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REPORT
110–606

HOUSING ASSISTANCE TAX ACT OF 2008

APRIL 24, 2008.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

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

R E P O R T

[To accompany H.R. 5720]

[Including cost estimate of the Congressional Budget Office]

The Committee on Ways and Means, to whom was referred the bill (H.R. 5720) to amend the Internal Revenue Code of 1986 to provide assistance for housing, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

The amendment is as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE; ETC.

(a) SHORT TITLE.—This Act may be cited as the "Housing Assistance Tax Act of 2008".

(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 of this Act is as follows:

TITLE I—HOUSING TAX INCENTIVES

Subtitle A—Multi-Family Housing

PART 1—LOW-INCOME HOUSING TAX CREDIT

SEC. 101. TEMPORARY INCREASE IN VOLUME CAP FOR LOW-INCOME HOUSING TAX CREDIT.

Paragraph (3) of section 42(h) is amended by adding at the end the following new subparagraph:

"(I) INCREASE IN STATE HOUSING CREDIT CEILING FOR 2008 AND 2009.—In the case of calendar years 2008 and 2009, the dollar amount in effect under subparagraph (C)(ii)(I) for such calendar year (after any increase under subparagraph (H)) shall be increased by $0.20.".

SEC. 102. DETERMINATION OF CREDIT RATE.

(a) ELIMINATION OF DISTINCTION BETWEEN NEW AND EXISTING BUILDINGS; MINIMUM CREDIT RATE FOR NON-FEDERALLY SUBSIDIZED BUILDINGS.—

(1) IN GENERAL.—Subsection (b) section 42 is amended to read as follows:

"(b) APPLICABLE PERCENTAGE.—For purposes of this section—

"(1) IN GENERAL.—The term 'applicable percentage' means, with respect to any building, the appropriate percentage prescribed by the Secretary for the earlier of—

"(A) the month in which such building is placed in service, or

"(B) at the election of the taxpayer—

"(i) the month in which the taxpayer and the housing credit agency enter into an agreement with respect to such building (which is binding on such agency, the taxpayer, and all successors in interest) as to the housing credit dollar amount to be allocated to such building, or

"(ii) in the case of any building to which subsection (h)(4)(B) applies, the month in which the tax-exempt obligations are issued.

A month may be elected under clause (ii) only if the election is made not later than the 5th day after the close of such month. Such an election, once made, shall be irrevocable.

"(2) METHOD OF PRESCRIBING PERCENTAGES.—

"(A) IN GENERAL.—For purposes of paragraph (1), the percentages prescribed by the Secretary for any month shall be—

"(i) in the case of any building which is not federally subsidized for the taxable year, the greater of—

"(I) the average percentage determined under subclause (II) for months in the preceding calendar year, or

"(II) the percentage which will yield over a 10-year period amounts of credit under subsection (a) which have a present value equal to 70 percent of the qualified basis of such building, and

"(ii) in the case of any other building, the percentage which will yield over a 10-year period amounts of credit under subsection (a) which have a present value equal to 30 percent of the qualified basis of such building.

"(B) METHOD OF DISCOUNTING.—The present value under subparagraph (A) shall be determined—

"(i) as of the last day of the 1st year of the 10-year period referred to in subparagraph (A),

"(ii) by using a discount rate equal to 72 percent of the average of the annual Federal mid-term rate and the annual Federal long-term rate applicable under section 1274(d)(1) to the month applicable under subparagraph (A) and compounded annually, and

"(iii) by assuming that the credit allowable under this section for any year is received on the last day of such year.

"(3) CROSS REFERENCES.—

"(A) For treatment of certain rehabilitation expenditures as separate buildings, see subsection (e).

"(B) For determination of applicable percentage for increases in qualified basis after the 1st year of the credit period, see subsection (f)(3).

"(C) For authority of housing credit agency to limit applicable percentage and qualified basis which may be taken into account under this section with respect to any building, see subsection (h)(7).".

(2) CONFORMING AMENDMENTS.—

(A) Subparagraph (B) of section 42(e)(3) is amended by striking "subsection (b)(2)(B)(ii)" and inserting "subsection (b)(2)(A)(ii)".

(B) Subparagraph (A) of section 42(i)(2) is amended by striking "new building" and inserting "building".

(b) MODIFICATIONS TO DEFINITION OF FEDERALLY SUBSIDIZED BUILDING.—

(1) IN GENERAL.—Subparagraph (A) of section 42(i)(2) is amended by striking ", or any below market Federal loan,".

(2) CONFORMING AMENDMENTS.—

(A) Subparagraph (B) of section 42(i)(2) is amended—

(i) by striking "BALANCE OF LOAN OR" in the heading thereof,

(ii) by striking "loan or" in the matter preceding clause (i), and

(iii) by striking "subsection (d)—" and all that follows and inserting "subsection (d) the proceeds of such obligation.".

(B) Subparagraph (C) of section 42(i)(2) is amended—

(i) by striking "or below market Federal loan" in the matter preceding clause (i),

(ii) in clause (i)—

(I) by striking "or loan (when issued or made)" and inserting "(when issued)", and

(II) by striking "the proceeds of such obligation or loan" and inserting "the proceeds of such obligation", and

(iii) by striking ", and such loan is repaid," in clause (ii).

(C) Paragraph (2) of section 42(i) is amended by striking subparagraphs (D) and (E).

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

SEC. 103. MODIFICATIONS TO DEFINITION OF ELIGIBLE BASIS.

(a) INCREASE IN CREDIT FOR CERTAIN STATE DESIGNATED BUILDINGS.—Subparagraph (C) of section 42(d)(5) (relating to increase in credit for buildings in high cost areas), before redesignation under subsection (f), is amended by adding at the end the following new clause:

"(v) BUILDINGS DESIGNATED BY STATE HOUSING CREDIT AGENCY.—Any building which is designated by the State housing credit agency as requiring the increase in credit under this subparagraph in order for such building to be financially feasible as part of a qualified low-income housing project shall be treated for purposes of this subparagraph as located in a difficult development area which is designated for purposes of this subparagraph. The preceding sentence shall not apply to any

building if paragraph (1) of subsection (h) does not apply to any portion of the eligible basis of such building by reason of paragraph (4) of such subsection.".

(b) MODIFICATION TO REHABILITATION REQUIREMENTS.—

(1) IN GENERAL.—Clause (ii) of section 42(e)(3)(A) is amended—

(A) by striking "10 percent" in subclause (I) and inserting "20 percent", and

(B) by striking "$3,000" in subclause (II) and inserting "$6,000".

(2) INFLATION ADJUSTMENT.—Paragraph (3) of section 42(e) is amended by adding at the end the following new subparagraph:

"(D) INFLATION ADJUSTMENT.—In the case of any expenditures which are treated under paragraph (4) as placed in service during any calendar year after 2009, the $6,000 amount in subparagraph (A)(ii)(II) shall 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 such calendar year by substituting 'calendar year 2008' for 'calendar year 1992' in subparagraph (B) thereof.

Any increase under the preceding sentence which is not a multiple of $100 shall be rounded to the nearest multiple of $100.".

(3) CONFORMING AMENDMENT.—Subclause (II) of section 42(f)(5)(B)(ii) is amended by striking "if subsection (e)(3)(A)(ii)(II)" and all that follows and inserting "if the dollar amount in effect under subsection (e)(3)(A)(ii)(II) were two-thirds of such amount.".

(c) INCREASE IN ALLOWABLE COMMUNITY SERVICE FACILITY SPACE FOR SMALL PROJECTS.—Clause (ii) of section 42(d)(4)(C) (relating to limitation) is amended by striking "10 percent of the eligible basis of the qualified low-income housing project of which it is a part. For purposes of" and inserting "the sum of—

"(I) 15 percent of so much of the eligible basis of the qualified low-income housing project of which it is a part as does not exceed $5,000,000, plus

"(II) 10 percent of so much of the eligible basis of such project as is not taken into account under subclause (I).

For purposes of".

(d) CLARIFICATION OF TREATMENT OF FEDERAL GRANTS.—Subparagraph (A) of section 42(d)(5) is amended to read as follows:

"(A) FEDERAL GRANTS NOT TAKEN INTO ACCOUNT IN DETERMINING ELIGIBLE BASIS.—The eligible basis of a building shall not include any costs financed with the proceeds of a Federally funded grant.".

(e) SIMPLIFICATION OF RELATED PARTY RULES.—Clause (iii) of section 42(d)(2)(D), before redesignation under subsection (f)(2), is amended—

(1) by striking all that precedes subclause (II),

(2) by redesignating subclause (II) as clause (iii) and moving such clause two ems to the left, and

(3) by striking the last sentence thereof.

(f) REPEAL OF DEADWOOD.—

(1) Clause (ii) of section 42(d)(2)(B) is amended by striking "the later of—" and all that follows and inserting "the date the building was last placed in service,".

(2) Subparagraph (D) of section 42(d)(2) is amended by striking clause (i) and by redesignating clauses (ii) and (iii) as clauses (i) and (ii), respectively.

(3) Paragraph (5) of section 42(d) is amended by striking subparagraph (B) and by redesignating subparagraph (C) as subparagraph (B).

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

SEC. 104. OTHER SIMPLIFICATION AND REFORM OF LOW-INCOME HOUSING TAX INCENTIVES.

(a) REPEAL PROHIBITION ON MODERATE REHABILITATION ASSISTANCE.—Paragraph (2) of section 42(c) (defining qualified low-income building) is amended by striking the flush sentence at the end.

(b) MODIFICATION OF TIME LIMIT FOR INCURRING 10 PERCENT OF PROJECT'S COST.—Clause (ii) of section 42(h)(1)(E) is amended by striking "(as of the later of the date which is 6 months after the date that the allocation was made or the close of the calendar year in which the allocation is made)" and inserting "(as of the date which is 1 year after the date that the allocation was made)".

