKEN INTO ACCOUNT FOR CERTAIN PASSENGER VEHICLES.—

(A) IN GENERAL.—The cost of any sport utility vehicle for any taxable year which may be taken into account under this section shall not exceed $25,000.

(B) SPORT UTILITY VEHICLE.—For purposes of subparagraph (A)—

(i) IN GENERAL.—The term "sport utility vehicle" means any 4-wheeled vehicle—

(I) which is primarily designed or which can be used to carry passengers over public streets, roads, or highways (except any vehicle operated exclusively on a rail or rails),

(II) which is not subject to section 280F, and

(III) which is rated at not more than 14,000 pounds gross vehicle weight.

(ii) CERTAIN VEHICLES EXCLUDED.—Such term does not include any vehicle which—

(I) is designed to have a seating capacity of more than 9 persons behind the driver's seat,

(II) is equipped with a cargo area of at least 6 feet in interior length which is an open area or is designed for use as an open area but is enclosed by a cap and is not readily accessible directly from the passenger compartment, or

(III) has an integral enclosure, fully enclosing the driver compartment and load carrying device, does not have seating rearward of the driver's seat, and has no body section protruding more than 30 inches ahead of the leading edge of the windshield.

(6) INFLATION ADJUSTMENT.—

(A) IN GENERAL.—In the case of any taxable year beginning after [2018] *2024 (2018 in the case of the dollar amount in paragraph (5)(A))*, the dollar amounts in paragraphs (1), (2), and (5)(A) shall each be increased by an amount equal to—

(i) such dollar amount, multiplied by

(ii) the cost-of-living adjustment determined under section 1(f)(3) for the calendar year in which the taxable year begins, determined by substituting ⟦"calendar year 2017⟧ *"calendar year 2024" ("calendar year 2017" in the case of the dollar amount in paragraph (5)(A))*" for "calendar year 2016" in subparagraph (A)(ii) thereof.

(B) ROUNDING.—The amount of any increase under subparagraph (A) shall be rounded to the nearest multiple of $10,000 ($100 in the case of any increase in the amount under paragraph (5)(A)).

(c) ELECTION.—

(1) IN GENERAL.—An election under this section for any taxable year shall—

(A) specify the items of section 179 property to which the election applies and the portion of the cost of each of such items which is to be taken into account under subsection (a), and

(B) be made on the taxpayer's return of the tax imposed by this chapter for the taxable year.

Such election shall be made in such manner as the Secretary may by regulations prescribe.

(2) ELECTION.—Any election made under this section, and any specification contained in any such election, may be revoked by the taxpayer with respect to any property, and such revocation, once made, shall be irrevocable.

(d) DEFINITIONS AND SPECIAL RULES.—

(1) SECTION 179 PROPERTY.—For purposes of this section, the term "section 179 property" means property—

(A) which is—

(i) tangible property (to which section 168 applies), or

(ii) computer software (as defined in section 197(e)(3)(B)) which is described in section 197(e)(3)(A)(i) and to which section 167 applies,

(B) which is—

(i) section 1245 property (as defined in section 1245(a)(3)), or

(ii) at the election of the taxpayer, qualified real property (as defined in subsection (e)), and

(C) which is acquired by purchase for use in the active conduct of a trade or business.

Such term shall not include any property described in section 50(b) (other than paragraph (2) thereof).

(2) PURCHASE DEFINED.—For purposes of paragraph (1), the term "purchase" means any acquisition of property, but only if—

(A) the property is not acquired from a person whose relationship to the person acquiring it would result in the disallowance of losses under section 267 or 707(b) (but, in applying section 267(b) and (c) for purposes of this section, paragraph (4) of section 267(c) shall be treated as providing that the family of an individual shall include only his spouse, ancestors, and lineal descendants),

(B) the property is not acquired by one component member of a controlled group from another component member of the same controlled group, and

(C) the basis of the property in the hands of the person acquiring it is not determined—

(i) in whole or in part by reference to the adjusted basis of such property in the hands of the person from whom acquired, or

(ii) under section 1014(a) (relating to property acquired from a decedent).

(3) COST.—For purposes of this section, the cost of property does not include so much of the basis of such property as is determined by reference to the basis of other property held at any time by the person acquiring such property.

(4) SECTION NOT TO APPLY TO ESTATES AND TRUSTS.—This section shall not apply to estates and trusts.

(5) SECTION NOT TO APPLY TO CERTAIN NONCORPORATE LESSORS.—This section shall not apply to any section 179 property which is purchased by a person who is not a corporation and with respect to which such person is the lessor unless—

(A) the property subject to the lease has been manufactured or produced by the lessor, or

(B) the term of the lease (taking into account options to renew) is less than 50 percent of the class life of the property (as defined in section 168(i)(1)), and for the period consisting of the first 12 months after the date on which the property is transferred to the lessee the sum of the deductions with respect to such property which are allowable to the lessor solely by reason of section 162 (other than rents and reimbursed amounts with respect to such property) exceeds 15 percent of the rental income produced by such property.

(6) DOLLAR LIMITATION OF CONTROLLED GROUP.—For purposes of subsection (b) of this section—

(A) all component members of a controlled group shall be treated as one taxpayer, and

(B) the Secretary shall apportion the dollar limitation contained in subsection (b)(1) among the component members of such controlled group in such manner as he shall by regulations prescribe.

(7) CONTROLLED GROUP DEFINED.—For purposes of paragraphs (2) and (6), the term "controlled group" has the meaning assigned to it by section 1563(a), except that, for such purposes, the phrase "more than 50 percent" shall be substituted for the phrase "at least 80 percent" each place it appears in section 1563(a)(1).

(8) TREATMENT OF PARTNERSHIPS AND S CORPORATIONS.—In the case of a partnership, the limitations of subsection (b) shall apply with respect to the partnership and with respect to each partner. A similar rule shall apply in the case of an S corporation and its shareholders.

(9) COORDINATION WITH SECTION 38.—No credit shall be allowed under section 38 with respect to any amount for which a deduction is allowed under subsection (a).

(10) RECAPTURE IN CERTAIN CASES.—The Secretary shall, by regulations, provide for recapturing the benefit under any deduction allowable under subsection (a) with respect to any property which is not used predominantly in a trade or business at any time.

(e) QUALIFIED REAL PROPERTY.—For purposes of this section, the term "qualified real property" means—

(1) any qualified improvement property described in section 168(e)(6), and

(2) any of the following improvements to nonresidential real property placed in service after the date such property was first placed in service:

(A) Roofs.

(B) Heating, ventilation, and air-conditioning property.

(C) Fire protection and alarm systems.

(D) Security systems.

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Subchapter E—ACCOUNTING PERIODS AND METHODS OF ACCOUNTING

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PART II—METHODS OF ACCOUNTING

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Subpart C—TAXABLE YEAR FOR WHICH DEDUCTIONS TAKEN

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SEC. 469. PASSIVE ACTIVITY LOSSES AND CREDITS LIMITED.

(a) DISALLOWANCE.—

(1) IN GENERAL.—If for any taxable year the taxpayer is described in paragraph (2), neither—

(A) the passive activity loss, nor

(B) the passive activity credit,

for the taxable year shall be allowed.

(2) PERSONS DESCRIBED.—The following are described in this paragraph:

(A) any individual, estate, or trust,

(B) any closely held C corporation, and

(C) any personal service corporation.

(b) DISALLOWED LOSS OR CREDIT CARRIED TO NEXT YEAR.—Except as otherwise provided in this section, any loss or credit from an activity which is disallowed under subsection (a) shall be treated as a deduction or credit allocable to such activity in the next taxable year.

(c) PASSIVE ACTIVITY DEFINED.—For purposes of this section—

(1) IN GENERAL.—The term "passive activity" means any activity—

(A) which involves the conduct of any trade or business, and

(B) in which the taxpayer does not materially participate.

(2) PASSIVE ACTIVITY INCLUDES ANY RENTAL ACTIVITY.—Except as provided in paragraph (7), the term "passive activity" includes any rental activity.

(3) WORKING INTERESTS IN OIL AND GAS PROPERTY.—

(A) IN GENERAL.—The term "passive activity" shall not include any working interest in any oil or gas property which the taxpayer holds directly or through an entity which does not limit the liability of the taxpayer with respect to such interest.

(B) INCOME IN SUBSEQUENT YEARS.—If any taxpayer has any loss for any taxable year from a working interest in any oil or gas property which is treated as a loss which is not from a passive activity, then any net income from such property (or any property the basis of which is determined in whole or in part by reference to the basis of such property) for any succeeding taxable year shall be treated as income of the taxpayer which is not from a passive activity. If the preceding sentence applies to the net income from any property for any taxable year, any credits allowable under subpart B (other than section 27) or D of part IV of subchapter A for such taxable year which are attributable to such property shall be treated as credits not from a passive activity to the extent the amount of such credits does not exceed the regular tax liability of the taxpayer for the taxable year which is allocable to such net income.

(4) MATERIAL PARTICIPATION NOT REQUIRED FOR PARAGRAPHS (2) AND (3).—Paragraphs (2) and (3) shall be applied without regard to whether or not the taxpayer materially participates in the activity.

(5) TRADE OR BUSINESS INCLUDES RESEARCH AND EXPERIMENTATION ACTIVITY.—For purposes of paragraph (1)(A), the term "trade or business" includes any activity involving research or experimentation (within the meaning of section 174).

(6) ACTIVITY IN CONNECTION WITH TRADE OR BUSINESS OR PRODUCTION OF INCOME.—To the extent provided in regulations, for purposes of paragraph (1)(A), the term "trade or business" includes—

(A) any activity in connection with a trade or business, or

(B) any activity with respect to which expenses are allowable as a deduction under section 212.

(7) SPECIAL RULES FOR TAXPAYERS IN REAL PROPERTY BUSINESS.—

(A) IN GENERAL.—If this paragraph applies to any taxpayer for a taxable year—

(i) paragraph (2) shall not apply to any rental real estate activity of such taxpayer for such taxable year, and

(ii) this section shall be applied as if each interest of the taxpayer in rental real estate were a separate activity.

Notwithstanding clause (ii), a taxpayer may elect to treat all interests in rental real estate as one activity. Nothing in the preceding provisions of this subparagraph shall be construed as affecting the determination of whether the

taxpayer materially participates with respect to any interest in a limited partnership as a limited partner.

(B) TAXPAYERS TO WHOM PARAGRAPH APPLIES.—This paragraph shall apply to a taxpayer for a taxable year if—

(i) more than one-half of the personal services performed in trades or businesses by the taxpayer during such taxable year are performed in real property trades or businesses in which the taxpayer materially participates, and

(ii) such taxpayer performs more than 750 hours of services during the taxable year in real property trades or businesses in which the taxpayer materially participates.

In the case of a joint return, the requirements of the preceding sentence are satisfied if and only if either spouse separately satisfies such requirements. For purposes of the preceding sentence, activities in which a spouse materially participates shall be determined under subsection (h).

(C) REAL PROPERTY TRADE OR BUSINESS.—For purposes of this paragraph, the term "real property trade or business" means any real property development, redevelopment, construction, reconstruction, acquisition, conversion, rental, operation, management, leasing, or brokerage trade or business.

(D) SPECIAL RULES FOR SUBPARAGRAPH (B).—

(i) CLOSELY HELD C CORPORATIONS.—In the case of a closely held C corporation, the requirements of subparagraph (B) shall be treated as met for any taxable year if more than 50 percent of the gross receipts of such corporation for such taxable year are derived from real property trades or businesses in which the corporation materially participates.

(ii) PERSONAL SERVICES AS AN EMPLOYEE.—For purposes of subparagraph (B), personal services performed as an employee shall not be treated as performed in real property trades or businesses. The preceding sentence shall not apply if such employee is a 5-percent owner (as defined in section 416(i)(1)(B)) in the employer.

(d) PASSIVE ACTIVITY LOSS AND CREDIT DEFINED.—For purposes of this section—

(1) PASSIVE ACTIVITY LOSS.—The term "passive activity loss" means the amount (if any) by which—

(A) the aggregate losses from all passive activities for the taxable year, exceed

(B) the aggregate income from all passive activities for such year.

(2) PASSIVE ACTIVITY CREDIT.—The term "passive activity credit" means the amount (if any) by which—

(A) the sum of the credits from all passive activities allowable for the taxable year under—

(i) subpart D of part IV of subchapter A, or

(ii) subpart B (other than section 27) of such part IV, exceeds

(B) the regular tax liability of the taxpayer for the taxable year allocable to all passive activities.

(e) SPECIAL RULES FOR DETERMINING INCOME OR LOSS FROM A PASSIVE ACTIVITY.—For purposes of this section—

(1) CERTAIN INCOME NOT TREATED AS INCOME FROM PASSIVE ACTIVITY.—In determining the income or loss from any activity—

(A) IN GENERAL.—There shall not be taken into account—

(i) any—

(I) gross income from interest, dividends, annuities, or royalties not derived in the ordinary course of a trade or business,

(II) expenses (other than interest) which are clearly and directly allocable to such gross income, and

(III) interest expense properly allocable to such gross income, and

(ii) gain or loss not derived in the ordinary course of a trade or business which is attributable to the disposition of property—

(I) producing income of a type described in clause (i), or

(II) held for investment.

For purposes of clause (ii), any interest in a passive activity shall not be treated as property held for investment.

(B) RETURN ON WORKING CAPITAL.—For purposes of subparagraph (A), any income, gain, or loss which is attributable to an investment of working capital shall be treated as not derived in the ordinary course of a trade or business.

(2) PASSIVE LOSSES OF CERTAIN CLOSELY HELD CORPORATIONS MAY OFFSET ACTIVE INCOME.—

(A) IN GENERAL.—If a closely held C corporation (other than a personal service corporation) has net active income for any taxable year, the passive activity loss of such taxpayer for such taxable year (determined without regard to this paragraph)—

(i) shall be allowable as a deduction against net active income, and

(ii) shall not be taken into account under subsection (a) to the extent so allowable as a deduction.

A similar rule shall apply in the case of any passive activity credit of the taxpayer.