(c) REPEAL OF BONDING REQUIREMENT ON DISPOSITION OF BUILDING.—Paragraph (6) of section 42(j) (relating to no recapture on disposition of building (or interest therein) where bond posted) is amended to read as follows:

"(6) NO RECAPTURE ON DISPOSITION OF BUILDING WHICH CONTINUES IN QUALIFIED USE.—

"(A) IN GENERAL.—The increase in tax under this subsection shall not apply solely by reason of the disposition of a building (or an interest therein) if it is reasonably expected that such building will continue to be operated as a qualified low-income building for the remaining compliance period with respect to such building.

"(B) STATUTE OF LIMITATIONS.—If a building (or an interest therein) is disposed of during any taxable year and there is any reduction in the qualified basis of such building which results in an increase in tax under this subsection for such taxable or any subsequent taxable year, then—

"(i) the statutory period for the assessment of any deficiency with respect to such increase in tax shall not expire before the expiration of 3 years from the date the Secretary is notified by the taxpayer (in such manner as the Secretary may prescribe) of such reduction in qualified basis, and

"(ii) such deficiency may be assessed before the expiration of such 3-year period notwithstanding the provisions of any other law or rule of law which would otherwise prevent such assessment.".

(d) ENERGY EFFICIENCY AND HISTORIC NATURE TAKEN INTO ACCOUNT IN MAKING ALLOCATIONS.—Subparagraph (C) of section 42(m)(1) (relating to plans for allocation of credit among projects) is amended by striking "and" at the end of clause (vii), by striking the period at the end of clause (viii) and inserting a comma, and by adding at the end the following new clauses:

"(ix) the energy efficiency of the project, and

"(x) the historic nature of the project.".

(e) CONTINUED ELIGIBILITY FOR STUDENTS WHO RECEIVED FOSTER CARE ASSISTANCE.—Clause (i) of section 42(i)(3)(D) is amended by striking "or" at the end of subclause (I), by redesignating subclause (II) as subclause (III), and by inserting after subclause (I) the following new subclause:

"(II) a student who was previously under the care and placement responsibility of the State agency responsible for administering a plan under part B or part E of title IV of the Social Security Act, or".

(f) TREATMENT OF RURAL PROJECTS.—Section 42(i) (relating to definitions and special rules) is amended by adding at the end the following new paragraph:

"(8) TREATMENT OF RURAL PROJECTS.—For purposes of this section, in the case of any project for residential rental property located in a rural area (as defined in section 520 of the Housing Act of 1949), any income limitation measured by reference to area median gross income shall be measured by reference to the greater of area median gross income or national non-metropolitan median income. The preceding sentence shall not apply with respect to any building if paragraph (1) of section 42(h) does not apply by reason of paragraph (4) thereof to any portion of the credit determined under this section with respect to such building.".

(g) EFFECTIVE DATE.—

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

(2) REPEAL OF BONDING REQUIREMENT ON DISPOSITION OF BUILDING.—The amendment made by subsection (c) shall apply to—

(A) interests in buildings disposed after the date of the enactment of this Act, and

(B) interests in buildings disposed of on or before such date if—

(i) it is reasonably expected that such building will continue to be operated as a qualified low-income building (within the meaning of section 42 of the Internal Revenue Code of 1986) for the remaining compliance period (within the meaning of such section) with respect to such building, and

(ii) the taxpayer elects the application of this subparagraph with respect to such disposition.

Notwithstanding the preceding sentence, the amendments made by subsection (c) shall not apply to any disposition after the date 5 years after the date of the enactment of this Act.

(3) ENERGY EFFICIENCY AND HISTORIC NATURE TAKEN INTO ACCOUNT IN MAKING ALLOCATIONS.—The amendments made by subsection (d) shall apply to allocations made after December 31, 2008.

(4) CONTINUED ELIGIBILITY FOR STUDENTS WHO RECEIVED FOSTER CARE ASSISTANCE.—The amendments made by subsection (e) shall apply to determinations made after the date of the enactment of this Act.

(5) TREATMENT OF RURAL PROJECTS.—The amendment made by subsection (f) shall apply to determinations made after the date of the enactment of this Act.

PART 2—MODIFICATIONS TO TAX-EXEMPT HOUSING BOND RULES

SEC. 111. RECYCLING OF TAX-EXEMPT DEBT FOR FINANCING RESIDENTIAL RENTAL PROJECTS.

(a) IN GENERAL.—Subsection (i) of section 146 (relating to treatment of refunding issues) is amended by adding at the end the following new paragraph:

"(6) TREATMENT OF CERTAIN RESIDENTIAL RENTAL PROJECT BONDS AS REFUNDING BONDS IRRESPECTIVE OF OBLIGOR.—

"(A) IN GENERAL.—If, during the 6-month period beginning on the date of a repayment of a loan financed by an issue 95 percent or more of the net proceeds of which are used to provide projects described in section 142(d), such repayment is used to provide a new loan for any project so described, any bond which is issued to refinance such issue shall be treated as a refunding issue to the extent the principal amount of such refunding issue does not exceed the principal amount of the bonds refunded.

"(B) LIMITATIONS.—Subparagraph (A) shall apply to only one refunding of the original issue and only if—

"(i) the refunding issue is issued not later than 4 years after the date on which the original issue was issued,

"(ii) the latest maturity date of any bond of the refunding issue is not later than 34 years after the date on which the refunded bond was issued, and

"(iii) the refunding issue is approved in accordance with section 147(f) before the issuance of the refunding issue.".

(b) LOW-INCOME HOUSING CREDIT.—Clause (ii) of section 42(h)(4)(A) is amended by inserting "or such financing is refunded as described in section 146(i)(6)" before the period at the end.

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

SEC. 112. COORDINATION OF CERTAIN RULES APPLICABLE TO LOW-INCOME HOUSING CREDIT AND QUALIFIED RESIDENTIAL RENTAL PROJECT EXEMPT FACILITY BONDS.

(a) DETERMINATION OF NEXT AVAILABLE UNIT.—Paragraph (3) of section 142(d) (relating to current income determinations) is amended by adding at the end the following new subparagraph:

"(C) EXCEPTION FOR PROJECTS WITH RESPECT TO WHICH AFFORDABLE HOUSING CREDIT IS ALLOWED.—In the case of a project with respect to which credit is allowed under section 42, the second sentence of subparagraph (B) shall be applied by substituting 'building (within the meaning of section 42)' for 'project'.".

(b) STUDENTS.—Paragraph (2) of section 142(d) (relating to definitions and special rules) is amended by adding at the end the following new subparagraph:

"(C) STUDENTS.—Rules similar to the rules of 42(i)(3)(D) shall apply for purposes of this subsection.".

(c) SINGLE-ROOM OCCUPANCY UNITS.—Paragraph (2) of section 142(d) (relating to definitions and special rules), as amended by subsection (b), is further amended by adding at the end the following new subparagraph:

"(D) SINGLE-ROOM OCCUPANCY UNITS.—A unit shall not fail to be treated as a residential unit merely because such unit is a single-room occupancy unit (within the meaning of section 42).".

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to determinations of the status of qualified residential rental projects for periods beginning after the date of the enactment of this Act, with respect to bonds issued before, on, or after such date.

PART 3—REFORMS RELATED TO THE LOW-INCOME HOUSING CREDIT AND TAX-EXEMPT HOUSING BONDS

SEC. 121. HOLD HARMLESS FOR REDUCTIONS IN AREA MEDIAN GROSS INCOME.

(a) IN GENERAL.—Paragraph (2) of section 142(d), as amended by section 112, is further amended by adding at the end the following new subparagraph:

"(E) HOLD HARMLESS FOR REDUCTIONS IN AREA MEDIAN GROSS INCOME.—

"(i) IN GENERAL.—Any determination of area median gross income under subparagraph (B) with respect to any project for any calendar year after 2008 shall not be less than the area median gross income determined under such subparagraph with respect to such project for the calendar year preceding the calendar year for which such determination is made.

"(ii) SPECIAL RULE FOR CERTAIN CENSUS CHANGES.—In the case of a HUD hold harmless impacted project, the area median gross income with respect to such project for any calendar year after 2008 (hereafter in this clause referred to as the current calendar year) shall be the greater of the amount determined without regard to this clause or the sum of—

"(I) the area median gross income determined under the HUD hold harmless policy with respect to such project for calendar year 2008, plus

"(II) any increase in the area median gross income determined under subparagraph (B) (determined without regard to the HUD hold harmless policy and this subparagraph) with respect to such project for the current calendar year over the area median gross income (as so determined) with respect to such project for calendar year 2008.

"(iii) HUD HOLD HARMLESS POLICY.—The term 'HUD hold harmless policy' means the regulations under which a policy similar to the rules of clause (i) applied to prevent a change in the method of determining area median gross income from resulting in a reduction in the area median gross income determined with respect to certain projects in calendar years 2007 and 2008.

"(iv) HUD HOLD HARMLESS IMPACTED PROJECT.—The term 'HUD hold harmless impacted project' means any project with respect to which area median gross income was determined under subparagraph (B) for calendar year 2007 or 2008 if such determination would have been less but for the HUD hold harmless policy.".

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to determinations of area median gross income for calendar years after 2008.

SEC. 122. EXCEPTION TO ANNUAL CURRENT INCOME DETERMINATION REQUIREMENT WHERE DETERMINATION NOT RELEVANT.

(a) IN GENERAL.—Subparagraph (A) of section 142(d)(3) is amended by adding at the end the following new sentence: "The preceding sentence shall not apply with respect to any project for any year if during such year no residential unit in the project is occupied by a new resident whose income exceeds the applicable income limit.".

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

Subtitle B—Single Family Housing

SEC. 131. FIRST-TIME HOMEBUYER CREDIT.

(a) IN GENERAL.—Subpart C of part IV of subchapter A of chapter 1 is amended by redesignating section 36 as section 37 and by inserting after section 35 the following new section:

"SEC. 36. FIRST-TIME HOMEBUYER CREDIT.

"(a) ALLOWANCE OF CREDIT.—In the case of an individual who is a first-time homebuyer of a principal residence in the United States during a taxable year, there shall be allowed as a credit against the tax imposed by this subtitle for such taxable year an amount equal to 10 percent of the purchase price of the residence.

"(b) LIMITATIONS.—

"(1) DOLLAR LIMITATION.—

"(A) IN GENERAL.—Except as otherwise provided in this paragraph, the credit allowed under subsection (a) shall not exceed $7,500.

"(B) MARRIED INDIVIDUALS FILING SEPARATELY.—In the case of a married individual filing a separate return, subparagraph (A) shall be applied by substituting '$3,750' for '$7,500'.

"(C) OTHER INDIVIDUALS.—If two or more individuals who are not married purchase a principal residence, the amount of the credit allowed under subsection (a) shall be allocated among such individuals in such manner as the Secretary may prescribe, except that the total amount of the credits allowed to all such individuals shall not exceed $7,500.

"(2) LIMITATION BASED ON MODIFIED ADJUSTED GROSS INCOME.—

"(A) IN GENERAL.—The amount allowable as a credit under subsection (a) (determined without regard to this paragraph) for the taxable year shall be reduced (but not below zero) by the amount which bears the same ratio to the amount which is so allowable as—

"(i) the excess (if any) of—

"(I) the taxpayer's modified adjusted gross income for such taxable year, over

"(II) $70,000 ($140,000 in the case of a joint return), bears to

"(ii) $20,000.

"(B) MODIFIED ADJUSTED GROSS INCOME.—For purposes of subparagraph (A), the term 'modified adjusted gross income' means the adjusted gross income of the taxpayer for the taxable year increased by any amount excluded from gross income under section 911, 931, or 933.

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

"(1) FIRST-TIME HOMEBUYER.—The term 'first-time homebuyer' means any individual if such individual (and if married, such individual's spouse) had no present ownership interest in a principal residence during the 3-year period ending on the date of the purchase of the principal residence to which this section applies.

"(2) PRINCIPAL RESIDENCE.—The term 'principal residence' has the same meaning as when used in section 121.

"(3) PURCHASE.—

"(A) IN GENERAL.—The term 'purchase' means any acquisition, but only if—

"(i) the property is not acquired from a person related to the person acquiring it, and

"(ii) 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).

"(B) CONSTRUCTION.—A residence which is constructed by the taxpayer shall be treated as purchased by the taxpayer on the date the taxpayer first occupies such residence.

"(4) PURCHASE PRICE.—The term 'purchase price' means the adjusted basis of the principal residence on the date such residence is purchased.

"(5) RELATED PERSONS.—A person shall be treated as related to another person if the relationship between such persons 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).

"(d) EXCEPTIONS.—No credit under subsection (a) shall be allowed to any taxpayer for any taxable year with respect to the purchase of a residence if—

"(1) a credit under section 1400C (relating to first-time homebuyer in the District of Columbia) is allowable to the taxpayer (or the taxpayer's spouse) for such taxable year or any prior taxable year,

"(2) the residence is financed by the proceeds of a qualified mortgage issue the interest on which is exempt from tax under section 103,

"(3) the taxpayer is a nonresident alien, or

"(4) the taxpayer disposes of such residence (or such residence ceases to be the principal residence of the taxpayer (and, if married, the taxpayer's spouse)) before the close of such taxable year.

"(e) REPORTING.—If the Secretary requires information reporting under section 6045 by a person described in subsection (e)(2) thereof to verify the eligibility of taxpayers for the credit allowable by this section, the exception provided by section 6045(e) shall not apply.

"(f) RECAPTURE OF CREDIT.—

"(1) IN GENERAL.—Except as otherwise provided in this subsection, if a credit under subsection (a) is allowed to a taxpayer, the tax imposed by this chapter shall be increased by 6⅔ percent of the amount of such credit for each taxable year in the recapture period.

"(2) ACCELERATION OF RECAPTURE.—If a taxpayer disposes of the principal residence with respect to which a credit was allowed under subsection (a) (or such residence ceases to be the principal residence of the taxpayer (and, if married, the taxpayer's spouse)) before the end of the recapture period—

"(A) the tax imposed by this chapter for the taxable year of such disposition or cessation, shall be increased by the excess of the amount of the credit allowed over the amounts of tax imposed by paragraph (1) for preceding taxable years, and

"(B) paragraph (1) shall not apply with respect to such credit for such taxable year or any subsequent taxable year .

"(3) LIMITATION BASED ON GAIN.—In the case of the sale of the principal residence to a person who is not related to the taxpayer, the increase in tax determined under paragraph (2) shall not exceed the amount of gain (if any) on such sale. Solely for purposes of the preceding sentence, the adjusted basis of such residence shall be reduced by the amount of the credit allowed under subsection (a) to the extent not previously recaptured under paragraph (1).

"(4) EXCEPTIONS.—

"(A) DEATH OF TAXPAYER.—Paragraphs (1) and (2) shall not apply to any taxable year ending after the date of the taxpayer's death.

"(B) INVOLUNTARY CONVERSION.—Paragraph (2) shall not apply in the case of a residence which is compulsorily or involuntarily converted (within the meaning of section 1033(a)) if the taxpayer acquires a new principal residence during the 2-year period beginning on the date of the disposition or cessation referred to in paragraph (2). Paragraph (2) shall apply to such new principal residence during the recapture period in the same manner as if such new principal residence were the converted residence.

"(C) TRANSFERS BETWEEN SPOUSES OR INCIDENT TO DIVORCE.—In the case of a transfer of a residence to which section 1041(a) applies—

"(i) paragraph (2) shall not apply to such transfer, and

"(ii) in the case of taxable years ending after such transfer, paragraphs (1) and (2) shall apply to the transferee in the same manner as if such transferee were the transferor (and shall not apply to the transferor).

"(5) JOINT RETURNS.—In the case of a credit allowed under subsection (a) with respect to a joint return, half of such credit shall be treated as having been allowed to each individual filing such return for purposes of this subsection.

"(6) RECAPTURE PERIOD.—For purposes of this subsection, the term 'recapture period' means the 15 taxable years beginning with the second taxable year following the taxable year in which the purchase of the principal residence for which a credit is allowed under subsection (a) was made.

"(g) APPLICATION OF SECTION.—This section shall only apply to a principal residence purchased by the taxpayer on or after April 9, 2008, and before April 1, 2009.".

(b) CONFORMING AMENDMENTS.—

(1) Section 26(b)(2) is amended by striking "and" at the end of subparagraph (U), by striking the period and inserting ", and" and the end of subparagraph (V), and by inserting after subparagraph (V) the following new subparagraph:

"(W) section 36(f) (relating to recapture of homebuyer credit).".

(2) Section 6211(b)(4)(A) is amended by striking "34," and all that follows through "6428" and inserting "34, 35, 36, 53(e), and 6428".

(3) Section 1324(b)(2) of title 31, United States Code, is amended by inserting ", 36," after "section 35".

(4) The table of sections for subpart C of part IV of subchapter A of chapter 1 is amended by redesignating the item relating to section 36 as an item relating to section 37 and by inserting before such item the following new item:

"Sec. 36. First-time homebuyer credit.".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to residences purchased on or after April 9, 2008, in taxable years ending on or after such date.

SEC. 132. ADDITIONAL STANDARD DEDUCTION FOR REAL PROPERTY TAXES FOR NON-ITEMIZERS.

(a) IN GENERAL.—Section 63(c)(1) (defining standard deduction) is amended by striking "and" at the end of subparagraph (A), by striking the period at the end of

subparagraph (B) and inserting ", and", and by adding at the end the following new subparagraph:

"(C) in the case of any taxable year beginning in 2008, the real property tax deduction.".

(b) DEFINITION.—Section 63(c) is amended by adding at the end the following new paragraph:

"(7) REAL PROPERTY TAX DEDUCTION.—For purposes of paragraph (1), the real property tax deduction is the lesser of—

"(A) the amount allowable as a deduction under this chapter for State and local taxes described in section 164(a)(1), or

"(B) $350 ($700 in the case of a joint return).

Any taxes taken into account under section 62(a) shall not be taken into account under this paragraph.".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 2007.

Subtitle C—General Provisions

SEC. 141. TEMPORARY LIBERALIZATION OF TAX-EXEMPT HOUSING BOND RULES.

(a) TEMPORARY INCREASE IN VOLUME CAP.—

(1) IN GENERAL.—Subsection (d) of section 146 is amended by adding at the end the following new paragraph:

"(5) INCREASE AND SET ASIDE FOR HOUSING BONDS FOR 2008.—

"(A) INCREASE FOR 2008.—In the case of calendar year 2008, the State ceiling for each State shall be increased by an amount equal to $10,000,000,000 multiplied by a fraction—

"(i) the numerator of which is the population of such State, and

"(ii) the denominator of which is the total population of all States.

"(B) SET ASIDE.—

"(i) IN GENERAL.—Any amount of the State ceiling for any State which is attributable to an increase under this paragraph shall be allocated solely for one or more qualified housing issues.

"(ii) QUALIFIED HOUSING ISSUE.—For purposes of this paragraph, the term 'qualified housing issue' means—

"(I) an issue described in section 142(a)(7) (relating to qualified residential rental projects), or

"(II) a qualified mortgage issue (determined by substituting '12-month period' for '42-month period' each place it appears in section 143(a)(2)(D)(i)).".

(2) CARRYFORWARD OF UNUSED LIMITATIONS.—Subsection (f) of section 146 is amended by adding at the end the following new paragraph:

"(6) SPECIAL RULES FOR INCREASED VOLUME CAP UNDER SUBSECTION (d)(5).—No amount which is attributable to the increase under subsection (d)(5) may be used—

"(A) for any issue other than a qualified housing issue (as defined in subsection (d)(5)), or

"(B) to issue any bond after calendar year 2010.".