(B) NET ACTIVE INCOME.—For purposes of this paragraph, the term "net active income" means the taxable income of the taxpayer for the taxable year determined without regard to—

(i) any income or loss from a passive activity, and

(ii) any item of gross income, expense, gain, or loss described in paragraph (1)(A).

(3) COMPENSATION FOR PERSONAL SERVICES.—Earned income (within the meaning of section 911(d)(2)(A)) shall not be taken into account in computing the income or loss from a passive activity for any taxable year.

(4) DIVIDENDS REDUCED BY DIVIDENDS RECEIVED DEDUCTION.—For purposes of paragraphs (1) and (2), income from dividends shall be reduced by the amount of any dividends received deduction under section 243 or 245.

(f) TREATMENT OF FORMER PASSIVE ACTIVITIES.—For purposes of this section—

(1) IN GENERAL.—If an activity is a former passive activity for any taxable year—

(A) any unused deduction allocable to such activity under subsection (b) shall be offset against the income from such activity for the taxable year,

(B) any unused credit allocable to such activity under subsection (b) shall be offset against the regular tax liability (computed after the application of paragraph (1)) allocable to such activity for the taxable year, and

(C) any such deduction or credit remaining after the application of subparagraphs (A) and (B) shall continue to be treated as arising from a passive activity.

(2) CHANGE IN STATUS OF CLOSELY HELD C CORPORATION OR PERSONAL SERVICE CORPORATION.—If a taxpayer ceases for any taxable year to be a closely held C corporation or personal service corporation, this section shall continue to apply to losses and credits to which this section applied for any preceding taxable year in the same manner as if such taxpayer continued to be a closely held C corporation or personal service corporation, whichever is applicable.

(3) FORMER PASSIVE ACTIVITY.—The term "former passive activity" means any activity which, with respect to the taxpayer—

(A) is not a passive activity for the taxable year, but

(B) was a passive activity for any prior taxable year.

(g) DISPOSITIONS OF ENTIRE INTEREST IN PASSIVE ACTIVITY.—If during the taxable year a taxpayer disposes of his entire interest in any passive activity (or former passive activity), the following rules shall apply:

(1) FULLY TAXABLE TRANSACTION.—

(A) IN GENERAL.—If all gain or loss realized on such disposition is recognized, the excess of—

(i) any loss from such activity for such taxable year (determined after the application of subsection (b)), over

(ii) any net income or gain for such taxable year from all other passive activities (determined after the application of subsection (b)),

shall be treated as a loss which is not from a passive activity.

(B) SUBPARAGRAPH (A) NOT TO APPLY TO DISPOSITION INVOLVING RELATED PARTY.—If the taxpayer and the person acquiring the interest bear a relationship to each other described in section 267(b) or section 707(b)(1), then subparagraph (A) shall not apply to any loss of the taxpayer until the taxable year in which such interest is acquired (in a transaction described in subparagraph (A)) by another person who does not bear such a relationship to the taxpayer.

(C) INCOME FROM PRIOR YEARS.—To the extent provided in regulations, income or gain from the activity for preceding taxable years shall be taken into account under subparagraph (A)(ii) for the taxable year to the extent necessary to prevent the avoidance of this section.

(D) CERTAIN DISPOSITIONS OF SMALL BUSINESS STOCK.—In the case a disposition any gain from which is excluded from gross income under section 1202, subparagraph (A) shall not apply.

(2) DISPOSITION BY DEATH.—If an interest in the activity is transferred by reason of the death of the taxpayer—

(A) paragraph (1)(A) shall apply to losses described in paragraph (1)(A) to the extent such losses are greater than the excess (if any) of—

(i) the basis of such property in the hands of the transferee, over

(ii) the adjusted basis of such property immediately before the death of the taxpayer, and

(B) any losses to the extent of the excess described in subparagraph (A) shall not be allowed as a deduction for any taxable year.

(3) INSTALLMENT SALE OF ENTIRE INTEREST.—In the case of an installment sale of an entire interest in an activity to which section 453 applies, paragraph (1) shall apply to the portion of such losses for each taxable year which bears the same ratio to all such losses as the gain recognized on such sale during such taxable year bears to the gross profit from such sale (realized or to be realized when payment is completed).

(h) MATERIAL PARTICIPATION DEFINED.—For purposes of this section—

(1) IN GENERAL.—A taxpayer shall be treated as materially participating in an activity only if the taxpayer is involved in the operations of the activity on a basis which is—

(A) regular,

(B) continuous, and

(C) substantial.

(2) INTERESTS IN LIMITED PARTNERSHIPS.—Except as provided in regulations, no interest in a limited partnership as a limited partner shall be treated as an interest with respect to which a taxpayer materially participates.

(3) TREATMENT OF CERTAIN RETIRED INDIVIDUALS AND SURVIVING SPOUSES.—A taxpayer shall be treated as materially participating in any farming activity for a taxable year if paragraph (4) or (5) of section 2032A(b) would cause the requirements of section 2032A(b)(1)(C)(ii) to be met with respect to real property used in such activity if such taxpayer had died during the taxable year.

(4) CERTAIN CLOSELY HELD C CORPORATIONS AND PERSONAL SERVICE CORPORATIONS.—A closely held C corporation or personal service corporation shall be treated as materially participating in an activity only if—

(A) 1 or more shareholders holding stock representing more than 50 percent (by value) of the outstanding stock of such corporation materially participate in such activity, or

(B) in the case of a closely held C corporation (other than a personal service corporation), the requirements of section 465(c)(7)(C) (without regard to clause (iv)) are met with respect to such activity.

(5) PARTICIPATION BY SPOUSE.—In determining whether a taxpayer materially participates, the participation of the spouse of the taxpayer shall be taken into account.

(i) $25,000 OFFSET FOR RENTAL REAL ESTATE ACTIVITIES.—

(1) IN GENERAL.—In the case of any natural person, subsection (a) shall not apply to that portion of the passive activity loss or the deduction equivalent (within the meaning of subsection (j)(5)) of the passive activity credit for any taxable year which is attributable to all rental real estate activities with respect to which such individual actively participated in such taxable year (and if any portion of such loss or credit arose in another taxable year, in such other taxable year).

(2) DOLLAR LIMITATION.—The aggregate amount to which paragraph (1) applies for any taxable year shall not exceed $25,000.

(3) PHASE-OUT OF EXEMPTION.—

(A) IN GENERAL.—In the case of any taxpayer, the $25,000 amount under paragraph (2) shall be reduced (but not below zero) by 50 percent of the amount by which the adjusted gross income of the taxpayer for the taxable year exceeds $100,000.

(B) SPECIAL PHASE-OUT OF REHABILITATION CREDIT.—In the case of any portion of the passive activity credit for any taxable year which is attributable to the rehabilitation credit determined under section 47, subparagraph (A) shall be applied by substituting "$200,000" for "$100,000".

(C) EXCEPTION FOR LOW-INCOME HOUSING CREDIT.—Subparagraph (A) shall not apply to any portion of the passive activity credit for any taxable year which is attributable to any credit determined under section 42.

(D) ORDERING RULE.—Paragraph (1) shall be applied for any taxable year—

(i) first, to the passive activity loss,

(ii) second, to the portion of the passive activity credit to which subparagraph (B) and (C) does not apply,

(iii) third, to the portion of such credit to which subparagraph (B) applies, and

(iv) then, to the portion of such credit to which subparagraph (C) applies.

(E) ADJUSTED GROSS INCOME.—For purposes of this paragraph, adjusted gross income shall be determined without regard to—

(i) any amount includible in gross income under section 86,

(ii) the amounts excludable from gross income under sections 85(c), 135, and 137,

(iii) the amounts allowable as a deduction under sections 219, 221, and 250, and

(iv) any passive activity loss or any loss allowable by reason of subsection (c)(7).

(4) SPECIAL RULE FOR ESTATES.—

(A) IN GENERAL.—In the case of taxable years of an estate ending less than 2 years after the date of the death of the decedent, this subsection shall apply to all rental real estate activities with respect to which such decedent actively participated before his death.

(B) REDUCTION FOR SURVIVING SPOUSE'S EXEMPTION.—For purposes of subparagraph (A), the $25,000 amount under paragraph (2) shall be reduced by the amount of the exemption under paragraph (1) (without regard to paragraph (3)) allowable to the surviving spouse of the decedent for the taxable year ending with or within the taxable year of the estate.

(5) MARRIED INDIVIDUALS FILING SEPARATELY.—

(A) IN GENERAL.—Except as provided in subparagraph (B), in the case of any married individual filing a separate return, this subsection shall be applied by substituting—

(i) "$12,500" for "$25,000" each place it appears,

(ii) "$50,000" for "$100,000" in paragraph (3)(A), and

(iii) "$100,000" for "$200,000" in paragraph (3)(B).

(B) TAXPAYERS NOT LIVING APART.—This subsection shall not apply to a taxpayer who—

(i) is a married individual filing a separate return for any taxable year, and

(ii) does not live apart from his spouse at all times during such taxable year.

(6) ACTIVE PARTICIPATION.—

(A) IN GENERAL.—An individual shall not be treated as actively participating with respect to any interest in any rental real estate activity for any period if, at any time during such period, such interest (including any interest of the spouse of the individual) is less than 10 percent (by value) of all interests in such activity.

(B) NO PARTICIPATION REQUIREMENT FOR LOW-INCOME HOUSING OR REHABILITATION CREDIT.—Paragraphs (1) and (4)(A) shall be applied without regard to the active participation requirement in the case of—

(i) any credit determined under section 42 for any taxable year, or

(ii) any rehabilitation credit determined under section 47,

(C) INTEREST AS A LIMITED PARTNER.—Except as provided in regulations, no interest as a limited partner in a limited partnership shall be treated as an interest with respect to which the taxpayer actively participates.

(D) PARTICIPATION BY SPOUSE.—In determining whether a taxpayer actively participates, the participation of the spouse of the taxpayer shall be taken into account.

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

(1) CLOSELY HELD C CORPORATION.—The term "closely held C corporation" means any C corporation described in section 465(a)(1)(B).

(2) PERSONAL SERVICE CORPORATION.—The term "personal service corporation" has the meaning given such term by sec-

tion 269A(b)(1), except that section 269A(b)(2) shall be applied—

(A) by substituting "any" for "more than 10 percent", and

(B) by substituting "any" for "50 percent or more in value" in section 318(a)(2)(C).

A corporation shall not be treated as a personal service corporation unless more than 10 percent of the stock (by value) in such corporation is held by employee-owners (within the meaning of section 269A(b)(2), as modified by the preceding sentence).

(3) REGULAR TAX LIABILITY.—The term "regular tax liability" has the meaning given such term by section 26(b).

(4) ALLOCATION OF PASSIVE ACTIVITY LOSS AND CREDIT.—The passive activity loss and the passive activity credit (and the $25,000 amount under subsection (i)) shall be allocated to activities, and within activities, on a pro rata basis in such manner as the Secretary may prescribe.

(5) DEDUCTION EQUIVALENT.—The deduction equivalent of credits from a passive activity for any taxable year is the amount which (if allowed as a deduction) would reduce the regular tax liability for such taxable year by an amount equal to such credits.

(6) SPECIAL RULE FOR GIFTS.—In the case of a disposition of any interest in a passive activity by gift—

(A) the basis of such interest immediately before the transfer shall be increased by the amount of any passive activity losses allocable to such interest with respect to which a deduction has not been allowed by reason of subsection (a), and

(B) such losses shall not be allowable as a deduction for any taxable year.

(7) QUALIFIED RESIDENCE INTEREST.—The passive activity loss of a taxpayer shall be computed without regard to qualified residence interest (within the meaning of section 163(h)(3)).

(8) RENTAL ACTIVITY.—The term "rental activity" means any activity where payments are principally for the use of tangible property.

(9) ELECTION TO INCREASE BASIS OF PROPERTY BY AMOUNT OF DISALLOWED CREDIT.—For purposes of determining gain or loss from a disposition of any property to which subsection (g)(1) applies, the transferor may elect to increase the basis of such property immediately before the transfer by an amount equal to the portion of any unused credit allowable under this chapter which reduced the basis of such property for the taxable year in which such credit arose. If the taxpayer elects the application of this paragraph, such portion of the passive activity credit of such taxpayer shall not be allowed for any taxable year.

(10) COORDINATION WITH SECTION 280A.—If a passive activity involves the use of a dwelling unit to which section 280A(c)(5) applies for any taxable year, any income, deduction, gain, or loss allocable to such use shall not be taken into account for purposes of this section for such taxable year.

(11) AGGREGATION OF MEMBERS OF AFFILIATED GROUPS.—Except as provided in regulations, all members of an affiliated group which files a consolidated return shall be treated as 1 corporation.

(12) SPECIAL RULE FOR DISTRIBUTIONS BY ESTATES OR TRUSTS.—If any interest in a passive activity is distributed by an estate or trust—

(A) the basis of such interest immediately before such distribution shall be increased by the amount of any passive activity losses allocable to such interest, and

(B) such losses shall not be allowable as a deduction for any taxable year.

(k) SEPARATE APPLICATION OF SECTION IN CASE OF PUBLICLY TRADED PARTNERSHIPS.—

(1) IN GENERAL.—This section shall be applied separately with respect to items attributable to each publicly traded partnership (and subsection (i) shall not apply with respect to items attributable to any such partnership). The preceding sentence shall not apply to any credit determined under section 42, or any rehabilitation credit determined under section 47, attributable to a publicly traded partnership to the extent the amount of any such credits exceeds the regular tax liability attributable to income from such partnership.

(2) PUBLICLY TRADED PARTNERSHIP.—For purposes of this section, the term "publicly traded partnership" means any partnership if—

(A) interests in such partnership are traded on an established securities market, or

(B) interests in such partnership are readily tradable on a secondary market (or the substantial equivalent thereof).

(3) COORDINATION WITH SUBSECTION (G).—For purposes of subsection (g), a taxpayer shall not be treated as having disposed of his entire interest in an activity of a publicly traded partnership until he disposes of his entire interest in such partnership.