(b) TEMPORARY RULE FOR USE OF QUALIFIED MORTGAGE BONDS PROCEEDS FOR SUBPRIME REFINANCING LOANS.—

(1) IN GENERAL.—Section 143(k) (relating to other definitions and special rules) is amended by adding at the end the following new paragraph:

"(12) SPECIAL RULES FOR SUBPRIME REFINANCINGS.—

"(A) IN GENERAL.—Notwithstanding the requirements of subsection (i)(1), the proceeds of a qualified mortgage issue may be used to refinance a mortgage on a residence which was originally financed by the mortgagor through a qualified subprime loan.

"(B) SPECIAL RULES.—In applying subparagraph (A) to any refinancing—

"(i) subsection (a)(2)(D)(i) shall be applied by substituting '12-month period' for '42-month period' each place it appears,

"(ii) subsection (d) (relating to 3-year requirement) shall not apply, and

"(iii) subsection (e) (relating to purchase price requirement) shall be applied by using the market value of the residence at the time of refinancing in lieu of the acquisition cost.

"(C) QUALIFIED SUBPRIME LOAN.—The term 'qualified subprime loan' means an adjustable rate single-family residential mortgage loan made after December 31, 2001, and before January 1, 2008, that the bond issuer

determines would be reasonably likely to cause financial hardship to the borrower if not refinanced.

"(D) TERMINATION.—This paragraph shall not apply to any bonds issued after December 31, 2010.".

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

SEC. 142. REPEAL OF ALTERNATIVE MINIMUM TAX LIMITATIONS ON TAX-EXEMPT HOUSING BONDS, LOW-INCOME HOUSING TAX CREDIT, AND REHABILITATION CREDIT.

(a) TAX-EXEMPT INTEREST ON CERTAIN HOUSING BONDS EXEMPTED FROM ALTERNATIVE MINIMUM TAX.—

(1) IN GENERAL.—Subparagraph (C) of section 57(a)(5) (relating to specified private activity bonds) is amended by redesignating clauses (iii) and (iv) as clauses (iv) and (v), respectively, and by inserting after clause (ii) the following new clause:

"(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).".

(2) NO ADJUSTMENT TO ADJUSTED CURRENT EARNINGS.—Subparagraph (B) of section 56(g)(4) is amended by adding at the end the following new clause:

"(iii) TAX EXEMPT INTEREST ON CERTAIN HOUSING BONDS.—Clause (i) shall not apply in the case of any interest on a bond to which section 57(a)(5)(C)(iii) applies.".

(b) ALLOWANCE OF LOW-INCOME HOUSING CREDIT AGAINST ALTERNATIVE MINIMUM TAX.—Subparagraph (B) of section 38(c)(4) (relating to specified credits) is amended by redesignating clauses (ii) through (iv) as clauses (iii) through (v) and inserting after clause (i) the following new clause:

"(ii) the credit determined under section 42 to the extent attributable to buildings placed in service after December 31, 2007,".

(c) ALLOWANCE OF REHABILITATION CREDIT AGAINST ALTERNATIVE MINIMUM TAX.—Subparagraph (B) of section 38(c)(4), as amended by subsection (b), is amended by striking "and" at the end of clause (iv), by redesignating clause (v) as clause (vi), and by inserting after clause (iv) the following new clause:

"(v) the credit determined under section 47 to the extent attributable to qualified rehabilitation expenditures properly taken into account for periods after December 31, 2007, and".

(d) EFFECTIVE DATE.—

(1) HOUSING BONDS.—The amendments made by subsection (a) shall apply to bonds issued after the date of the enactment of this Act.

(2) LOW INCOME HOUSING CREDIT.—The amendments made by subsection (b) shall apply to credits determined under section 42 of the Internal Revenue Code of 1986 to the extent attributable to buildings placed in service after December 31, 2007.

(3) REHABILITATION CREDIT.—The amendments made by subsection (c) shall apply to credits determined under section 47 of the Internal Revenue Code of 1986 to the extent attributable to qualified rehabilitation expenditures properly taken into account for periods after December 31, 2007.

SEC. 143. BONDS GUARANTEED BY FEDERAL HOME LOAN BANKS ELIGIBLE FOR TREATMENT AS TAX-EXEMPT BONDS.

(a) IN GENERAL.—Subparagraph (A) of section 149(b)(3) (relating to exceptions for certain insurance programs) is amended by striking "or" at the end of clause (ii), by striking the period at the end of clause (iii) and inserting ", or" and by adding at the end the following new clause:

"(iv) any guarantee by a Federal home loan bank made in connection with the original issuance of a bond during the period beginning on the date of the enactment of this Act and ending on December 31, 2010 (or a renewal or extension of a guarantee so made).".

(b) SAFETY AND SOUNDNESS REQUIREMENTS.—Paragraph (3) of section 149(b) is amended by adding at the end the following new subparagraph:

"(E) SAFETY AND SOUNDNESS REQUIREMENTS FOR FEDERAL HOME LOAN BANKS.—Clause (iv) of subparagraph (A) shall not apply to any guarantee by a Federal home loan bank unless such bank meets safety and soundness collateral requirements for such guarantees which are at least as stringent as such requirements which apply under regulations applicable to such guarantees by Federal home loan banks as in effect on April 9, 2008.".

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

SEC. 144. MODIFICATION OF RULES PERTAINING TO FIRPTA NONFOREIGN AFFIDAVITS.

(a) IN GENERAL.—Subsection (b) of section 1445 (relating to exemptions) is amended by adding at the end the following:

"(9) ALTERNATIVE PROCEDURE FOR FURNISHING NONFOREIGN AFFIDAVIT.—For purposes of paragraphs (2) and (7)—

"(A) IN GENERAL.—Paragraph (2) shall be treated as applying to a transaction if, in connection with a disposition of a United States real property interest—

"(i) the affidavit specified in paragraph (2) is furnished to a qualified substitute, and

"(ii) the qualified substitute furnishes a statement to the transferee stating, under penalty of perjury, that the qualified substitute has such affidavit in his possession.

"(B) REGULATIONS.—The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out this paragraph.".

(b) QUALIFIED SUBSTITUTE.—Subsection (f) of section 1445 (relating to definitions) is amended by adding at the end the following new paragraph:

"(6) QUALIFIED SUBSTITUTE.—The term 'qualified substitute' means, with respect to a disposition of a United States real property interest—

"(A) the person (including any attorney or title company) responsible for closing the transaction, other than the transferor's agent, and

"(B) the transferee's agent.".

(c) EXEMPTION NOT TO APPLY IF KNOWLEDGE OR NOTICE THAT AFFIDAVIT OR STATEMENT IS FALSE.—

(1) IN GENERAL.—Paragraph (7) of section 1445(b) (relating to special rules for paragraphs (2) and (3)) is amended to read as follows:

"(7) SPECIAL RULES FOR PARAGRAPHS (2), (3), AND (9).—Paragraph (2), (3), or (9) (as the case may be) shall not apply to any disposition—

"(A) if—

"(i) the transferee or qualified substitute has actual knowledge that the affidavit referred to in such paragraph, or the statement referred to in paragraph (9)(A)(ii), is false, or

"(ii) the transferee or qualified substitute receives a notice (as described in subsection (d)) from a transferor's agent, transferee's agent, or qualified substitute that such affidavit or statement is false, or

"(B) if the Secretary by regulations requires the transferee or qualified substitute to furnish a copy of such affidavit or statement to the Secretary and the transferee or qualified substitute fails to furnish a copy of such affidavit or statement to the Secretary at such time and in such manner as required by such regulations.".

(2) LIABILITY.—

(A) NOTICE.—Paragraph (1) of section 1445(d) (relating to notice of false affidavit; foreign corporations) is amended to read as follows:

"(1) NOTICE OF FALSE AFFIDAVIT; FOREIGN CORPORATIONS.—If—

"(A) the transferor furnishes the transferee or qualified substitute an affidavit described in paragraph (2) of subsection (b) or a domestic corporation furnishes the transferee an affidavit described in paragraph (3) of subsection (b), and

"(B) in the case of—

"(i) any transferor's agent—

"(I) such agent has actual knowledge that such affidavit is false, or

"(II) in the case of an affidavit described in subsection (b)(2) furnished by a corporation, such corporation is a foreign corporation, or

"(ii) any transferee's agent or qualified substitute, such agent or substitute has actual knowledge that such affidavit is false,

such agent or qualified substitute shall so notify the transferee at such time and in such manner as the Secretary shall require by regulations.".

(B) FAILURE TO FURNISH NOTICE.—Paragraph (2) of section 1445(d) (relating to failure to furnish notice) is amended to read as follows:

"(2) FAILURE TO FURNISH NOTICE.—

"(A) IN GENERAL.—If any transferor's agent, transferee's agent, or qualified substitute is required by paragraph (1) to furnish notice, but fails to furnish such notice at such time or times and in such manner as may be required by regulations, such agent or substitute shall have the same duty to deduct and withhold that the transferee would have had if such agent or substitute had complied with paragraph (1).

"(B) LIABILITY LIMITED TO AMOUNT OF COMPENSATION.—An agent's or substitute's liability under subparagraph (A) shall be limited to the amount of compensation the agent or substitute derives from the transaction.".

(C) CONFORMING AMENDMENT.—The heading for section 1445(d) is amended by striking "OR TRANSFEREE'S AGENTS" and inserting ", TRANSFEREE'S AGENTS, OR QUALIFIED SUBSTITUTES".

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to dispositions of United States real property interests after the date of the enactment of this Act.

SEC. 145. MODIFICATION OF DEFINITION OF TAX-EXEMPT USE PROPERTY FOR PURPOSES OF THE REHABILITATION CREDIT.

(a) IN GENERAL.—Subclause (I) of section 47(c)(2)(B)(v) is amended by striking "section 168(h)" and inserting "section 168(h), except that '50 percent' shall be substituted for '35 percent' in paragraph (1)(B)(iii) thereof".

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to expenditures properly taken into account for periods after December 31, 2007.

TITLE II—REFORMS RELATED TO REAL ESTATE INVESTMENT TRUSTS

Subtitle A—Foreign Currency and Other Qualified Activities

SEC. 201. REVISIONS TO REIT INCOME TESTS.

(a) ADDITION OF PERMISSIBLE INCOME CATEGORIES.—Section 856(c) (relating to limitations) is amended—

(1) by striking "and" at the end of paragraph (2)(G) and by inserting after paragraph (2)(H) the following new subparagraphs:

"(I) passive foreign exchange gains; and

"(J) any other item of income or gain as determined by the Secretary;", and

(2) by striking "and" at the end of paragraphs (3)(H) and (3)(I) and by inserting after paragraph (3)(I) the following new subparagraphs:

"(J) real estate foreign exchange gains; and

"(K) any other item of income or gain as determined by the Secretary; and".

(b) RULES REGARDING FOREIGN CURRENCY TRANSACTIONS.—Section 856 (defining real estate investment trust) is amended by adding at the end the following new subsection:

"(n) RULES REGARDING FOREIGN CURRENCY TRANSACTIONS.—With respect to any taxable year—

"(1) REAL ESTATE FOREIGN EXCHANGE GAINS.—For purposes of subsection (c)(3)(J), the term 'real estate foreign exchange gains' means—

"(A) foreign currency gains (as defined in section 988(b)(1)) which are attributable to—

"(i) any item described in subsection (c)(3) (other than in subparagraph (J) thereof),

"(ii) the acquisition or ownership of obligations secured by mortgages on real property or on interests in real property (other than foreign currency gains attributable to any item described in clause (i)), or

"(iii) becoming or being the obligor under obligations secured by mortgages on real property or on interests in real property (other than foreign currency gains attributable to any item described in clause (i)),

"(B) gains described in section 987 attributable to a qualified business unit (as defined by section 989) of the real estate investment trust, but only if such qualified business unit meets the requirements under—

"(i) subsection (c)(3) (without regard to subparagraph (J) thereof) for the taxable year, and

"(ii) subsection (c)(4)(A) at the close of each quarter that the real estate investment trust has directly or indirectly held the qualified business unit, and

"(C) any other foreign currency gains as determined by the Secretary.

"(2) PASSIVE FOREIGN EXCHANGE GAINS.—For purposes of subsection (c)(2)(I), the term 'passive foreign exchange gains' means—

"(A) real estate foreign exchange gains,

"(B) foreign currency gains (as defined in section 988(b)(1)) which are not described in subparagraph (A) and which are attributable to any item described in subsection (c)(2) (other than in subparagraph (I) thereof), and

"(C) any other foreign currency gains as determined by the Secretary.".

(c) ADDITION TO REIT HEDGING RULE.—Subparagraph (G) of section 856(c)(5) is amended to read as follows:

"(G) TREATMENT OF CERTAIN HEDGING INSTRUMENTS.—Except to the extent as determined by the Secretary—

"(i) any income of a real estate investment trust from a hedging transaction (as defined in clause (ii) or (iii) of section 1221(b)(2)(A)) which is clearly identified pursuant to section 1221(a)(7), including gain from the sale or disposition of such a transaction, shall not constitute gross income under paragraphs (2) and (3) to the extent that the transaction hedges any indebtedness incurred or to be incurred by the trust to acquire or carry real estate assets, and

"(ii) any income of a real estate investment trust from a transaction entered into by the trust primarily to manage risk of currency fluctuations with respect to any item described in paragraph (2) or (3), including gain from the termination of such a transaction, shall not constitute gross income under paragraphs (2) and (3), but only if such transaction is clearly identified as such before the close of the day on which it was acquired, originated, or entered into (or such other time as the Secretary may prescribe).".

(d) AUTHORITY TO EXCLUDE ITEMS OF INCOME FROM REIT INCOME TESTS.—Section 856(c)(5) is amended by adding at the end the following new subparagraph:

"(H) SECRETARIAL AUTHORITY TO EXCLUDE OTHER ITEMS OF INCOME.—The Secretary is authorized to determine whether any item of income or gain which does not otherwise qualify under paragraph (2) or (3) may be considered as not constituting gross income solely for purposes of this part.".

SEC. 202. REVISIONS TO REIT ASSET TESTS.

(a) CLARIFICATION OF VALUATION TEST.—The first sentence in the matter following section 856(c)(4)(B)(iii)(III) is amended by inserting "(including a discrepancy caused solely by the change in the foreign currency exchange rate used to value a foreign asset)" after "such requirements".

(b) CLARIFICATION OF PERMISSIBLE ASSET CATEGORY.—Section 856(c)(5), as amended by section 201(d), is amended by adding at the end the following new subparagraph:

"(I) CASH.—The term 'cash' includes foreign currency if the real estate investment trust or its qualified business unit (as defined in section 989) uses such foreign currency as its functional currency (as defined in section 985(b)).".

SEC. 203. CONFORMING FOREIGN CURRENCY REVISIONS.

(a) NET INCOME FROM FORECLOSURE PROPERTY.—Clause (i) of section 857(b)(4)(B) is amended to read as follows:

"(i) gain (including any foreign currency gain, as defined in section 988(b)(1)) from the sale or other disposition of foreclosure property described in section 1221(a)(1) and the gross income for the taxable year derived from foreclosure property (as defined in section 856(e)), but only to the extent such gross income is not described in (or, in the case of foreign currency gain, not attributable to gross income described in) section 856(c)(3) other than subparagraph (F) thereof, over".

(b) NET INCOME FROM PROHIBITED TRANSACTIONS.—Clause (i) of section 857(b)(6)(B) is amended to read as follows:

"(i) the term 'net income derived from prohibited transactions' means the excess of the gain (including any foreign currency gain, as defined in section 988(b)(1)) from prohibited transactions over the deductions (including any foreign currency loss, as defined in section 988(b)(2)) allowed by this chapter which are directly connected with prohibited transactions;".

Subtitle B—Taxable REIT Subsidiaries

SEC. 211. CONFORMING TAXABLE REIT SUBSIDIARY ASSET TEST.

Section 856(c)(4)(B)(ii) is amended by striking "20 percent" and inserting "25 percent".

Subtitle C—Dealer Sales

SEC. 221. HOLDING PERIOD UNDER SAFE HARBOR.

Section 857(b)(6) (relating to income from prohibited transactions) is amended—

(1) by striking "4 years" in subparagraphs (C)(i), (C)(iv), and (D)(i) and inserting "2 years",

(2) by striking "4-year period" in subparagraphs (C)(ii), (D)(ii), and (D)(iii) and inserting "2-year period", and

(3) by striking "real estate asset"and all that follows through "if" in the matter preceding clause (i) of subparagraphs (C) and (D), respectively, and inserting "real estate asset (as defined in section 856(c)(5)(B)) and which is described in section 1221(a)(1) if".

SEC. 222. DETERMINING VALUE OF SALES UNDER SAFE HARBOR.

Section 857(b)(6) is amended—

(1) by striking the semicolon at the end of subparagraph (C)(iii) and inserting ", or (III) the fair market value of property (other than sales of foreclosure property or sales to which section 1033 applies) sold during the taxable year does not exceed 10 percent of the fair market value of all of the assets of the trust as of the beginning of the taxable year;", and

(2) by adding "or" at the end of subclause (II) of subparagraph (D)(iv) and by adding at the end of such subparagraph the following new subclause:

> "(III) the fair market value of property (other than sales of foreclosure property or sales to which section 1033 applies) sold during the taxable year does not exceed 10 percent of the fair market value of all of the assets of the trust as of the beginning of the taxable year,".

Subtitle D—Health Care REITs

SEC. 231. CONFORMITY FOR HEALTH CARE FACILITIES.

(a) RELATED PARTY RENTALS.—Subparagraph (B) of section 856(d)(8) (relating to special rule for taxable REIT subsidiaries) is amended to read as follows:

> "(B) EXCEPTION FOR CERTAIN LODGING FACILITIES AND HEALTH CARE PROPERTY.—The requirements of this subparagraph are met with respect to an interest in real property which is a qualified lodging facility or a qualified health care property (as defined in subsection (e)(6)(D)(i)) leased by the trust to a taxable REIT subsidiary of the trust if the property is operated on behalf of such subsidiary by a person who is an eligible independent contractor. For purposes of this section, a taxable REIT subsidiary is not considered to be operating or managing a qualified health care property or qualified lodging facility solely because it directly or indirectly possesses a license, permit or similar instrument enabling it to do so.".

(b) ELIGIBLE INDEPENDENT CONTRACTOR.—Subparagraphs (A) and (B) of section 856(d)(9) (relating to eligible independent contractor) are amended to read as follows:

> "(A) IN GENERAL.—The term 'eligible independent contractor' means, with respect to any qualified lodging facility or qualified health care property (as defined in subsection (e)(6)(D)(i)), any independent contractor if, at the time such contractor enters into a management agreement or other similar service contract with the taxable REIT subsidiary to operate such qualified lodging facility or qualified health care property, such contractor (or any related person) is actively engaged in the trade or business of operating qualified lodging facilities or qualified health care properties, respectively, for any person who is not a related person with respect to the real estate investment trust or the taxable REIT subsidiary.
>
> "(B) SPECIAL RULES.—Solely for purposes of this paragraph and paragraph (8)(B), a person shall not fail to be treated as an independent contractor with respect to any qualified lodging facility or qualified health care property (as so defined) by reason of the following:

"(i) The taxable REIT subsidiary bears the expenses for the operation of such qualified lodging facility or qualified health care property pursuant to the management agreement or other similar service contract.

"(ii) The taxable REIT subsidiary receives the revenues from the operation of such qualified lodging facility or qualified health care property, net of expenses for such operation and fees payable to the operator pursuant to such agreement or contract.