(4) APPLICATION TO REGULATED INVESTMENT COMPANIES.—For purposes of this section, a regulated investment company (as defined in section 851) holding an interest in a qualified publicly traded partnership (as defined in section 851(h)) shall be treated as a taxpayer described in subsection (a)(2) with respect to items attributable to such interest.

(l) REGULATIONS.—The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out provisions of this section, including regulations—

(1) which specify what constitutes an activity, material participation, or active participation for purposes of this section,

(2) which provide that certain items of gross income will not be taken into account in determining income or loss from any activity (and the treatment of expenses allocable to such income),

(3) requiring net income or gain from a limited partnership or other passive activity to be treated as not from a passive activity,

(4) which provide for the determination of the allocation of interest expense for purposes of this section, and

(5) which deal with changes in marital status and changes between joint returns and separate returns.

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Subchapter P—CAPITAL GAINS AND LOSSES

PART I—TREATMENT OF CAPITAL GAINS

* * * * * * *

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

(a) EXCLUSION.—

(1) IN GENERAL.—In the case of a taxpayer other than a corporation, gross income shall not include [50 percent] *the applicable percentage* of any gain from the sale or exchange of qualified small business stock [held for more than 5 years] *held for at least 3 years*.

(2) EMPOWERMENT ZONE BUSINESSES.—

(A) IN GENERAL.—In the case of qualified small business stock acquired after the date of the enactment of this paragraph in a corporation which is a qualified business entity (as defined in section 1397C(b)) during substantially all of the taxpayer's holding period for such stock, paragraph (1) shall be applied by substituting "60 percent" for "50 percent".

(B) CERTAIN RULES TO APPLY.—Rules similar to the rules of paragraphs (5) and (7) of section 1400B(b) (as in effect before its repeal) shall apply for purposes of this paragraph.

(C) GAIN AFTER 2018 NOT QUALIFIED.—Subparagraph (A) shall not apply to gain attributable to periods after December 31, 2018.

(D) TREATMENT OF DC ZONE.—The District of Columbia Enterprise Zone shall not be treated as an empowerment zone for purposes of this paragraph.

(3) SPECIAL RULES FOR 2009 AND CERTAIN PERIODS IN 2010.—In the case of qualified small business stock *held for more than 5 years and* acquired after the date of the enactment of this paragraph and on or before the date of the enactment of the Creating Small Business Jobs Act of 2010—

[(A) paragraph (1) shall be applied by substituting "75 percent" for "50 percent", and]

(A) the applicable percentage under paragraph (1) shall be 75 percent, and

(B) paragraph (2) shall not apply.

In the case of any stock which would be described in the preceding sentence (but for this sentence), the acquisition date for purposes of this subsection shall be the first day on which such stock was held by the taxpayer determined after the application of section 1223.

(4) 100 PERCENT EXCLUSION FOR STOCK ACQUIRED DURING CERTAIN PERIODS IN 2010 AND THEREAFTER.—In the case of qualified small business stock *held for more than 5 years and* acquired after the date of the enactment of the Creating Small

Business Jobs Act of 2010 *and before the date of the enactment of the Small Business Jobs Act*—

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

(A) the applicable percentage under paragraph (1) shall be 100 percent, and

(B) paragraph (2) shall not apply**[**, and**]**.

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

In the case of any stock which would be described in the preceding sentence (but for this sentence), the acquisition date for purposes of this subsection shall be the first day on which such stock was held by the taxpayer determined after the application of section 1223.

(5) APPLICABLE PERCENTAGE.—Except as provided in paragraphs (3) and (4), the applicable percentage under paragraph (1) shall be determined under the following table:

Years stock held:	***Applicable percentage:***
3 years	*50%*
4 years	*75%*
5 years or more	*100%*

(b) PER-ISSUER LIMITATION ON TAXPAYER'S ELIGIBLE GAIN.—

(1) IN GENERAL.—If the taxpayer has eligible gain for the taxable year from 1 or more dispositions of stock issued by any corporation, the aggregate amount of such gain from dispositions of stock issued by such corporation which may be taken into account under subsection (a) for the taxable year shall not exceed the greater of—

(A) $10,000,000 reduced by the aggregate amount of eligible gain taken into account by the taxpayer under subsection (a) for prior taxable years and attributable to dispositions of stock issued by such corporation, or

(B) 10 times the aggregate adjusted bases of qualified small business stock issued by such corporation and disposed of by the taxpayer during the taxable year.

For purposes of subparagraph (B), the adjusted basis of any stock shall be determined without regard to any addition to basis after the date on which such stock was originally issued.

(2) ELIGIBLE GAIN.—For purposes of this subsection, the term "eligible gain" means any gain from the sale or exchange of qualified small business stock held for **[**more than 5 years**]** *at least 3 years*.

(3) TREATMENT OF MARRIED INDIVIDUALS.—

(A) SEPARATE RETURNS.—In the case of a separate return by a married individual, paragraph (1)(A) shall be applied by substituting "$5,000,000" for "$10,000,000".

(B) ALLOCATION OF EXCLUSION.—In the case of any joint return, the amount of gain taken into account under subsection (a) shall be allocated equally between the spouses for purposes of applying this subsection to subsequent taxable years.

(C) MARITAL STATUS.—For purposes of this subsection, marital status shall be determined under section 7703.

(c) QUALIFIED SMALL BUSINESS STOCK.—For purposes of this section—

(1) IN GENERAL.—Except as otherwise provided in this section, the term "qualified small business stock" means any stock in a [C corporation] *corporation* which is originally issued after the date of the enactment of the Revenue Reconciliation Act of 1993, if—

(A) as of the date of issuance, such corporation is a qualified small business, and

(B) except as provided in subsections (f) and (h), such stock is acquired by the taxpayer at its original issue (directly or through an underwriter)—

(i) in exchange for money or other property (not including stock), or

(ii) as compensation for services provided to such corporation (other than services performed as an underwriter of such stock).

(2) ACTIVE BUSINESS REQUIREMENT; ETC..—

(A) IN GENERAL.—Stock in a corporation shall not be treated as qualified small business stock unless, during substantially all of the taxpayer's holding period for such stock, such corporation meets the active business requirements of subsection (e) [and such corporation is a C corporation].

(B) SPECIAL RULE FOR CERTAIN SMALL BUSINESS INVESTMENT COMPANIES.—

(i) WAIVER OF ACTIVE BUSINESS REQUIREMENT.—Notwithstanding any provision of subsection (e), a corporation shall be treated as meeting the active business requirements of such subsection for any period during which such corporation qualifies as a specialized small business investment company.

(ii) SPECIALIZED SMALL BUSINESS INVESTMENT COMPANY.—For purposes of clause (i), the term "specialized small business investment company" means any eligible corporation (as defined in subsection (e)(4)) which is licensed to operate under section 301(d) of the Small Business Investment Act of 1958 (as in effect on May 13, 1993).

(3) CERTAIN PURCHASES BY CORPORATION OF ITS OWN STOCK.—

(A) REDEMPTIONS FROM TAXPAYER OR RELATED PERSON.—Stock acquired by the taxpayer shall not be treated as qualified small business stock if, at any time during the 4-year period beginning on the date 2 years before the issuance of such stock, the corporation issuing such stock purchased (directly or indirectly) any of its stock from the taxpayer or from a person related (within the meaning of section 267(b) or 707(b)) to the taxpayer.

(B) SIGNIFICANT REDEMPTIONS.—Stock issued by a corporation shall not be treated as qualified business stock if, during the 2-year period beginning on the date 1 year before the issuance of such stock, such corporation made 1 or

more purchases of its stock with an aggregate value (as of the time of the respective purchases) exceeding 5 percent of the aggregate value of all of its stock as of the beginning of such 2-year period.

(C) TREATMENT OF CERTAIN TRANSACTIONS.—If any transaction is treated under section 304(a) as a distribution in redemption of the stock of any corporation, for purposes of subparagraphs (A) and (B), such corporation shall be treated as purchasing an amount of its stock equal to the amount treated as such a distribution under section 304(a).

(d) QUALIFIED SMALL BUSINESS.—For purposes of this section—

(1) IN GENERAL.—The term "qualified small business" means any domestic corporation [which is a C corporation] if—

(A) the aggregate gross assets of such corporation (or any predecessor thereof) at all times on or after the date of the enactment of the Revenue Reconciliation Act of 1993 and before the issuance did not exceed $50,000,000,

(B) the aggregate gross assets of such corporation immediately after the issuance (determined by taking into account amounts received in the issuance) do not exceed $50,000,000, and

(C) such corporation agrees to submit such reports to the Secretary and to shareholders as the Secretary may require to carry out the purposes of this section.

(2) AGGREGATE GROSS ASSETS.—

(A) IN GENERAL.—For purposes of paragraph (1), the term "aggregate gross assets" means the amount of cash and the aggregate adjusted bases of other property held by the corporation.

(B) TREATMENT OF CONTRIBUTED PROPERTY.—For purposes of subparagraph (A), the adjusted basis of any property contributed to the corporation (or other property with a basis determined in whole or in part by reference to the adjusted basis of property so contributed) shall be determined as if the basis of the property contributed to the corporation (immediately after such contribution) were equal to its fair market value as of the time of such contribution.

(3) AGGREGATION RULES.—

(A) IN GENERAL.—All corporations which are members of the same parent-subsidiary controlled group shall be treated as 1 corporation for purposes of this subsection.

(B) PARENT-SUBSIDIARY CONTROLLED GROUP.—For purposes of subparagraph (A), the term "parent-subsidiary controlled group" means any controlled group of corporations as defined in section 1563(a)(1), except that—

(i) "more than 50 percent" shall be substituted for "at least 80 percent" each place it appears in section 1563(a)(1), and

(ii) section 1563(a)(4) shall not apply.

(C) CLARIFICATION WITH RESPECT TO S CORPORATIONS.—Any determination of the members of a controlled group of corporations under this paragraph shall include taking into account any stock ownership in an S corporation.

(e) ACTIVE BUSINESS REQUIREMENT.—

(1) IN GENERAL.—For purposes of subsection (c)(2), the requirements of this subsection are met by a corporation for any period if during such period—

(A) at least 80 percent (by value) of the assets of such corporation are used by such corporation in the active conduct of 1 or more qualified trades or businesses, and

(B) such corporation is an eligible corporation.

(2) SPECIAL RULE FOR CERTAIN ACTIVITIES.—For purposes of paragraph (1), if, in connection with any future qualified trade or business, a corporation is engaged in—

(A) start-up activities described in section 195(c)(1)(A),

(B) activities resulting in the payment or incurring of expenditures which may be treated as research and experimental expenditures under section 174, or

(C) activities with respect to in-house research expenses described in section 41(b)(4),

assets used in such activities shall be treated as used in the active conduct of a qualified trade or business. Any determination under this paragraph shall be made without regard to whether a corporation has any gross income from such activities at the time of the determination.

(3) QUALIFIED TRADE OR BUSINESS.—For purposes of this subsection, the term "qualified trade or business" means any trade or business other than—

(A) any trade or business involving the performance of services in the fields of health, law, engineering, architecture, accounting, actuarial science, performing arts, consulting, athletics, financial services, brokerage services, or any trade or business where the principal asset of such trade or business is the reputation or skill of 1 or more of its employees,

(B) any banking, insurance, financing, leasing, investing, or similar business,

(C) any farming business (including the business of raising or harvesting trees),

(D) any business involving the production or extraction of products of a character with respect to which a deduction is allowable under section 613 or 613A, and

(E) any business of operating a hotel, motel, restaurant, or similar business.

(4) ELIGIBLE CORPORATION.—For purposes of this subsection, the term "eligible corporation" means any domestic corporation; except that such term shall not include—

(A) a DISC or former DISC,

(B) a regulated investment company, real estate investment trust, or REMIC, and

(C) a cooperative.

(5) STOCK IN OTHER CORPORATIONS.—

(A) LOOK-THRU IN CASE OF SUBSIDIARIES.—For purposes of this subsection, stock and debt in any subsidiary corporation shall be disregarded and the parent corporation shall be deemed to own its ratable share of the subsidiary's assets, and to conduct its ratable share of the subsidiary's activities.

(B) PORTFOLIO STOCK OR SECURITIES.—A corporation shall be treated as failing to meet the requirements of paragraph (1) for any period during which more than 10 percent of the value of its assets (in excess of liabilities) consists of stock or securities in other corporations which are not subsidiaries of such corporation (other than assets described in paragraph (6)).

(C) SUBSIDIARY.—For purposes of this paragraph, a corporation shall be considered a subsidiary if the parent owns more than 50 percent of the combined voting power of all classes of stock entitled to vote, or more than 50 percent in value of all outstanding stock, of such corporation.

(6) WORKING CAPITAL.—For purposes of paragraph (1)(A), any assets which—

(A) are held as a part of the reasonably required working capital needs of a qualified trade or business of the corporation, or

(B) are held for investment and are reasonably expected to be used within 2 years to finance research and experimentation in a qualified trade or business or increases in working capital needs of a qualified trade or business,

shall be treated as used in the active conduct of a qualified trade or business. For periods after the corporation has been in existence for at least 2 years, in no event may more than 50 percent of the assets of the corporation qualify as used in the active conduct of a qualified trade or business by reason of this paragraph.

(7) MAXIMUM REAL ESTATE HOLDINGS.—A corporation shall not be treated as meeting the requirements of paragraph (1) for any period during which more than 10 percent of the total value of its assets consists of real property which is not used in the active conduct of a qualified trade or business. For purposes of the preceding sentence, the ownership of, dealing in, or renting of real property shall not be treated as the active conduct of a qualified trade or business.

(8) COMPUTER SOFTWARE ROYALTIES.—For purposes of paragraph (1), rights to computer software which produces active business computer software royalties (within the meaning of section 543(d)(1)) shall be treated as an asset used in the active conduct of a trade or business.

(9) APPLIED AT S CORPORATION LEVEL.—In the case of an S corporation, the requirements of this subsection shall be applied at the corporate level.

(f) STOCK ACQUIRED ON [CONVERSION OF OTHER STOCK.—] [If any stock] *CONVERSION.—*

(1) OTHER STOCK.—If any stock in a corporation is acquired solely through the conversion of other stock in such corporation which is qualified small business stock in the hands of the taxpayer—

[(1)] *(A)* the stock so acquired shall be treated as qualified small business stock in the hands of the taxpayer, and

[(2)] *(B)* the stock so acquired shall be treated as having been held during the period during which the converted stock was held.

(2) CONVERTIBLE DEBT INSTRUMENTS.—

(A) IN GENERAL.—If any stock in a corporation is acquired by the taxpayer, without recognition of gain, solely through the conversion of a qualified convertible debt instrument—

(i) the stock so acquired shall be treated as qualified small business stock in the hands of the taxpayer, and

(ii) the stock so acquired shall be treated as having been held during the period during which the qualified convertible debt instrument was held.

(B) QUALIFIED CONVERTIBLE DEBT INSTRUMENT.—For purposes of this paragraph, the term "qualified convertible debt instrument" means any bond or other evidence of indebtedness—

(i) which is originally issued by the corporation to the taxpayer,

(ii) the issuer of which—

(I) from issuance until conversion, is a qualified small business, and

(II) during substantially all of the taxpayer's holding period of such bond or evidence of indebtedness, the corporation meets the active business requirements of subsection (e), and

(iii) which is convertible into stock in the corporation.

(g) TREATMENT OF PASS-THRU ENTITIES.—

(1) IN GENERAL.—If any amount included in gross income by reason of holding an interest in a pass-thru entity meets the requirements of paragraph (2)—

(A) such amount shall be treated as gain described in subsection (a), and

(B) for purposes of applying subsection (b), such amount shall be treated as gain from a disposition of stock in the corporation issuing the stock disposed of by the pass-thru entity and the taxpayer's proportionate share of the adjusted basis of the pass-thru entity in such stock shall be taken into account.

(2) REQUIREMENTS.—An amount meets the requirements of this paragraph if—

(A) such amount is attributable to gain on the sale or exchange by the pass-thru entity of stock which is qualified small business stock in the hands of such entity (determined by treating such entity as an individual) and which was held by such entity for **[**more than 5 years**]** *at least 3 years*, and

(B) such amount is includible in the gross income of the taxpayer by reason of the holding of an interest in such entity which was held by the taxpayer on the date on which such pass-thru entity acquired such stock and at all times thereafter before the disposition of such stock by such pass-thru entity.

(3) LIMITATION BASED ON INTEREST ORIGINALLY HELD BY TAXPAYER.—Paragraph (1) shall not apply to any amount to the extent such amount exceeds the amount to which paragraph (1) would have applied if such amount were determined by ref-

erence to the interest the taxpayer held in the pass-thru entity on the date the qualified small business stock was acquired.

(4) PASS-THRU ENTITY.—For purposes of this subsection, the term "pass-thru entity" means—

(A) any partnership,

(B) any S corporation,

(C) any regulated investment company, and

(D) any common trust fund.

(h) CERTAIN TAX-FREE AND OTHER TRANSFERS.—For purposes of this section—

(1) IN GENERAL.—In the case of a transfer described in paragraph (2), the transferee shall be treated as—

(A) having acquired such stock in the same manner as the transferor, and

(B) having held such stock during any continuous period immediately preceding the transfer during which it was held (or treated as held under this subsection) by the transferor.

(2) DESCRIPTION OF TRANSFERS.—A transfer is described in this subsection if such transfer is—

(A) by gift,

(B) at death, or

(C) from a partnership to a partner of stock with respect to which requirements similar to the requirements of subsection (g) are met at the time of the transfer (without regard to the 5-year holding period requirement).

(3) CERTAIN RULES MADE APPLICABLE.—Rules similar to the rules of section 1244(d)(2) shall apply for purposes of this section.

(4) INCORPORATIONS AND REORGANIZATIONS INVOLVING NONQUALIFIED STOCK.—

(A) IN GENERAL.—In the case of a transaction described in section 351 or a reorganization described in section 368, if qualified small business stock is exchanged for other stock which would not qualify as qualified small business stock but for this subparagraph, such other stock shall be treated as qualified small business stock acquired on the date on which the exchanged stock was acquired.

(B) LIMITATION.—This section shall apply to gain from the sale or exchange of stock treated as qualified small business stock by reason of subparagraph (A) only to the extent of the gain which would have been recognized at the time of the transfer described in subparagraph (A) if section 351 or 368 had not applied at such time. The preceding sentence shall not apply if the stock which is treated as qualified small business stock by reason of subparagraph (A) is issued by a corporation which (as of the time of the transfer described in subparagraph (A)) is a qualified small business.

(C) SUCCESSIVE APPLICATION.—For purposes of this paragraph, stock treated as qualified small business stock under subparagraph (A) shall be so treated for subsequent transactions or reorganizations, except that the limitation of subparagraph (B) shall be applied as of the time of the first transfer to which such limitation applied (determined

after the application of the second sentence of subparagraph (B)).

(D) CONTROL TEST.—In the case of a transaction described in section 351, this paragraph shall apply only if, immediately after the transaction, the corporation issuing the stock owns directly or indirectly stock representing control (within the meaning of section 368(c)) of the corporation whose stock was exchanged.

(i) BASIS RULES.—For purposes of this section—

(1) STOCK EXCHANGED FOR PROPERTY.—In the case where the taxpayer transfers property (other than money or stock) to a corporation in exchange for stock in such corporation—

(A) such stock shall be treated as having been acquired by the taxpayer on the date of such exchange, and

(B) the basis of such stock in the hands of the taxpayer shall in no event be less than the fair market value of the property exchanged.

(2) TREATMENT OF CONTRIBUTIONS TO CAPITAL.—If the adjusted basis of any qualified small business stock is adjusted by reason of any contribution to capital after the date on which such stock was originally issued, in determining the amount of the adjustment by reason of such contribution, the basis of the contributed property shall in no event be treated as less than its fair market value on the date of the contribution.

(j) TREATMENT OF CERTAIN SHORT POSITIONS.—

(1) IN GENERAL.—If the taxpayer has an offsetting short position with respect to any qualified small business stock, subsection (a) shall not apply to any gain from the sale or exchange of such stock unless—

(A) such stock was held by the taxpayer for [more than 5 years] *at least 3 years* as of the first day on which there was such a short position, and

(B) the taxpayer elects to recognize gain as if such stock were sold on such first day for its fair market value.

(2) OFFSETTING SHORT POSITION.—For purposes of paragraph (1), the taxpayer shall be treated as having an offsetting short position with respect to any qualified small business stock if—

(A) the taxpayer has made a short sale of substantially identical property,

(B) the taxpayer has acquired an option to sell substantially identical property at a fixed price, or

(C) to the extent provided in regulations, the taxpayer has entered into any other transaction which substantially reduces the risk of loss from holding such qualified small business stock.

For purposes of the preceding sentence, any reference to the taxpayer shall be treated as including a reference to any person who is related (within the meaning of section 267(b) or 707(b)) to the taxpayer.

(k) REGULATIONS.—The Secretary shall prescribe such regulations as may be appropriate to carry out the purposes of this section, including regulations to prevent the avoidance of the purposes of this section through split-ups, shell corporations, partnerships, or otherwise.

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Subchapter Z—OPPORTUNITY ZONES

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SEC. 1400Z–3. SPECIAL RULES FOR CAPITAL GAINS INVESTED IN RURAL OPPORTUNITY ZONES.

(a) IN GENERAL.—

(1) TREATMENT OF GAINS.—In the case of capital gain from the sale to, or exchange with, an unrelated person of any property held by the taxpayer, at the election of the taxpayer—

(A) gross income for the taxable year shall not include so much of such gain as does not exceed the aggregate amount invested by the taxpayer in a qualified rural opportunity fund during the 180-day period beginning on the date of such sale or exchange,

(B) the amount of gain excluded by subparagraph (A) shall be included in gross income as provided by subsection (b), and

(C) subsection (c) shall apply.

(2) ELECTION.—No election may be made under paragraph (1)—

(A) with respect to a sale or exchange if an election previously made with respect to such sale or exchange is in effect, or

(B) with respect to any sale or exchange after December 31, 2032.

(b) DEFERRAL OF GAIN INVESTED IN QUALIFIED RURAL OPPORTUNITY ZONE PROPERTY.—

(1) YEAR OF INCLUSION.—Gain to which subsection (a)(1)(B) applies shall be included in income in the taxable year which includes the earlier of—

(A) the date on which such investment is sold or exchanged, or

(B) December 31, 2032.

(2) AMOUNT INCLUDIBLE.—

(A) IN GENERAL.—The amount of gain included in gross income under subsection (a)(1)(A) shall be the excess of—

(i) the lesser of the amount of gain excluded under paragraph (1) or the fair market value of the investment as determined as of the date described in paragraph (1), over

(ii) the taxpayer's basis in the investment.

(B) DETERMINATION OF BASIS QUALIFIED RURAL OPPORTUNITY ZONE PROPERTY.—

(i) IN GENERAL.—Except as otherwise provided in this clause or subsection (c), the taxpayer's basis in the investment shall be zero.

(ii) INCREASE FOR GAIN RECOGNIZED UNDER SUBSECTION (A)(1)(B).—The basis in the investment shall be increased by the amount of gain recognized by reason of subsection (a)(1)(B) with respect to such property.

(iii) INVESTMENTS HELD FOR 5 YEARS.—In the case of any investment held for at least 5 years, the basis of

such investment shall be increased by an amount equal to 10 percent of the amount of gain deferred by reason of subsection (a)(1)(A).

(iv) INVESTMENTS HELD FOR 7 YEARS.—In the case of any investment held by the taxpayer for at least 7 years, in addition to any adjustment made under clause (iii), the basis of such property shall be increased by an amount equal to 5 percent of the amount of gain deferred by reason of subsection (a)(1)(A).

(c) SPECIAL RULE FOR INVESTMENTS HELD FOR AT LEAST 10 YEARS.—In the case of any investment held by the taxpayer for at least 10 years and with respect to which the taxpayer makes an election under this subsection, the basis of such property shall be equal to the fair market value of such investment on the date that the investment is sold or exchanged.

(d) QUALIFIED RURAL OPPORTUNITY FUND.—For purposes of this section—

(1) IN GENERAL.—The term "qualified rural opportunity fund" means any investment vehicle which is organized as a corporation or a partnership for the purpose of investing in qualified rural opportunity zone property (other than another qualified rural opportunity fund) that holds at least 90 percent of its assets in qualified rural opportunity zone property, determined by the average of the percentage of qualified rural opportunity zone property held in the fund as measured—

(A) on the last day of the first 6-month period of the taxable year of the fund, and

(B) on the last day of the taxable year of the fund.

(2) QUALIFIED RURAL OPPORTUNITY ZONE PROPERTY.—

(A) IN GENERAL.—The term "qualified rural opportunity zone property" means property which is—

(i) qualified rural opportunity zone stock,

(ii) qualified rural opportunity zone partnership interest, or

(iii) qualified rural opportunity zone business property.

(B) QUALIFIED RURAL OPPORTUNITY ZONE STOCK.—

(i) IN GENERAL.—Except as provided in clause (ii), the term "qualified rural opportunity zone stock" means any stock in a domestic corporation if—

(I) such stock is acquired by the qualified rural opportunity fund after December 31, 2023, at its original issue (directly or through an underwriter) from the corporation solely in exchange for cash,

(II) as of the time such stock was issued, such corporation was a qualified rural opportunity zone business (or, in the case of a new corporation, such corporation was being organized for purposes of being a qualified rural opportunity zone business), and

(III) during substantially all of the qualified rural opportunity fund's holding period for such stock, such corporation qualified as a qualified rural opportunity zone business.

(ii) REDEMPTIONS.—A rule similar to the rule of section 1202(c)(3) shall apply for purposes of this paragraph.

(C) QUALIFIED RURAL OPPORTUNITY ZONE PARTNERSHIP INTEREST.—The term "qualified rural opportunity zone partnership interest" means any capital or profits interest in a domestic partnership if—

(i) such interest is acquired by the qualified rural opportunity fund after December 31, 2023, from the partnership solely in exchange for cash,

(ii) as of the time such interest was acquired, such partnership was a qualified rural opportunity zone business (or, in the case of a new partnership, such partnership was being organized for purposes of being a qualified rural opportunity zone business), and

(iii) during substantially all of the qualified rural opportunity fund's holding period for such interest, such partnership qualified as a qualified rural opportunity zone business.

(D) QUALIFIED RURAL OPPORTUNITY ZONE BUSINESS PROPERTY.—

(i) IN GENERAL.—The term "qualified rural opportunity zone business property" means tangible property used in a trade or business of the qualified rural opportunity fund if—

(I) such property was acquired by the qualified rural opportunity fund by purchase (as defined in section 179(d)(2)) after December 31, 2023,

(II) the original use of such property in the qualified rural opportunity zone commences with the qualified rural opportunity fund or the qualified rural opportunity fund substantially improves the property, and

(III) during substantially all of the qualified rural opportunity fund's holding period for such property, substantially all of the use of such property was in a qualified rural opportunity zone.

(ii) SUBSTANTIAL IMPROVEMENT.—For purposes of subparagraph (A)(ii), property shall be treated as substantially improved by the qualified rural opportunity fund only if, during any 30-month period beginning after the date of acquisition of such property, additions to basis with respect to such property in the hands of the qualified rural opportunity fund exceed an amount equal to the adjusted basis of such property at the beginning of such 30-month period in the hands of the qualified rural opportunity fund.

(iii) RELATED PARTY.—For purposes of subparagraph (A)(i), the related person rule of section 179(d)(2) shall be applied pursuant to subsection (e)(2) in lieu of the application of such rule in section 179(d)(2)(A).

(3) QUALIFIED RURAL OPPORTUNITY ZONE BUSINESS.—

(A) IN GENERAL.—The term "qualified rural opportunity zone business" means a trade or business—

(i) in which substantially all of the tangible property owned or leased by the taxpayer is qualified rural opportunity zone business property (determined by substituting "qualified rural opportunity zone business" for "qualified rural opportunity fund" each place it appears in paragraph (2)(D)),

(ii) which satisfies the requirements of paragraphs (2), (4), and (8) of section 1397C(b), and

(iii) which is not described in section 144(c)(6)(B).