"(iii) The real estate investment trust receives income from such person with respect to another property that is attributable to a lease of such other property to such person that was in effect as of the later of—

"(I) January 1, 1999, or

"(II) the earliest date that any taxable REIT subsidiary of such trust entered into a management agreement or other similar service contract with such person with respect to such qualified lodging facility or qualified health care property.".

(c) TAXABLE REIT SUBSIDIARIES.—The last sentence of section 856(l)(3) is amended—

(1) by inserting "or a health care facility" after "a lodging facility", and

(2) by inserting "or health care facility" after "such lodging facility".

Subtitle E—Effective Dates

SEC. 241. EFFECTIVE DATES.

(a) IN GENERAL.—Except as otherwise provided in this section, the amendments made by this title shall apply to taxable years beginning after the date of the enactment of this Act.

(b) REIT INCOME TESTS.—

(1) The amendment made by section 201(a) and (b) shall apply to gains and items of income recognized after the date of the enactment of this Act.

(2) The amendment made by section 201(c) shall apply to transactions entered into after the date of the enactment of this Act.

(3) The amendment made by section 201(d) shall apply after the date of the enactment of this Act.

(c) CONFORMING FOREIGN CURRENCY REVISIONS.—

(1) The amendment made by section 203(a) shall apply to gains recognized after the date of the enactment of this Act.

(2) The amendment made by section 203(b) shall apply to gains and deductions recognized after the date of the enactment of this Act.

(d) DEALER SALES.—The amendments made by subtitle C shall apply to sales made after the date of the enactment of this Act.

TITLE III—REVENUE PROVISIONS

SEC. 301. BROKER REPORTING OF CUSTOMER'S BASIS IN SECURITIES TRANSACTIONS.

(a) IN GENERAL.—

(1) BROKER REPORTING FOR SECURITIES TRANSACTIONS.—Section 6045 (relating to returns of brokers) is amended by adding at the end the following new subsection:

"(g) ADDITIONAL INFORMATION REQUIRED IN THE CASE OF SECURITIES TRANSACTIONS, ETC.—

"(1) IN GENERAL.—If a broker is otherwise required to make a return under subsection (a) with respect to the gross proceeds of the sale of a covered security, the broker shall include in such return the information described in paragraph (2).

"(2) ADDITIONAL INFORMATION REQUIRED.—

"(A) IN GENERAL.—The information required under paragraph (1) to be shown on a return with respect to a covered security of a customer shall include the customer's adjusted basis in such security and whether any gain or loss with respect to such security is long-term or short-term (within the meaning of section 1222).

"(B) DETERMINATION OF ADJUSTED BASIS.—For purposes of subparagraph (A)—

"(i) IN GENERAL.—The customer's adjusted basis shall be determined—

"(I) in the case of any security (other than any stock for which an average basis method is permissible under section 1012), in accordance with the first-in first-out method unless the customer notifies the broker by means of making an adequate identification of the stock sold or transferred, and

"(II) in the case of any stock for which an average basis method is permissible under section 1012, in accordance with the broker's default method unless the customer notifies the broker that he elects another acceptable method under section 1012 with respect to the account in which such stock is held.

"(ii) EXCEPTION FOR WASH SALES.—Except as otherwise provided by the Secretary, the customer's adjusted basis shall be determined without regard to section 1091 (relating to loss from wash sales of stock or securities) unless the transactions occur in the same account with respect to identical securities.

"(3) COVERED SECURITY.—For purposes of this subsection—

"(A) IN GENERAL.—The term 'covered security' means any specified security acquired on or after the applicable date if such security—

"(i) was acquired through a transaction in the account in which such security is held, or

"(ii) was transferred to such account from an account in which such security was a covered security, but only if the broker received a statement under section 6045A with respect to the transfer.

"(B) SPECIFIED SECURITY.—The term 'specified security' means—

"(i) any share of stock in a corporation,

"(ii) any note, bond, debenture, or other evidence of indebtedness,

"(iii) any commodity, or contract or derivative with respect to such commodity, if the Secretary determines that adjusted basis reporting is appropriate for purposes of this subsection, and

"(iv) any other financial instrument with respect to which the Secretary determines that adjusted basis reporting is appropriate for purposes of this subsection.

"(C) APPLICABLE DATE.—The term 'applicable date' means—

"(i) January 1, 2010, in the case of any specified security which is stock in a corporation (other than any stock described in clause (ii)),

"(ii) January 1, 2011, in the case of any stock for which an average basis method is permissible under section 1012, and

"(iii) January 1, 2012, or such later date determined by the Secretary in the case of any other specified security.

"(4) TREATMENT OF S CORPORATIONS.—In the case of the sale of a covered security acquired by an S corporation (other than a financial institution) after December 31, 2011, such S corporation shall be treated in the same manner as a partnership for purposes of this section.

"(5) SPECIAL RULES FOR SHORT SALES.—In the case of a short sale, reporting under this section shall be made for the year in which such sale is closed.".

(2) BROKER INFORMATION REQUIRED WITH RESPECT TO OPTIONS.—Section 6045, as amended by subsection (a), is amended by adding at the end the following new subsection:

"(h) APPLICATION TO OPTIONS ON SECURITIES.—

"(1) EXERCISE OF OPTION.—For purposes of this section, if a covered security is acquired or disposed of pursuant to the exercise of an option that was granted or acquired in the same account as the covered security, the amount received with respect to the grant or paid with respect to the acquisition of such option shall be treated as an adjustment to gross proceeds or as an adjustment to basis, as the case may be.

"(2) LAPSE OR CLOSING TRANSACTION.—In the case of the lapse (or closing transaction (as defined in section 1234(b)(2)(A))) of an option on a specified security or the exercise of a cash-settled option on a specified security, reporting under subsections (a) and (g) with respect to such option shall be made for the calendar year which includes the date of such lapse, closing transaction, or exercise.

"(3) PROSPECTIVE APPLICATION.—Paragraphs (1) and (2) shall not apply to any option which is granted or acquired before January 1, 2012.

"(4) DEFINITIONS.—For purposes of this subsection, the terms 'covered security' and 'specified security' shall have the meanings given such terms in subsection (g)(3).".

(3) EXTENSION OF PERIOD FOR STATEMENTS SENT TO CUSTOMERS.—

(A) IN GENERAL.—Subsection (b) of section 6045 is amended by striking "January 31" and inserting "February 15".

(B) STATEMENTS RELATED TO SUBSTITUTE PAYMENTS.—Subsection (d) of section 6045 is amended—

(i) by striking "at such time and", and

(ii) by inserting after "other item." the following new sentence: "The written statement required under the preceding sentence shall be furnished on or before February 15 of the year following the calendar year in which the payment was made.".

(C) OTHER STATEMENTS.—Subsection (b) of section 6045 is amended by adding at the end the following: "In the case of a consolidated reporting statement (as defined in regulations) with respect to any account, any statement which would otherwise be required to be furnished on or before January 31 of a calendar year with respect to any item reportable to the taxpayer shall instead be required to be furnished on or before February 15 of such calendar year if furnished with such consolidated reporting statement.".

(b) DETERMINATION OF BASIS OF CERTAIN SECURITIES ON ACCOUNT BY ACCOUNT OR AVERAGE BASIS METHOD.—Section 1012 (relating to basis of property–cost) is amended—

(1) by striking "The basis of property" and inserting the following:

"(a) IN GENERAL.—The basis of property",

(2) by striking "The cost of real property" and inserting the following:

"(b) SPECIAL RULE FOR APPORTIONED REAL ESTATE TAXES.—The cost of real property", and

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

"(c) DETERMINATIONS BY ACCOUNT.—

"(1) IN GENERAL.—In the case of the sale, exchange, or other disposition of a specified security on or after the applicable date, the conventions prescribed by regulations under this section shall be applied on an account by account basis.

"(2) APPLICATION TO OPEN-END FUNDS.—

"(A) IN GENERAL.—Except as provided in subparagraph (B), any stock in an open-end fund acquired before January 1, 2011, shall be treated as a separate account from any such stock acquired on or after such date.

"(B) ELECTION BY OPEN-END FUND FOR TREATMENT AS SINGLE ACCOUNT.—If an open-end fund elects to have this subparagraph apply with respect to one or more of its stockholders—

"(i) subparagraph (A) shall not apply with respect to any stock in such fund held by such stockholders, and

"(ii) all stock in such fund which is held by such stockholders shall be treated as covered securities described in section 6045(g)(3) without regard to the date of the acquisition of such stock.

A rule similar to the rule of the preceding sentence shall apply with respect to a broker holding stock in an open-end fund as a nominee.

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

"(A) OPEN-END FUND.—The term 'open-end fund' means a regulated investment company (as defined in section 851) which is offering for sale or has outstanding any redeemable security of which it is the issuer. Any stock which is traded on an established securities exchange shall not be treated as stock in an open-end fund.

"(B) SPECIFIED SECURITY; APPLICABLE DATE.—The terms 'specified security' and 'applicable date' shall have the meaning given such terms in section 6045(g).

"(d) AVERAGE BASIS FOR STOCK ACQUIRED PURSUANT TO A DIVIDEND REINVESTMENT PLAN.—

"(1) IN GENERAL.—In the case of any stock acquired after December 31, 2010, in connection with a dividend reinvestment plan, the basis of such stock while held as part of such plan shall be determined using one of the methods which may be used for determining the basis of stock in an open-end fund.

"(2) TREATMENT AFTER TRANSFER.—In the case of the transfer to another account of stock to which paragraph (1) applies, such stock shall have a cost basis in such other account equal to its basis in the dividend reinvestment plan immediately before such transfer (properly adjusted for any fees or other charges taken into account in connection with such transfer).

"(3) SEPARATE ACCOUNTS; ELECTION FOR TREATMENT AS SINGLE ACCOUNT.—Rules similar to the rules of subsection (c)(2) shall apply for purposes of this subsection.