(B) SPECIAL RULE.—For purposes of subparagraph (A), tangible property that ceases to be a qualified rural opportunity zone business property shall continue to be treated as a qualified rural opportunity zone business property for the lesser of—

(i) 5 years after the date on which such tangible property ceases to be so qualified, or

(ii) the date on which such tangible property is no longer held by the qualified rural opportunity zone business.

(4) QUALIFIED RURAL OPPORTUNITY ZONE.—

(A) IN GENERAL.—The term "qualified rural opportunity zone" means any population census tract which—

(i) is located in a rural county, and

(ii) is in persistent poverty (as determined by the Bureau of the Census using the same methodology and data as used for purposes of the May 2023 report of such Bureau entitled "Persistent Poverty in Counties and Census Tracts").

(B) RURAL COUNTY.—The term "rural county" means any county if more than 50 percent of the census blocks which comprise such county are rural blocks (as determined by the Bureau of the Census as of the date of the enactment of this Act). A rule similar to section 143(k)(2)(D) shall apply for purposes of the preceding sentence.

(e) APPLICABLE RULES.—

(1) TREATMENT OF INVESTMENTS WITH MIXED FUNDS.—In the case of any investment in a qualified rural opportunity fund only a portion of which consists of investments of gain to which an election under subsection (a) is in effect—

(A) such investment shall be treated as 2 separate investments, consisting of—

(i) one investment that only includes amounts to which the election under subsection (a) applies, and

(ii) a separate investment consisting of other amounts, and

(B) subsections (a), (b), and (c) shall only apply to the investment described in subparagraph (A)(i).

(2) RELATED PERSONS.—For purposes of this section, persons are related to each other if such persons are described in section 267(b) or 707(b)(1), determined by substituting "20 percent" for "50 percent" each place it occurs in such sections.

(3) DECEDENTS.—In the case of a decedent, amounts recognized under this section shall, if not properly includible in the gross income of the decedent, be includible in gross income as provided by section 691.

(4) REGULATIONS.—The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of this section, including—

(A) rules for the certification of qualified rural opportunity funds for the purposes of this section,

(B) rules to ensure a qualified rural opportunity fund has a reasonable period of time to reinvest the return of capital from investments in qualified rural opportunity zone stock and qualified rural opportunity zone partnership interests, and to reinvest proceeds received from the sale or disposition of qualified rural opportunity zone property, and

(C) rules to prevent abuse.

(f) FAILURE OF QUALIFIED RURAL OPPORTUNITY FUND TO MAINTAIN INVESTMENT STANDARD.—

(1) IN GENERAL.—If a qualified rural opportunity fund fails to meet the 90-percent requirement of subsection (d)(1), the qualified rural opportunity fund shall pay a penalty for each month it fails to meet the requirement in an amount equal to the product of—

(A) the excess of—

(i) the amount equal to 90 percent of its aggregate assets, over

(ii) the aggregate amount of qualified rural opportunity zone property held by the fund, multiplied by

(B) the underpayment rate established under section 6621(a)(2) for such month.

(2) SPECIAL RULE FOR PARTNERSHIPS.—In the case that the qualified rural opportunity fund is a partnership, the penalty imposed by paragraph (1) shall be taken into account proportionately as part of the distributive share of each partner of the partnership.

(3) REASONABLE CAUSE EXCEPTION.—No penalty shall be imposed under this subsection with respect to any failure if it is shown that such failure is due to reasonable cause.

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Subtitle C—Employment Taxes

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CHAPTER 24—COLLECTION OF INCOME TAX AT SOURCE ON WAGES

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SEC. 3406. BACKUP WITHHOLDING.

(a) REQUIREMENT TO DEDUCT AND WITHHOLD.—

(1) IN GENERAL.—In the case of any reportable payment, if—

(A) the payee fails to furnish his TIN to the payor in the manner required,

(B) the Secretary notifies the payor that the TIN furnished by the payee is incorrect,

(C) there has been a notified payee underreporting described in subsection (c), or

(D) there has been a payee certification failure described in subsection (d),

then the payor shall deduct and withhold from such payment a tax equal to the product of the fourth lowest rate of tax applicable under section 1(c) and such payment.

(2) SUBPARAGRAPHS (C) AND (D) OF PARAGRAPH (1) APPLY ONLY TO INTEREST AND DIVIDEND PAYMENTS.—Subparagraphs (C) and (D) of paragraph (1) shall apply only to reportable interest or dividend payments.

(b) REPORTABLE PAYMENT, ETC..—For purposes of this section—

(1) REPORTABLE PAYMENT.—The term "reportable payment" means—

(A) any reportable interest or dividend payment, and

(B) any other reportable payment.

(2) REPORTABLE INTEREST OR DIVIDEND PAYMENT.—

(A) IN GENERAL.—The term "reportable interest or dividend payment" means any payment of a kind, and to a payee, required to be shown on a return required under—

(i) section 6049(a) (relating to payments of interest),

(ii) section 6042(a) (relating to payments of dividends), or

(iii) section 6044 (relating to payments of patronage dividends) but only to the extent such payment is in money.

(B) SPECIAL RULE FOR PATRONAGE DIVIDENDS.—For purposes of subparagraphs (C) and (D) of subsection (a)(1), the term "reportable interest or dividend payment" shall not include any payment to which section 6044 (relating to patronage dividends) applies unless 50 percent or more of such payment is in money.

(3) OTHER REPORTABLE PAYMENT.—The term "other reportable payment" means any payment of a kind, and to a payee, required to be shown on a return required under—

(A) section 6041 (relating to certain information at source),

(B) section 6041A(a) (relating to payments of remuneration for services),

(C) section 6045 (relating to returns of brokers),

(D) section 6050A (relating to reporting requirements of certain fishing boat operators), but only to the extent such payment is in money and represents a share of the proceeds of the catch,

(E) section 6050N (relating to payments of royalties), or

(F) section 6050W (relating to returns relating to payments made in settlement of payment card transactions).

(4) WHETHER PAYMENT IS OF REPORTABLE KIND DETERMINED WITHOUT REGARD TO MINIMUM AMOUNT.—The determination of whether any payment is of a kind required to be shown on a return described in paragraph (2) or (3) shall be made without regard to any minimum amount which must be paid before a return is required.

(5) EXCEPTION FOR CERTAIN SMALL PAYMENTS.—To the extent provided in regulations, the term "reportable payment" shall not include any payment which—

(A) does not exceed $10, and

(B) if determined for a 1-year period, would not exceed $10.

(6) OTHER REPORTABLE PAYMENTS INCLUDE PAYMENTS DESCRIBED IN SECTION 6041(A) OR 6041A(A) [ONLY WHERE AGGREGATE FOR CALENDAR YEAR IS $600 OR MORE] *ONLY IF IN EXCESS OF THRESHOLD*.—Any payment of a kind required to be shown on a return required under section 6041(a) or 6041A(a) which is made during any calendar year shall be treated as a reportable payment only if—

(A) the aggregate amount of such payment and all previous payments described in such sections by the payor to the payee during such calendar year equals or exceeds [$600] *the dollar amount in effect for such calendar year under section 6041(a)*,

(B) the payor was required under section 6041(a) or 6041A(a) to file a return for the preceding calendar year with respect to payments to the payee, or

(C) during the preceding calendar year, the payor made reportable payments to the payee with respect to which amounts were required to be deducted and withheld under subsection (a).

(7) EXCEPTION FOR CERTAIN WINDOW PAYMENTS OF INTEREST, ETC..—For purposes of subparagraphs (C) and (D) of subsection (a)(1), the term "reportable interest or dividend payment" shall not include any payment—

(A) in redemption of a coupon on a bearer instrument or in redemption of a United States savings bond, or

(B) to the extent provided in regulations, of interest on instruments similar to those described in subparagraph (A).

The preceding sentence shall not apply for purposes of determining whether there is payee underreporting described in subsection (c).

(c) NOTIFIED PAYEE UNDERREPORTING WITH RESPECT TO INTEREST AND DIVIDENDS.—

(1) NOTIFIED PAYEE UNDERREPORTING.—If—

(A) the Secretary determines with respect to any payee that there has been payee underreporting,

(B) at least 4 notices have been mailed by the Secretary to the payee (over a period of at least 120 days) with respect to the underreporting, and

(C) in the case of any payee who has filed a return for the taxable year, any deficiency of tax attributable to such failure has been assessed,

the Secretary may notify payors of reportable interest or dividend payments with respect to such payee of the requirement to deduct and withhold under subsection (a)(1)(C) (but not the reasons for the withholding under subsection (a)(1)(C)).

(2) PAYEE UNDERREPORTING DEFINED.—For purposes of this section, there has been payee underreporting if for any taxable year the Secretary determines that—

(A) the payee failed to include in his return of tax under chapter 1 for such year any portion of a reportable interest or dividend payment required to be shown on such return, or

(B) the payee may be required to file a return for such year and to include a reportable interest or dividend payment in such return, but failed to file such return.

(3) DETERMINATION BY SECRETARY TO STOP (OR NOT TO START) WITHHOLDING.—

(A) IN GENERAL.—If the Secretary determines that—

(i) there was no payee underreporting,

(ii) any payee underreporting has been corrected (and any tax, penalty, or interest with respect to the payee underreporting has been paid),

(iii) withholding under subsection (a)(1)(C) has caused (or would cause) undue hardship to the payee and it is unlikely that any payee underreporting by such payee will occur again, or

(iv) there is a bona fide dispute as to whether there has been any payee underreporting,

then the Secretary shall take the action described in subparagraph (B).

(B) SECRETARY TO TAKE ACTION TO STOP (OR NOT TO START) WITHHOLDING.—For purposes of subparagraph (A), if at the time of the Secretary's determination under subparagraph (A)—

(i) no notice has been given under paragraph (1) to any payor with respect to the underreporting, the Secretary shall not give any such notice, or

(ii) if such notice has been given, the Secretary shall—

(I) provide the payee with a written certification that withholding under subsection (a)(1)(C) is to stop, and

(II) notify the applicable payors (and brokers) that such withholding is to stop.

(C) TIME FOR TAKING ACTION WHERE NOTICE TO PAYOR HAS BEEN GIVEN.—In any case where notice has been given under paragraph (1) to any payor with respect to any underreporting, if the Secretary makes a determination under subparagraph (A) during the 12-month period ending on October 15 of any calendar year—

(i) except as provided in clause (ii), the Secretary shall take the action described in subparagraph (B)(ii) to bring about the stopping of withholding no later than December 1 of such calendar year, or

(ii) in the case of—

(I) a no payee underreporting determination under clause (i) of subparagraph (A), or

(II) a hardship determination under clause (iii) of subparagraph (A),

such action shall be taken no later than the 45th day after the day on which the Secretary made the determination.

(D) OPPORTUNITY TO REQUEST DETERMINATION.—The Secretary shall prescribe procedures under which—

(i) a payee may request a determination under subparagraph (A), and

(ii) the payee may provide information with respect to such request.

(4) PAYOR NOTIFIES PAYEE OF WITHHOLDING BECAUSE OF PAYEE UNDERREPORTING.—Any payor required to withhold any tax under subsection (a)(1)(C) shall, at the time such withholding begins, notify the payee of such withholding.

(5) PAYEE MAY BE REQUIRED TO NOTIFY SECRETARY WHO HIS PAYORS AND BROKERS ARE.—For purposes of this section, the Secretary may require any payee of reportable interest or dividend payments who is subject to withholding under subsection (a)(1)(C) to notify the Secretary of—

(A) all payors from whom the payee receives reportable interest or dividend payments, and

(B) all brokers with whom the payee has accounts which may involve reportable interest or dividend payments.

The Secretary may notify any such broker that such payee is subject to withholding under subsection (a)(1)(C).

(d) INTEREST AND DIVIDEND BACKUP WITHHOLDING APPLIES TO NEW ACCOUNTS AND INSTRUMENTS UNLESS PAYEE CERTIFIES THAT HE IS NOT SUBJECT TO SUCH WITHHOLDING.—

(1) IN GENERAL.—There is a payee certification failure unless the payee has certified to the payor, under penalty of perjury, that such payee is not subject to withholding under subsection (a)(1)(C).

(2) SPECIAL RULES FOR READILY TRADABLE INSTRUMENTS.—

(A) IN GENERAL.—Subsection (a)(1)(D) shall apply to any reportable interest or dividend payment to any payee on any readily tradable instrument if (and only if) the payor was notified by a broker under subparagraph (B) or no certification was provided to the payor by the payee under paragraph (1) and—

(i) such instrument was acquired directly by the payee from the payor, or

(ii) such instrument is held by the payor as nominee for the payee.

(B) BROKER NOTIFIES PAYOR.—If—

(i) a payee acquires any readily tradable instrument through a broker, and

(ii) with respect to such acquisition—

(I) the payee fails to furnish his TIN to the broker in the manner required under subsection (a)(1)(A),

(II) the Secretary notifies such broker before such acquisition that the TIN furnished by the payee is incorrect,

(III) the Secretary notifies such broker before such acquisition that such payee is subject to withholding under subsection (a)(1)(C), or

(IV) the payee does not provide a certification to such broker under subparagraph (C),

such broker shall, within such period as the Secretary may prescribe by regulations (but not later than 15 days after such acquisition), notify the payor that such payee is subject to withholding under subparagraph (A), (B), (C), or (D) of subsection (a)(1), respectively.

(C) TIME FOR PAYEE TO PROVIDE CERTIFICATION TO BROKER.—In the case of any readily tradable instrument

acquired by a payee through a broker, the certification described in paragraph (1) may be provided by the payee to such broker—

(i) at any time after the payee's account with the broker was established and before the acquisition of such instrument, or

(ii) in connection with the acquisition of such instrument.

(3) EXCEPTION FOR EXISTING ACCOUNTS, ETC..—This subsection and subsection (a)(1)(D) shall not apply to any reportable interest or dividend payment which is paid or credited—

(A) in the case of interest or any other amount of a kind reportable under section 6049, with respect to any account (whatever called) established before January 1, 1984, or with respect to any instrument acquired before January 1, 1984,

(B) in the case of dividends or any other amount reportable under section 6042, on any stock or other instrument acquired before January 1, 1984, or

(C) in the case of patronage dividends or other amounts of a kind reportable under section 6044, with respect to any membership acquired, or contract entered into, before January 1, 1984.