"(4) DIVIDEND REINVESTMENT PLAN.—For purposes of this subsection—

"(A) IN GENERAL.—The term 'dividend reinvestment plan' means any arrangement under which dividends on any stock are reinvested in stock identical to the stock with respect to which the dividends are paid.

"(B) INITIAL STOCK ACQUISITION TREATED AS ACQUIRED IN CONNECTION WITH PLAN.—Stock shall be treated as acquired in connection with a dividend reinvestment plan if such stock is acquired pursuant to such plan or if the dividends paid on such stock are subject to such plan.".

(c) INFORMATION BY TRANSFERORS TO AID BROKERS.—

(1) IN GENERAL.—Subpart B of part III of subchapter A of chapter 61 is amended by inserting after section 6045 the following new section:

"SEC. 6045A. INFORMATION REQUIRED IN CONNECTION WITH TRANSFERS OF COVERED SECURITIES TO BROKERS.

"(a) FURNISHING OF INFORMATION.—Every applicable person which transfers to a broker (as defined in section 6045(c)(1)) a security which is a covered security (as defined in section 6045(g)(3)) in the hands of such applicable person shall furnish to such broker a written statement in such manner and setting forth such information as the Secretary may by regulations prescribe for purposes of enabling such broker to meet the requirements of section 6045(g).

"(b) APPLICABLE PERSON.—For purposes of subsection (a), the term 'applicable person' means—

"(1) any broker (as defined in section 6045(c)(1)), and

"(2) any other person as provided by the Secretary in regulations.

"(c) TIME FOR FURNISHING STATEMENT.—Except as otherwise provided by the Secretary, any statement required by subsection (a) shall be furnished not later than 15 days after the date of the transfer described in such subsection.".

(2) ASSESSABLE PENALTIES.—Paragraph (2) of section 6724(d) (defining payee statement) is amended by redesignating subparagraphs (I) through (CC) as subparagraphs (J) through (DD), respectively, and by inserting after subparagraph (H) the following new subparagraph:

"(I) section 6045A (relating to information required in connection with transfers of covered securities to brokers),".

(3) CLERICAL AMENDMENT.—The table of sections for subpart B of part III of subchapter A of chapter 61 is amended by inserting after the item relating to section 6045 the following new item:

"Sec. 6045A. Information required in connection with transfers of covered securities to brokers.".

(d) ADDITIONAL ISSUER INFORMATION TO AID BROKERS.—

(1) IN GENERAL.—Subpart B of part III of subchapter A of chapter 61, as amended by subsection (b), is amended by inserting after section 6045A the following new section:

"SEC. 6045B. RETURNS RELATING TO ACTIONS AFFECTING BASIS OF SPECIFIED SECURITIES.

"(a) IN GENERAL.—According to the forms or regulations prescribed by the Secretary, any issuer of a specified security shall make a return setting forth—

"(1) a description of any organizational action which affects the basis of such specified security of such issuer,

"(2) the quantitative effect on the basis of such specified security resulting from such action, and

"(3) such other information as the Secretary may prescribe.

"(b) TIME FOR FILING RETURN.—Any return required by subsection (a) shall be filed not later than the earlier of—

"(1) 45 days after the date of the action described in subsection (a), or

"(2) January 15 of the year following the calendar year during which such action occurred.

"(c) STATEMENTS TO BE FURNISHED TO HOLDERS OF SPECIFIED SECURITIES OR THEIR NOMINEES.—According to the forms or regulations prescribed by the Secretary, every person required to make a return under subsection (a) with respect to a specified security shall furnish to the nominee with respect to the specified security (or certificate holder if there is no nominee) a written statement showing—

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

"(2) the information required to be shown on such return with respect to such security, and

"(3) such other information as the Secretary may prescribe.

The written statement required under the preceding sentence shall be furnished to the holder on or before January 15 of the year following the calendar year during which the action described in subsection (a) occurred.

"(d) SPECIFIED SECURITY.—For purposes of this section, the term 'specified security' has the meaning given such term by section 6045(g)(3)(B). No return shall be

required under this section with respect to actions described in subsection (a) with respect to a specified security which occur before the applicable date (as defined in section 6045(g)(3)(C)) with respect to such security.

"(e) PUBLIC REPORTING IN LIEU OF RETURN.—The Secretary may waive the requirements under subsections (a) and (c) with respect to a specified security, if the person required to make the return under subsection (a) makes publicly available, in such form and manner as the Secretary determines necessary to carry out the purposes of this section—

"(1) the name, address, phone number, and email address of the information contact of such person, and

"(2) the information described in paragraphs (1), (2), and (3) of subsection (a).".

(2) ASSESSABLE PENALTIES.—

(A) Subparagraph (B) of section 6724(d)(1) of such Code (defining information return) is amended by redesignating clause (iv) and each of the clauses which follow as clauses (v) through (xxii), respectively, and by inserting after clause (iii) the following new clause:

"(iv) section 6045B(a) (relating to returns relating to actions affecting basis of specified securities),".

(B) Paragraph (2) of section 6724(d) of such Code (defining payee statement), as amended by subsection (c)(2), is amended by redesignating subparagraphs (J) through (DD) as subparagraphs (K) through (EE), respectively, and by inserting after subparagraph (I) the following new subparagraph:

"(J) subsections (c) and (e) of section 6045B (relating to returns relating to actions affecting basis of specified securities),".

(3) CLERICAL AMENDMENT.—The table of sections for subpart B of part III of subchapter A of chapter 61 of such Code, as amended by subsection (b)(3), is amended by inserting after the item relating to section 6045A the following new item:

"Sec. 6045B. Returns relating to actions affecting basis of specified securities.".

(e) EFFECTIVE DATE.—

(1) IN GENERAL.—Except as otherwise provided in this subsection, the amendments made by this section shall take effect on January 1, 2010.

(2) EXTENSION OF PERIOD FOR STATEMENTS SENT TO CUSTOMERS.—The amendments made by subsection (a)(3) shall apply to statements required to be furnished after December 31, 2008.

SEC. 302. DELAY IN APPLICATION OF WORLDWIDE ALLOCATION OF INTEREST.

(a) IN GENERAL.—Paragraphs (5)(D) and (6) of section 864(f) are each amended by striking "December 31, 2008" and inserting "December 31, 2009".

(b) TRANSITIONAL RULE.—Subsection (f) of section 864 is amended by adding at the end the following new paragraph:

"(7) TRANSITION.—In the case of the first taxable year to which this subsection applies, the increase (if any) in the amount of the interest expense allocable to sources within the United States by reason of the application of this subsection shall be 78 percent of the amount of such increase determined without regard to this paragraph.".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 2008.

SEC. 303. TIME FOR PAYMENT OF CORPORATE ESTIMATED TAXES.

(a) REPEAL OF ADJUSTMENT FOR 2012.—Subparagraph (B) of section 401(1) of the Tax Increase Prevention and Reconciliation Act of 2005 is amended by striking the percentage contained therein and inserting "100 percent".

(b) MODIFICATION OF ADJUSTMENT FOR 2013.—The percentage under subparagraph (C) of section 401(1) of the Tax Increase Prevention and Reconciliation Act of 2005 in effect on the date of the enactment of this Act is increased by 13 percentage points.

I. SUMMARY AND BACKGROUND

A. PURPOSE AND SUMMARY

The bill, H.R. 5720, as amended, (1) provides a temporary two-year increase in the volume cap for the low-income housing credit, (2) makes various programmatic reforms and simplifications to the low-income housing credit and tax-exempt bond rules relating to

housing, (3) provides a temporary increase in the volume cap for tax-exempt housing bonds and allows recycling of tax-exempt debt for financing residential rental projects, (4) creates a refundable first-time homebuyer credit, (5) provides an additional standard deduction for real property taxes for non-itemizers, (6) provides AMT relief for tax-exempt housing bonds, the low-income housing and rehabilitation credits, (7) temporarily modifies the Federal guarantee tax-exempt bond restriction for Federal home loan banks, (8) modifies the FIRPTA non-foreign affidavit rules, (9) amends the definition of tax-exempt use property for the rehabilitation credit, (10) reforms the rules for real estate investment trusts, (11) establishes broker reporting of customers' basis in securities transactions, (12) delays application of worldwide allocation of interest expense, and (13) adjusts the time for payment of corporate estimated taxes for certain large corporations.

B. Background and Need for Legislation

The provisions approved by the Committee reflect the need to improve the tax provisions relating to multi-family low-income housing and respond in a targeted revenue-neutral way to temporary housing and credit market imbalances, as well as other purposes.

C. Legislative History

The Committee on Ways and Means marked up the Housing Assistance Tax Act of 2008 on April 9, 2008, and ordered the bill, as amended, favorably reported.

II. EXPLANATION OF THE BILL

TITLE I—BENEFITS FOR MULTI-FAMILY LOW-INCOME HOUSING

OVERVIEW

Low-income housing credit

The low-income housing credit may be claimed over a 10-year period for the cost of building rental housing occupied by tenants having incomes below specified levels. The amount of the credit for any taxable year in the credit period is the applicable percentage of the qualified basis of each qualified low-income building. The qualified basis of any qualified low-income building for any taxable year equals the applicable fraction of the eligible basis of the building.

The credit percentage for newly constructed or substantially rehabilitated housing that is not Federally subsidized is adjusted monthly by the Internal Revenue Service so that the 10 annual installments of the credit have a present value of 70 percent of the total qualified basis. The credit percentage for newly constructed or substantially rehabilitated housing that is Federally subsidized and for existing housing that is substantially rehabilitated is calculated to have a present value of 30 percent of qualified basis. These are referred to as the 70-percent credit and 30-percent credit, respectively.