(4) EXCEPTION FOR READILY TRADABLE INSTRUMENTS ACQUIRED THROUGH EXISTING BROKERAGE ACCOUNTS.—Subparagraph (B) of paragraph (2) shall not apply with respect to a readily tradable instrument which was acquired through an account with a broker if—

(A) such account was established before January 1, 1984, and

(B) during 1983, such broker bought or sold instruments for the payee (or acted as a nominee for the payee) through such account.

The preceding sentence shall not apply with respect to any readily tradable instrument acquired through such account after the broker was notified by the Secretary that the payee is subject to withholding under subsection (a)(1)(C).

(e) PERIOD FOR WHICH WITHHOLDING IS IN EFFECT.—

(1) FAILURE TO FURNISH TIN.—In the case of any failure by a payee to furnish his TIN to a payor in the manner required, subsection (a) shall apply to any reportable payment made by such payor during the period during which the TIN has not been furnished in the manner required. The Secretary may require that a TIN required to be furnished under subsection (a)(1)(A) be provided under penalties of perjury only with respect to interest, dividends, patronage dividends, and amounts subject to broker reporting.

(2) NOTIFICATION OF INCORRECT NUMBER.—In any case in which the Secretary notifies the payor that the TIN furnished by the payee is incorrect, subsection (a) shall apply to any reportable payment made by such payor—

(A) after the close of the 30th day after the day on which the payor received such notification, and

(B) before the payee furnishes another TIN in the manner required.

(3) NOTIFIED PAYEE UNDERREPORTING DESCRIBED IN SUBSECTION (C).—

(A) IN GENERAL.—In the case of any notified payee underreporting described in subsection (c), subsection (a) shall apply to any reportable interest or dividend payment made—

(i) after the close of the 30th day after the day on which the payor received notification from the Secretary of such underreporting, and

(ii) before the stop date.

(B) STOP DATE.—For purposes of this subsection, the term "stop date" means the determination effective date or, if later, the earlier of—

(i) the day on which the payor received notification from the Secretary under subsection (c)(3)(B) to stop withholding, or

(ii) the day on which the payor receives from the payee a certification provided by the Secretary under subsection (c)(3)(B).

(C) DETERMINATION EFFECTIVE DATE.—For purposes of this subsection—

(i) IN GENERAL.—Except as provided in clause (ii), the determination effective date of any determination under subsection (c)(3)(A) which is made during the 12-month period ending on October 15 of any calendar year shall be the first January 1 following such October 15.

(ii) DETERMINATION THAT THERE WAS NO UNDERREPORTING; HARDSHIP.—In the case of any determination under clause (i) or (iii) of subsection (c)(3)(A), the determination effective date shall be the date on which the Secretary's determination is made.

(4) FAILURE TO PROVIDE CERTIFICATION THAT PAYEE IS NOT SUBJECT TO WITHHOLDING.—

(A) IN GENERAL.—In the case of any payee certification failure described in subsection (d)(1), subsection (a) shall apply to any reportable interest or dividend payment made during the period during which the certification described in subsection (d)(1) has not been furnished to the payor.

(B) SPECIAL RULE FOR READILY TRADABLE INSTRUMENTS ACQUIRED THROUGH BROKER WHERE NOTIFICATION.—In the case of any readily tradable instrument acquired by the payee through a broker, the period described in subparagraph (A) shall start with payments to the payee made after the close of the 30th day after the payor receives notification from a broker under subsection (d)(2)(B).

(5) 30-DAY GRACE PERIODS.—

(A) START-UP.—If the payor elects the application of this subparagraph with respect to the payee, subsection (a) shall also apply to any reportable payment made during the 30-day period described in paragraph (2)(A), (3)(A), or (4)(B).

(B) STOPPING.—Unless the payor elects not to have this subparagraph apply with respect to the payee, subsection (a) shall also apply to any reportable payment made after

the close of the period described in paragraph (1), (2), or (4) (as the case may be) and before the 30th day after the close of such period. A similar rule shall also apply with respect to the period described in paragraph (3)(A) where the stop date is determined under clause (i) or (ii) of paragraph (3)(B).

(C) ELECTION OF SHORTER GRACE PERIOD.—The payor may elect a period shorter than the grace period set forth in subparagraph (A) or (B), as the case may be.

(f) CONFIDENTIALITY OF INFORMATION.—

(1) IN GENERAL.—No person may use any information obtained under this section (including any failure to certify under subsection (d)) except for purposes of meeting any requirement under this section or (subject to the safeguards set forth in section 6103) for purposes permitted under section 6103.

(2) CROSS REFERENCE.—For provision providing for civil damages for violation of paragraph (1), see section 7431.

(g) EXCEPTIONS.—

(1) PAYMENTS TO CERTAIN PAYEES.—Subsection (a) shall not apply to any payment made to—

(A) any organization or governmental unit described in subparagraph (B), (C), (D), (E), or (F) of section 6049(b)(4), or

(B) any other person specified in regulations.

(2) AMOUNTS FOR WHICH WITHHOLDING OTHERWISE REQUIRED.—Subsection (a) shall not apply to any amount for which withholding is otherwise required by this title.

(3) EXEMPTION WHILE WAITING FOR TIN.—The Secretary shall prescribe regulations for exemptions from the tax imposed by subsection (a) during the period during which a person is waiting for receipt of a TIN.

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

(1) OBVIOUSLY INCORRECT NUMBER.—A person shall be treated as failing to furnish his TIN if the TIN furnished does not contain the proper number of digits.

(2) PAYEE FURNISHES 2 INCORRECT TINS.—If the payee furnishes the payor 2 incorrect TINs in any 3-year period, the payor shall, after receiving notice of the second incorrect TIN, treat the payee as not having furnished another TIN under subsection (e)(2)(B) until the day on which the payor receives notification from the Secretary that a correct TIN has been furnished.

(3) JOINT PAYEES.—Except to the extent otherwise provided in regulations, any payment to joint payees shall be treated as if all the payment were made to the first person listed in the payment.

(4) PAYOR DEFINED.—The term "payor" means, with respect to any reportable payment, a person required to file a return described in paragraph (2) or (3) of subsection (b) with respect to such payment.

(5) BROKER.—

(A) IN GENERAL.—The term "broker" has the meaning given to such term by section 6045(c)(1).

(B) ONLY 1 BROKER PER ACQUISITION.—If, but for this subparagraph, there would be more than 1 broker with respect to any acquisition, only the broker having the closest contact with the payee shall be treated as the broker.

(C) PAYOR NOT TREATED AS BROKER.—In the case of any instrument, such term shall not include any person who is the payor with respect to such instrument.

(D) REAL ESTATE BROKER NOT TREATED AS A BROKER.—Except as provided by regulations, such term shall not include any real estate broker (as defined in section 6045(e)(2)).

(6) READILY TRADABLE INSTRUMENT.—The term "readily tradable instrument" means—

(A) any instrument which is part of an issue any portion of which is traded on an established securities market (within the meaning of section 453(f)(5)), and

(B) except as otherwise provided in regulations prescribed by the Secretary, any instrument which is regularly quoted by brokers or dealers making a market.

(7) ORIGINAL ISSUE DISCOUNT.—To the extent provided in regulations, rules similar to the rules of paragraph (6) of section 6049(d) shall apply.

(8) REQUIREMENT OF NOTICE TO PAYEE.—Whenever the Secretary notifies a payor under paragraph (1)(B) of subsection (a) that the TIN furnished by any payee is incorrect, the Secretary shall at the same time furnish a copy of such notice to the payor, and the payor shall promptly furnish such copy to the payee.

(9) REQUIREMENT OF NOTICE TO SECRETARY.—If the Secretary notifies a payor under paragraph (1)(B) of subsection (a) that the TIN furnished by any payee is incorrect and such payee subsequently furnishes another TIN to the payor, the payor shall promptly notify the Secretary of the other TIN so furnished.

(10) COORDINATION WITH OTHER SECTIONS.—For purposes of section 31, this chapter (other than section 3402(n)), and so much of subtitle F (other than section 7205) as relates to this chapter, payments which are subject to withholding under this section shall be treated as if they were wages paid by an employer to an employee (and amounts deducted and withheld under this section shall be treated as if deducted and withheld under section 3402).

(i) REGULATIONS.—The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of this section.

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Subtitle F—Procedure and Administration

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CHAPTER 61—INFORMATION AND RETURNS

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Subchapter A—RETURNS AND RECORDS

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PART II—TAX RETURNS OR STATEMENTS

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Subpart A—GENERAL REQUIREMENT

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SEC. 6011. GENERAL REQUIREMENT OF RETURN, STATEMENT, OR LIST.

(a) GENERAL RULE.—When required by regulations prescribed by the Secretary any person made liable for any tax imposed by this title, or with respect to the collection thereof, shall make a return or statement according to the forms and regulations prescribed by the Secretary. Every person required to make a return or statement shall include therein the information required by such forms or regulations.

(b) IDENTIFICATION OF TAXPAYER.—The Secretary is authorized to require such information with respect to persons subject to the taxes imposed by chapter 21 or chapter 24 as is necessary or helpful in securing proper identification of such persons.

(c) RETURNS, ETC., OF DISCS AND FORMER DISCS AND FORMER FSC'S.—

(1) RECORDS AND INFORMATION.—A DISC, former DISC, or former FSC (as defined in section 922 as in effect before its repeal by the FSC Repeal and Extraterritorial Income Exclusion Act of 2000) shall for the taxable year—

(A) furnish such information to persons who were shareholders at any time during such taxable year, and to the Secretary, and

(B) keep such records, as may be required by regulations prescribed by the Secretary.

(2) RETURNS.—A DISC shall file for the taxable year such returns as may be prescribed by the Secretary by forms or regulations.

(d) AUTHORITY TO REQUIRE INFORMATION CONCERNING SECTION 912 ALLOWANCES.—The Secretary may by regulations require any individual who receives allowances which are excluded from gross income under section 912 for any taxable year to include on his return of the taxes imposed by subtitle A for such taxable year such information with respect to the amount and type of such allowances as the Secretary determines to be appropriate.

(e) REGULATIONS REQUIRING RETURNS ON MAGNETIC MEDIA, ETC..—

(1) IN GENERAL.—The Secretary shall prescribe regulations providing standards for determining which returns must be filed on magnetic media or in other machine-readable form. Except as provided in paragraph (3), the Secretary may not require returns of any tax imposed by subtitle A on individuals, estates, and trusts to be other than on paper forms supplied by the Secretary.

(2) REQUIREMENTS OF REGULATIONS.—In prescribing regulations under paragraph (1), the Secretary—

(A) shall not require any person to file returns on magnetic media unless such person is required to file at least the applicable number of returns during the calendar year, and

(B) shall take into account (among other relevant factors) the ability of the taxpayer to comply at reasonable cost with the requirements of such regulations.

(3) SPECIAL RULE FOR TAX RETURN PREPARERS.—

(A) IN GENERAL.—The Secretary shall require that any individual income tax return prepared by a tax return preparer be filed on magnetic media if—

(i) such return is filed by such tax return preparer, and

(ii) such tax return preparer is a specified tax return preparer for the calendar year during which such return is filed.

(B) SPECIFIED TAX RETURN PREPARER.—For purposes of this paragraph, the term "specified tax return preparer" means, with respect to any calendar year, any tax return preparer unless such preparer reasonably expects to file 10 or fewer individual income tax returns during such calendar year.

(C) INDIVIDUAL INCOME TAX RETURN.—For purposes of this paragraph, the term "individual income tax return" means any return of the tax imposed by subtitle A on individuals, estates, or trusts.

(D) EXCEPTION FOR CERTAIN PREPARERS LOCATED IN AREAS WITHOUT INTERNET ACCESS.—The Secretary may waive the requirement of subparagraph (A) if the Secretary determines, on the basis of an application by the tax return preparer, that the preparer cannot meet such requirement by reason of being located in a geographic area which does not have access to internet service (other than dial-up or satellite service).

(4) SPECIAL RULE FOR RETURNS FILED BY FINANCIAL INSTITUTIONS WITH RESPECT TO WITHHOLDING ON FOREIGN TRANSFERS.—The numerical limitation under paragraph (2)(A) shall not apply to any return filed by a financial institution (as defined in section 1471(d)(5)) with respect to tax for which such institution is made liable under section 1461 or 1474(a).

(5) APPLICABLE NUMBER.—

(A) IN GENERAL.—For purposes of paragraph (2)(A), the applicable number shall be—

(i) except as provided in subparagraph (B), in the case of calendar years before 2021, 250,

(ii) in the case of calendar year 2021, 100, and

(iii) in the case of calendar years after 2021, 10.

(B) SPECIAL RULE FOR PARTNERSHIPS FOR 2018, 2019, 2020, AND 2021.—In the case of a partnership, for any calendar year before 2022, the applicable number shall be—

(i) in the case of calendar year 2018, 200,

(ii) in the case of calendar year 2019, 150,

(iii) in the case of calendar year 2020, 100, and

(iv) in the case of calendar year 2021, 50.

(6) PARTNERSHIPS REQUIRED TO FILE ON MAGNETIC MEDIA.—Notwithstanding paragraph (2)(A), the Secretary shall require partnerships having more than 100 partners to file returns on magnetic media.

(6) APPLICATION OF NUMERICAL LIMITATION TO RETURNS RELATING TO DEFERRED COMPENSATION PLANS.—For purposes of applying the numerical limitation under paragraph (2)(A) to any return required under section 6058, information regarding each plan for which information is provided on such return shall be treated as a separate return.

(8) QUALIFIED OPPORTUNITY FUNDS AND QUALIFIED RURAL OPPORTUNITY FUNDS.—Notwithstanding paragraphs (1) and (2), any return filed by a qualified opportunity fund or qualified rural opportunity fund shall be filed on magnetic media or other machine-readable form.

(f) PROMOTION OF ELECTRONIC FILING.—

(1) IN GENERAL.—The Secretary is authorized to promote the benefits of and encourage the use of electronic tax administration programs, as they become available, through the use of mass communications and other means.

(2) INCENTIVES.—The Secretary may implement procedures to provide for the payment of appropriate incentives for electronically filed returns.

(g) DISCLOSURE OF REPORTABLE TRANSACTION TO TAX-EXEMPT ENTITY.—Any taxable party to a prohibited tax shelter transaction (as defined in section 4965(e)(1)) shall by statement disclose to any tax-exempt entity (as defined in section 4965(c)) which is a party to such transaction that such transaction is such a prohibited tax shelter transaction.

(h) MANDATORY E-FILING OF UNRELATED BUSINESS INCOME TAX RETURN.—Any organization required to file an annual return under this section which relates to any tax imposed by section 511 shall file such return in electronic form.

(i) INCOME, ESTATE, AND GIFT TAXES.—For requirement that returns of income, estate, and gift taxes be made whether or not there is tax liability, see subparts B and C.

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PART III—INFORMATION RETURNS

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Subpart A—INFORMATION CONCERNING PERSONS SUBJECT TO SPECIAL PROVISIONS

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SEC. 6039K. RETURNS WITH RESPECT TO QUALIFIED OPPORTUNITY FUNDS AND QUALIFIED RURAL OPPORTUNITY FUNDS.

(a) IN GENERAL.—Every qualified opportunity fund shall file an annual return (at such time and in such manner as the Secretary

may prescribe) containing the information described in subsection (b).

(b) INFORMATION FROM QUALIFIED OPPORTUNITY FUNDS.—The information described in this subsection is—

(1) the name, address, and taxpayer identification number of the qualified opportunity fund,

(2) whether the qualified opportunity fund is organized as a corporation or a partnership,

(3) the value of the total assets held by the qualified opportunity fund as of each date described in section 1400Z–2(d)(1),

(4) the value of all qualified opportunity zone property held by the qualified opportunity fund on each such date,

(5) with respect to each investment held by the qualified opportunity fund in qualified opportunity zone stock or a qualified opportunity zone partnership interest—

(A) the name, address, and taxpayer identification number of the corporation in which such stock is held or the partnership in which such interest is held, as the case may be,

(B) each North American Industry Classification System (NAICS) code that applies to the trades or businesses conducted by such corporation or partnership,

(C) the population census tracts in which the qualified opportunity zone business property of such corporation or partnership is located,

(D) the amount of the investment in such stock or partnership interest as of each date described in section 1400Z–2(d)(1),

(E) the value of tangible property held by such corporation or partnership on each such date which is owned by such corporation or partnership,

(F) the value of tangible property held by such corporation or partnership on each such date which is leased by such corporation or partnership,

(G) the approximate number of residential units (if any) for any real property held by such corporation or partnership, and

(H) the approximate average monthly number of full-time equivalent employees of such corporation or partnership for the year (within numerical ranges identified by the Secretary) or such other indication of the employment impact of such corporation or partnership as determined appropriate by the Secretary,

(6) with respect to the items of qualified opportunity zone business property held by the qualified opportunity fund—

(A) the North American Industry Classification System (NAICS) code that applies to the trades or businesses in which such property is held,

(B) the population census tract in which the property is located,

(C) whether the property is owned or leased,

(D) the aggregate value of the items of qualified opportunity zone property held by the qualified opportunity fund as of each date described in section 1400Z–2(d)(1), and

(E) in the case of real property, number of residential units (if any),

(7) the approximate average monthly number of full-time equivalent employees for the year of the trades or businesses of the qualified opportunity fund in which qualified opportunity zone business property is held (within numerical ranges identified by the Secretary) or such other indication of the employment impact of such trades or businesses as determined appropriate by the Secretary,

(8) with respect to each person who disposed of an investment in the qualified opportunity fund during the year—

(A) the name and taxpayer identification number of such person,

(B) the date or dates on which the investment disposed was acquired, and

(C) the date or dates on which any such investment was disposed and the amount of the investment disposed, and

(9) such other information as the Secretary may require.

(c) STATEMENT REQUIRED TO BE FURNISHED TO INVESTORS.—Every person required to make a return under subsection (a) shall furnish to each person whose name is required to be set forth in such return by reason of subsection (b)(8) a written statement showing—

(1) the name, address and phone number of the information contact of the person required to make such return, and

(2) the information required to be shown on such return by reason of subsection (b)(8) with respect to the person whose name is required to be so set forth.

(d) DEFINITIONS.—For purposes of this section—

(1) IN GENERAL.—Any term used in this section which is also used in subchapter Z of chapter 1 shall have the meaning given such term under such subchapter.

(2) FULL-TIME EQUIVALENT EMPLOYEES.—The term "full-time equivalent employees" means, with respect to any month, the sum of—

(A) the number of full-time employees (as defined in section 4980H(c)(4)) for the month, plus

(B) the number of employees determined (under rules similar to the rules of section 4980H(c)(2)(E)) by dividing the aggregate number of hours of service of employees who are not full-time employees for the month by 120.

(e) APPLICATION TO QUALIFIED RURAL OPPORTUNITY FUNDS.—Every qualified rural opportunity fund shall file the annual return required under subsection (a), and the statements required under subsection (c), applied—

(1) by substituting "qualified rural opportunity" for "qualified opportunity" each place it appears, and

(2) by substituting "section 1400Z–3(d)(1)" for "section 1400Z–2(d)(1)" each place it appears.

SEC. 6039L. INFORMATION REQUIRED FROM QUALIFIED OPPORTUNITY ZONE BUSINESSES AND QUALIFIED RURAL OPPORTUNITY ZONE BUSINESSES.

(a) IN GENERAL.—Every applicable qualified opportunity zone business shall furnish to the qualified opportunity fund described in subsection (b) a written statement in such manner and setting forth

such information as the Secretary may by regulations prescribe for purposes of enabling such qualified opportunity fund to meet the requirements of section 6039K(b)(5).

(b) APPLICABLE QUALIFIED OPPORTUNITY ZONE BUSINESS.—For purposes of subsection (a), the term "applicable qualified opportunity zone business" means any qualified opportunity zone business—

(1) which is a trade or business of a qualified opportunity fund,

(2) in which a qualified opportunity fund holds qualified opportunity zone stock, or

(3) in which a qualified opportunity fund holds a qualified opportunity zone partnership interest.

(c) OTHER TERMS.—Any term used in this section which is also used in subchapter Z of chapter 1 shall have the meaning given such term under such subchapter.

(d) APPLICATION TO QUALIFIED RURAL OPPORTUNITY FUNDS.—Every qualified rural opportunity zone business (as defined in subsection (b) determined after application of the substitutions described in this sentence) shall furnish the written statement required under subsection (a), applied by substituting "qualified rural opportunity" for "qualified opportunity" each place it appears.

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Subpart B—INFORMATION CONCERNING TRANSACTIONS WITH OTHER PERSONS

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SEC. 6041. INFORMATION AT SOURCE.

(a) PAYMENTS [OF $600 OR MORE] *EXCEEDING THRESHOLD*.—All persons engaged in a trade or business and making payment in the course of such trade or business to another person, of rent, salaries, wages, premiums, annuities, compensations, remunerations, emoluments, or other fixed or determinable gains, profits, and income (other than payments to which section 6042(a)(1), 6044(a)(1), 6047(e), 6049(a), or 6050N(a) applies, and other than payments with respect to which a statement is required under the authority of section 6042(a)(2), 6044(a)(2), or 6045), of [$600] *$5,000* or more in any [taxable year] *calendar year*, or, in the case of such payments made by the United States, the officers or employees of the United States having information as to such payments and required to make returns in regard thereto by the regulations hereinafter provided for, shall render a true and accurate return to the Secretary, under such regulations and in such form and manner and to such extent as may be prescribed by the Secretary, setting forth the amount of such gains, profits, and income, and the name and address of the recipient of such payment.

(b) COLLECTION OF FOREIGN ITEMS.—In the case of collections of items (not payable in the United States) of interest upon the bonds of foreign countries and interest upon the bonds of and dividends from foreign corporations by any person undertaking as a matter of business or for profit the collection of foreign payments of such interest or dividends by means of coupons, checks, or bills of exchange, such person shall make a return according to the forms or regulations prescribed by the Secretary, setting forth the amount

paid and the name and address of the recipient of each such payment.

(c) RECIPIENT TO FURNISH NAME AND ADDRESS.—When necessary to make effective the provisions of this section, the name and address of the recipient of income shall be furnished upon demand of the person paying the income.

(d) STATEMENTS TO BE FURNISHED TO PERSONS WITH RESPECT TO WHOM INFORMATION IS REQUIRED.—Every person required to make a return under subsection (a) shall furnish to each person with respect to whom such a return is required a written statement showing—

(1) the name, address, and phone number of the information contact of the person required to make such return, and

(2) the aggregate amount of payments to the person required to be shown on the return.

The written statement required under the preceding sentence shall be furnished to the person on or before January 31 of the year following the calendar year for which the return under subsection (a) was required to be made. To the extent provided in regulations prescribed by the Secretary, this subsection shall also apply to persons required to make returns under subsection (b).

(e) SECTION DOES NOT APPLY TO CERTAIN TIPS.—This section shall not apply to tips with respect to which section 6053(a) (relating to reporting of tips) applies.

(f) SECTION DOES NOT APPLY TO CERTAIN HEALTH ARRANGEMENTS.—This section shall not apply to any payment for medical care (as defined in section 213(d)) made under—

(1) a flexible spending arrangement (as defined in section 106(c)(2)), or

(2) a health reimbursement arrangement which is treated as employer-provided coverage under an accident or health plan for purposes of section 106.

(g) NONQUALIFIED DEFERRED COMPENSATION.—Subsection (a) shall apply to—

(1) any deferrals for the year under a nonqualified deferred compensation plan (within the meaning of section 409A(d)), whether or not paid, except that this paragraph shall not apply to deferrals which are required to be reported under section 6051(a)(13) (without regard to any de minimis exception), and

(2) any amount includible under section 409A and which is not treated as wages under section 3401(a).

(h) INFLATION ADJUSTMENT.—In the case of any calendar year after 2024, the dollar amount in subsection (a) shall be increased by an amount equal to—

(1) such dollar amount, multiplied by

(2) the cost-of-living adjustment determined under section 1(f)(3) for such calendar year, determined by substituting "calendar year 2023" for "calendar year 2016" in subparagraph (A)(ii) thereof.

If any increase under the preceding sentence is not a multiple of $100, such increase shall be rounded to the nearest multiple of $100.

SEC. 6041A. RETURNS REGARDING PAYMENTS OF REMUNERATION FOR SERVICES AND DIRECT SALES.

(a) RETURNS REGARDING REMUNERATION FOR SERVICES.—If—

(1) any service-recipient engaged in a trade or business pays in the course of such trade or business during any calendar year remuneration to any person for services performed by such person, and

(2) the aggregate of such remuneration paid to such person during such calendar year [is $600 or more] *equals or exceeds the dollar amount in effect for such calendar year under section 6041(a)*,

then the service-recipient shall make a return, according to the forms or regulations prescribed by the Secretary, setting forth the aggregate amount of such payments and the name and address of the recipient of such payments. For purposes of the preceding sentence, the term "service-recipient" means the person for whom the service is performed.

(b) DIRECT SALES OF $5,000 OR MORE.—

(1) IN GENERAL.—If—

(A) any person engaged in a trade or business in the course of such trade or business during any calendar year sells consumer products to any buyer on a buy-sell basis, a deposit-commission basis, or any similar basis which the Secretary prescribes by regulations, for resale (by the buyer or any other person) in the home or otherwise than in a permanent retail establishment, and

(B) the aggregate amount of the sales to such buyer during such calendar year [is $5,000 or more] *equals or exceeds the dollar amount in effect for such calendar year under section 6041(a)*,

then such person shall make a return, according to the forms or regulations prescribed by the Secretary, setting forth the name and address of the buyer to whom such sales are made.

(2) DEFINITIONS.—For purposes of paragraph (1)—

(A) BUY-SELL BASIS.—A transaction is on a buy-sell basis if the buyer performing the services is entitled to retain part or all of the difference between the price at which the buyer purchases the product and the price at which the buyer sells the product as part or all of the buyer's remuneration for the services, and

(B) DEPOSIT-COMMISSION BASIS.—A transaction is on a deposit-commission basis if the buyer performing the services is entitled to retain part or all of a purchase deposit paid by the consumer in connection with the transaction as part or all of the buyer's remuneration for the services.

(c) CERTAIN SERVICES NOT INCLUDED.—No return shall be required under subsection (a) or (b) if a statement with respect to the services is required to be furnished under section 6051, 6052, or 6053.

(d) APPLICATIONS TO GOVERNMENTAL UNITS.—

(1) TREATED AS PERSONS.—The term "person" includes any governmental unit (and any agency or instrumentality thereof).

(2) SPECIAL RULES.—In the case of any payment by a governmental entity or any agency or instrumentality thereof—

(A) subsection (a) shall be applied without regard to the trade or business requirement contained therein, and

(B) any return under this section shall be made by the officer or employee having control of the payment or appropriately designated for the purpose of making such return.

(3) PAYMENTS TO CORPORATIONS BY FEDERAL EXECUTIVE AGENCIES.—

(A) IN GENERAL.—Notwithstanding any regulation prescribed by the Secretary before the date of the enactment of this paragraph, subsection (a) shall apply to remuneration paid to a corporation by any Federal executive agency (as defined in section 6050M(b)).

(B) EXCEPTION.—Subparagraph (A) shall not apply to—

(i) services under contracts described in section 6050M(e)(3) with respect to which the requirements of section 6050M(e)(2) are met, and

(ii) such other services as the Secretary may specify in regulations prescribed after the date of the enactment of this paragraph.

(e) STATEMENTS TO BE FURNISHED TO PERSONS WITH RESPECT TO WHOM INFORMATION IS REQUIRED TO BE FURNISHED.—Every person required to make a return under subsection (a) or (b) shall furnish to each person whose name is required to be set forth in such return a written statement showing—

(1) the name, address, and phone number of the information contact of the person required to make such return, and

(2) in the case of subsection (a), the aggregate amount of payments to the person required to be shown on such return.

The written statement required under the preceding sentence shall be furnished to the person on or before January 31 of the year following the calendar year for which the return under subsection (a) was made.

(f) RECIPIENT TO FURNISH NAME, ADDRESS, AND IDENTIFICATION NUMBER; INCLUSION ON RETURN.—

(1) FURNISHING OF INFORMATION.—Any person with respect to whom a return or statement is required under this section to be made by another person shall furnish to such other person his name, address, and identification number at such time and in such manner as the Secretary may prescribe by regulations.

(2) INCLUSION ON RETURN.—The person to whom an identification number is furnished under paragraph (1) shall include such number on any return which such person is required to file under this section and to which such identification number relates.

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SEC. 6050W. RETURNS RELATING TO PAYMENTS MADE IN SETTLEMENT OF PAYMENT CARD AND THIRD PARTY NETWORK TRANSACTIONS.

(a) IN GENERAL.—Each payment settlement entity shall make a return for each calendar year setting forth—

(1) the name, address, and TIN of each participating payee to whom one or more payments in settlement of reportable payment transactions are made, and

(2) the gross amount of the reportable payment transactions with respect to each such participating payee.

Such return shall be made at such time and in such form and manner as the Secretary may require by regulations.

(b) PAYMENT SETTLEMENT ENTITY.—For purposes of this section—

(1) IN GENERAL.—The term "payment settlement entity" means—

(A) in the case of a payment card transaction, the merchant acquiring entity, and

(B) in the case of a third party network transaction, the third party settlement organization.

(2) MERCHANT ACQUIRING ENTITY.—The term "merchant acquiring entity" means the bank or other organization which has the contractual obligation to make payment to participating payees in settlement of payment card transactions.

(3) THIRD PARTY SETTLEMENT ORGANIZATION.—The term "third party settlement organization" means the central organization which has the contractual obligation to make payment to participating payees of third party network transactions.

(4) SPECIAL RULES RELATED TO INTERMEDIARIES.—For purposes of this section—

(A) AGGREGATED PAYEES.—In any case where reportable payment transactions of more than one participating payee are settled through an intermediary—

(i) such intermediary shall be treated as the participating payee for purposes of determining the reporting obligations of the payment settlement entity with respect to such transactions, and

(ii) such intermediary shall be treated as the payment settlement entity with respect to the settlement of such transactions with the participating payees.

(B) ELECTRONIC PAYMENT FACILITATORS.—In any case where an electronic payment facilitator or other third party makes payments in settlement of reportable payment transactions on behalf of the payment settlement entity, the return under subsection (a) shall be made by such electronic payment facilitator or other third party in lieu of the payment settlement entity.

(c) REPORTABLE PAYMENT TRANSACTION.—For purposes of this section—

(1) IN GENERAL.—The term "reportable payment transaction" means any payment card transaction and any third party network transaction.

(2) PAYMENT CARD TRANSACTION.—The term "payment card transaction" means any transaction in which a payment card is accepted as payment.

(3) THIRD PARTY NETWORK TRANSACTION.—The term "third party network transaction" means any transaction described in subsection (d)(3)(A)(iii) which is settled through a third party payment network.

(d) OTHER DEFINITIONS.—For purposes of this section—

(1) PARTICIPATING PAYEE.—

(A) IN GENERAL.—The term "participating payee" means—

(i) in the case of a payment card transaction, any person who accepts a payment card as payment, and

(ii) in the case of a third party network transaction, any person who accepts payment from a third party settlement organization in settlement of such transaction.

(B) EXCLUSION OF FOREIGN PERSONS.—Except as provided by the Secretary in regulations or other guidance, such term shall not include any person with a foreign address. Notwithstanding the preceding sentence, a person with only a foreign address shall not be treated as a participating payee with respect to any payment settlement entity solely because such person receives payments from such payment settlement entity in dollars.

(C) INCLUSION OF GOVERNMENTAL UNITS.—The term "person" includes any governmental unit (and any agency or instrumentality thereof).

(2) PAYMENT CARD.—The term "payment card" means any card which is issued pursuant to an agreement or arrangement which provides for—

(A) one or more issuers of such cards,

(B) a network of persons unrelated to each other, and to the issuer, who agree to accept such cards as payment, and

(C) standards and mechanisms for settling the transactions between the merchant acquiring entities and the persons who agree to accept such cards as payment.

The acceptance as payment of any account number or other indicia associated with a payment card shall be treated for purposes of this section in the same manner as accepting such payment card as payment.

(3) THIRD PARTY PAYMENT NETWORK.—The term "third party payment network" means any agreement or arrangement—

(A) which involves the establishment of accounts with a central organization by a substantial number of persons who—

(i) are unrelated to such organization,

(ii) provide goods or services, and

(iii) have agreed to settle transactions for the provision of such goods or services pursuant to such agreement or arrangement,

(B) which provides for standards and mechanisms for settling such transactions, and

(C) which guarantees persons providing goods or services pursuant to such agreement or arrangement that such persons will be paid for providing such goods or services.

Such term shall not include any agreement or arrangement which provides for the issuance of payment cards.

[(e) DE MINIMIS EXCEPTION FOR THIRD PARTY SETTLEMENT ORGANIZATIONS.—A third party settlement organization shall not be required to report any information under subsection (a) with respect to third party network transactions of any participating payee if the amount which would otherwise be reported under subsection (a)(2) with respect to such transactions does not exceed $600.]

(e) EXCEPTION FOR DE MINIMIS PAYMENTS BY THIRD PARTY SETTLEMENT ORGANIZATIONS.—A third party settlement organization shall be required to report any information under subsection (a)

with respect to third party network transactions of any participating payee only if—

(1) the amount which would otherwise be reported under subsection (a)(2) with respect to such transactions exceeds $20,000, and

(2) the aggregate number of such transactions exceeds 200.

(f) STATEMENTS TO BE FURNISHED TO PERSONS WITH RESPECT TO WHOM INFORMATION IS REQUIRED.—Every person required to make a return under subsection (a) shall furnish to each person with respect to whom such a return is required a written statement showing—

(1) the name, address, and phone number of the information contact of the person required to make such return, and

(2) the gross amount of the reportable payment transactions with respect to the person required to be shown on the return.

The written statement required under the preceding sentence shall be furnished to the person on or before January 31 of the year following the calendar year for which the return under subsection (a) was required to be made. Such statement may be furnished electronically, and if so, the email address of the person required to make such return may be shown in lieu of the phone number.

(g) REGULATIONS.—The Secretary may prescribe such regulations or other guidance as may be necessary or appropriate to carry out this section, including rules to prevent the reporting of the same transaction more than once.

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CHAPTER 68—ADDITIONS TO THE TAX, ADDITIONAL AMOUNTS, AND ASSESSABLE PENALTIES

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Subchapter B—ASSESSABLE PENALTIES

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PART II—FAILURE TO COMPLY WITH CERTAIN INFORMATION REPORTING REQUIREMENTS

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Sec. 6726. Failure to comply with information reporting requirements relating to qualified opportunity funds and qualified rural opportunity funds.

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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), or

(xxvi) section 6050Y (relating to returns relating to certain life insurance contract transactions), 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)), **[**or**]**

(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**[**.**]**,

[(JJ)**]** *(KK)* subsection (a)(2), (b)(2), or (c)(2) of section 6050Y (relating to returns relating to certain life insurance contract transactions).

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)**[**.**]**,

(LL) section 6039K(c) (relating to disposition of qualified opportunity fund investments), or

(MM) section 6039L (relating to information required from certain qualified opportunity zone businesses and qualified rural opportunity zone businesses).

(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.

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SEC. 6726. FAILURE TO COMPLY WITH INFORMATION REPORTING REQUIREMENTS RELATING TO QUALIFIED OPPORTUNITY FUNDS AND QUALIFIED RURAL OPPORTUNITY FUNDS.

(a) IN GENERAL.—In the case of any person required to file a return under section 6039K fails to file a complete and correct return under such section in the time and in the manner prescribed therefor, such person shall pay a penalty of $500 for each day during which such failure continues.

(b) LIMITATION.—

(1) IN GENERAL.—The maximum penalty under this section on failures with respect to any 1 return shall not exceed $10,000.

(2) LARGE QUALIFIED OPPORTUNITY FUNDS.—In the case of any failure described in subsection (a) with respect to a fund the gross assets of which (determined on the last day of the taxable year) are in excess of $10,000,000, paragraph (1) shall be applied by substituting "$50,000" for "$10,000".

(c) PENALTY IN CASES OF INTENTIONAL DISREGARD.—If a failure described in subsection (a) is due to intentional disregard, then—

(1) subsection (a) shall be applied by substituting "$2,500" for "$500",

(2) subsection (b)(1) shall be applied by substituting "$50,000" for "$10,000", and

(3) subsection (b)(2) shall be applied by substituting "$250,000" for "$50,000".

(d) INFLATION ADJUSTMENT.—

(1) IN GENERAL.—In the case of any failure relating to a return required to be filed in a calendar year beginning after 2023, each of the dollar amounts in subsections (a), (b), and (c) shall be increased by an amount equal to such dollar amount multiplied by 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.

(2) ROUNDING.—

(A) IN GENERAL.—If the $500 dollar amount in subsection (a) and (c)(1) or the $2,500 amount in subsection (c)(1), after being increased under paragraph (1), is not a multiple of $10, such dollar amount shall be rounded to the next lowest multiple of $10.

(B) ASSET THRESHOLD.—If the $10,000,000 dollar amount in subsection (b)(2), after being increased under paragraph (1), is not a multiple of $10,000, such dollar amount shall be rounded to the next lowest multiple of $10,000.

(C) OTHER DOLLAR AMOUNTS.—If any dollar amount in subsection (b) or (c) (other than any amount to which subparagraph (A) or (B) applies), after being increased under paragraph (1), is not a multiple of $1,000, such dollar amount shall be rounded to the next lowest multiple of $1,000.

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VII. DISSENTING VIEWS

HOUSE OF REPRESENTATIVES,
COMMITTEE ON WAYS AND MEANS,
Washington, DC, June 23, 2023.

DISSENTING VIEWS ON SMALL BUSINESS JOBS ACT, H.R. 3937

Small businesses are vital to the life of thriving communities across the United States, and Democrats support tax policies that are targeted to grow and protect them. We witnessed these policies in action during the most recent pandemic when President Biden and Congress provided essential help for small businesses so that they can continue to operate and make payroll. Unfortunately, many of the proposals in the "Small Business Jobs Act" have little to do with protecting or strengthening small businesses. Instead, these provisions make it much more likely that a taxpayer with income from a trade or business will not pay taxes on that income, and certain that wealthy investors of startups will escape taxation in the future when they sell their profitable investments.

The Small Business Jobs Act includes three proposals that are particularly out of step with helping small businesses. The first is a provision that would raise the dollar amount threshold as well as the number of transactions threshold for IRS Form 1099–K reporting. In an effort to close the tax gap, the American Rescue Plan lowered these thresholds at which third-party payment networks for commercial transactions would need to report amounts paid to service providers to $600, and removed the number of transactions threshold. The Republican bill would return the current thresholds to prior law, so that reporting would be required if the service provider received more than $20,000 and registered 200 or more transactions. It is worth noting that this provision reverts the law back to its state in 2008, and before online platforms such as Uber and Airbnb became household names. While many are on board with raising the $600 threshold, the 200-transaction threshold will eliminate reporting for many taxpayers who earn a significant amount of money using third-party apps. This provision has little to do with helping small businesses grow and weather unforeseen downturns, and much to do with the Republicans' lack of interest in closing the tax gap.

Similarly, a more generous exclusion for gain from qualified small business stock (QSBS) is another proposal in the Small Business Jobs Act that purports to help small business but merely rewards wealthy investors. Currently, owners must hold QSBS at least 5 years in order to exclude 50 percent of the capital gains. Republicans are now proposing to drastically expand this benefit so that owners who hold QSBS (which would now include S corporation stock) for even shorter periods can reap the benefit of excluding their income from tax. A recent analysis by Manoj Viswanathan

written in conjunction with the Washington Center for Equitable Growth found that the benefits of the QSBS provision primarily went to founders of companies and their early employees, venture capital firms, and so-called angel investors, and that taxpayers claiming the benefit of this provision have, on average, over $500,000 in capital gains. Moreover, it is widely known that investors often "gift" shares of their QSBS to family members who are also able to take advantage of the income exclusion.

Finally, an expansion of opportunity zones would present similar challenges in that it would largely benefit high income taxpayers. For example, the Joint Committee on Taxation estimated that the average household income of qualified opportunity fund investors is over $1 million. We should be focused on limiting these benefits rather than expanding them for wealthy taxpayers.

RICHARD E. NEAL,
Ranking Member.

RANKING MEMBER RICHARD E. NEAL, OPENING STATEMENT, COMMITTEE ON WAYS AND MEANS MARKUP OF H.R. 3937,

Tuesday, June 13, 2023.

Now we turn to the so-called "Small Business Jobs Act," a bill that contains two provisions designed to make it easier for people to avoid their taxes: one provision to ensure that venture capitalists don't pay any capital gains taxes, and a $44 billion dollar giveaway to wealthy business owners.

Republicans could have used this occasion to focus on bipartisan efforts like the New Markets Tax Credit—a proven program that uplifts small businesses and communities. Or they could've looked to workplace supports, like universal paid leave and affordable child care. We've heard directly from workers that these supports would help unlock their fullest potential. Republicans instead have chosen to devote their efforts to further tilting the tax code to the wealthy and well-connected.

There is no proof that these tax cuts will go anywhere but the pockets of venture capitalists and business owners. This isn't how you create jobs—we would know.

The investments of this Committee helped spur the record job growth under President Biden. Unemployment remains at historic lows, with more jobs created in the last 28 months than any other president has seen in a full term.

Small businesses and their workers are the backbone of our economy, but enough with the lip service. This Committee should invest in proven tools that grow wages, and give workers more breathing room, instead of fattening already thick pockets.

With that, I yield back the balance of my time.

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