Tax-exempt bonds for housing

Private activity bonds are bonds that nominally are issued by State or local governments, but the proceeds of which are used (directly or indirectly) by a private person and payment of which is derived from funds of such private person. The exclusion from income for interest paid on State and local bonds does not apply to private activity bonds, unless the bonds are issued for certain permitted purposes ("qualified private activity bonds"). The definition of a qualified private activity bond includes, but is not limited to, qualified mortgage bonds, qualified veterans' mortgage bonds, and bonds for qualified residential rental projects.

Residential rental property may be financed with qualified private activity bonds if the financed project is a "qualified residential rental project." A project is a qualified residential rental project if 20 percent or more of the residential units in such project are occupied by individuals whose income is 50 percent or less of area median gross income (the "20–50 test"). Alternatively, a project is a qualified residential rental project if 40 percent or more of the residential units in such project are occupied by individuals whose income is 60 percent or less of area median gross income (the "40–60 test"). The issuer must elect to apply either the 20–50 test or the 40–60 test. Operators of qualified residential rental projects must annually certify that such project meets the requirements for qualification, including meeting the 20–50 test or the 40–60 test.

REASONS FOR CHANGE

Safe, affordable housing is a major priority to all individual Americans. The temporary increase in the volume limit for the low income housing credit is intended to augment the supply of rental housing for low-income individuals. The various improvements to the low-income housing credit and tax-exempt bond rules are designed to create new opportunities for such housing in situations and geographical areas which have not previously benefited from the low-income housing credit and tax-exempt bond financing. In the first comprehensive effort to improve the technical operation of the credit in over a decade, the Committee intends to eliminate outdated requirements, unnecessary restrictions, and needless complexity in the development and operation of low-income credit projects. The Committee also believes that a change to the refunding rules for multi-family housing bonds will allow more efficient combinations of the credit and tax-exempt bonds in certain circumstances. The Committee believes that all the modifications described in this title of the bill are necessary improvements to the vitally important system of housing tax incentives in the Code. In the future, the Committee will continue to monitor the operation of the low-income credit and tax-exempt housing bonds to ensure that these subsidies for affordable housing continue to serve low-income individuals efficiently.

A. Low-Income Housing Credit

1. Temporary increase in the low-income housing credit volume limits (Sec. 101 of the bill and Sec. 42 of the Code)

PRESENT LAW

In general

The low-income housing credit may be claimed over a 10-year period by owners of certain residential rental property for the cost of rental housing occupied by tenants having incomes below specified levels (sec. 42). The amount of the credit for any taxable year in the credit period is the applicable percentage of the qualified basis of each qualified low-income building. The qualified basis of any qualified low-income building for any taxable year equals the applicable fraction of the eligible basis of the building.

Volume limits

A low-income housing credit is allowable only if the owner of a qualified building receives a housing credit allocation from the State or local housing credit agency. Generally, the aggregate credit authority provided annually to each State for calendar year 2008 is $2.00 per resident, with a minimum annual cap of $2,325,000 for certain small population States (Rev. Proc. 2007–66). These amounts are indexed for inflation. Projects that also receive financing with proceeds of tax-exempt bonds issued subject to the private activity bond volume limit do not require an allocation of the low-income housing credit.

EXPLANATION OF PROVISION

The provision increases from $2.00 per resident to $2.20 per resident the allocation authority provided annually to each State for calendar years 2008 and 2009. In 2010, the volume limit will return to the prescribed levels had this provision not been enacted.

EFFECTIVE DATE

The provision is effective for low-income credit allocations made for calendar years after 2007.

2. Determination of credit rate (Sec. 102 of the bill and Sec. 42 of the Code)

(a) Modifications to the applicable percentage

PRESENT LAW

In general

The low-income housing credit may be claimed over a 10-year credit period after each low-income building is placed-in-service. The amount of the credit for any taxable year in the 4 credit period is the applicable percentage of the qualified basis of each qualified low-income building.

Present value credit

The calculation of the applicable percentage is designed to produce a credit equal to: (1) 70 percent of the present value of the

building's qualified basis in the case of newly constructed or substantially rehabilitated housing that is not Federally subsidized (the "70-percent credit"); or (2) 30 percent of the present value of the building's qualified basis in the case of newly constructed or substantially rehabilitated housing that is Federally subsidized and existing housing that is substantially rehabilitated (the "30-percent credit"). Where existing housing is substantially rehabilitated, the existing housing is eligible for the 30-percent credit and the qualified rehabilitation expenses (if not Federally subsidized) are eligible for the 70-percent credit.

Calculation of the applicable percentage

The credit percentage for a low-income building is set for the earlier of: (1) the month the building is placed in service; or (2) at the election of the taxpayer, (a) the month the taxpayer and the housing credit agency enter into a binding agreement with respect to such building for a credit allocation, or (b) in the case of a tax-exempt bond-financed project for which no credit allocation is required, the month in which the tax-exempt bonds are issued.

These credit percentages (used for the 70-percent credit and 30-percent credit) are adjusted monthly by the IRS on a discounted after-tax basis (assuming a 28-percent tax rate) based on the average of the Applicable Federal Rates for mid-term and long-term obligations for the month the building is placed in service. The discounting formula assumes that each credit is received on the last day of each year and that the present value is computed on the last day of the first year. In a project consisting of two or more buildings placed in service in different months, a separate credit percentage may apply to each building.

EXPLANATION OF PROVISION

The provision expands the class of low-income buildings eligible for the 70-percent credit and provides a floor on the applicable credit percentages for non-Federally subsidized buildings.

The provision extends the 70-percent credit to non-Federally subsidized existing housing that is substantially rehabilitated (i.e., in the case of an existing building which is substantially rehabilitated, both the qualified basis of the existing building and the qualified rehabilitation expenses are eligible for the 70-percent credit as long as the building is not Federally-subsidized.)

Also, the provision provides a floor on the applicable percentage for non-Federally subsidized buildings equal to the average percentage for such buildings during the preceding calendar year.

EFFECTIVE DATE

The provision is effective for buildings placed in service after the date of enactment.

(b) Modification to the definition of a Federally subsidized building

PRESENT LAW

If any portion of the eligible basis of a building is Federally subsidized, then the building is ineligible for the 70-percent credit. A Federal subsidy is defined as: (1) any obligation the interest of which is tax exempt from tax under section 103; (2) a direct or indi-

rect Federal loan if the interest rate is less than the applicable Federal rate; or (3) assistance provided under the HOME Investments Partnership Act or the Native American Housing Assistance and Self Determination Act of 1996.

EXPLANATION OF PROVISION

The provision limits the definition of a Federal subsidy for these purposes to any obligation the interest on which is exempt from tax under section 103. Therefore, additional buildings may become eligible for the 70-percent credit.

EFFECTIVE DATE

The provision is effective for buildings placed in service after the date of enactment.

3. Modifications to definition of eligible basis (Sec. 103 of the bill and Sec. 42 of the Code)

(a) Modification to the enhanced credit for buildings in high-cost areas

PRESENT LAW

Generally, buildings located in high-cost areas (i.e., qualified census tracts and difficult development areas) are eligible for an enhanced credit. Under the enhanced credit, the 70-percent and 30-percent credits are increased to a 91-percent and 39-percent credit, respectively. The mechanism for this increase is through an increase from 100 to 130 percent of the otherwise applicable eligible basis of a new building or the rehabilitation expenditures of an existing building. A further requirement for the enhanced credit is that the portions of each metropolitan statistical area or nonmetropolitan statistical area designated as difficult to develop areas cannot exceed an aggregate area having 20 percent of the population of such statistical area.

EXPLANATION OF PROVISION

The provision adds a third type of high-cost area eligible for an enhanced credit. The third type is defined as any building designated by the State housing credit agency as requiring the enhanced credit in order for such building to be financially feasible. This new type of high-cost area is not subject to the present-law limitation limiting high cost areas to 20 percent of the population of each metropolitan statistical area or nonmetropolitan statistical area.

It is expected that the State allocating agencies shall set standards for determining which areas shall be designated difficult development areas and which projects shall be allocated additional credits in such areas in the State allocating agency's allocation plan. It is also expected that the State allocating agency shall publicly express its reasons for such area designations and the basis for allocating additional credits to a project.

EFFECTIVE DATE

The provision is effective for buildings placed in service after the date of enactment.

(b) Modification to the substantial rehabilitation requirement

PRESENT LAW

Rehabilitation expenditures [1] paid or incurred by a taxpayer with respect to a low-income building are treated as a separate building and may be eligible for the 70-percent credit if they satisfy the otherwise applicable credit rules.[2] To qualify for the credit, the rehabilitation expenditures must equal the greater of an amount that is (1) at least 10 percent of the adjusted basis of the building being rehabbed; or (2) at least $3,000 per low-income unit in the building being rehabbed.

At the election of the taxpayer, a special rule applies allowing the 30-percent credit to both existing buildings and rehabilitation expenditures if the second prong (i.e., at least $3,000 of rehabilitation expenditures per low-income unit) of the rehabilitation expenditures test is satisfied. This special rule applies only in the case where the taxpayer acquired the building and immediately prior to that acquisition the building was owned by or on behalf of a government unit.

EXPLANATION OF PROVISION

The provision increases the minimum expenditure requirements. Under the provision, the rehabilitation expenditures must equal the greater of an amount that is (1) at least 20 percent of the adjusted basis of the building being rehabbed; or (2) at least $6,000 per low-income unit in the building being rehabbed. The provision also indexes the $6,000 amount for inflation. The other present-law rules apply.[3]

The provision retains the taxpayer election allowing the 30-percent credit to both existing building and the rehabilitation expenditures if the second prong (i.e., at least $3,000 of rehabilitation expenditures per low-income unit) of the rehabilitation expenditures test is satisfied.

EFFECTIVE DATE

The provision is effective for buildings placed in service after the date of enactment.

(c) Community service facility eligibility for the credit

PRESENT LAW

In general, the qualified basis of a low-income building is limited to that portion of the building dedicated to qualified low-income use (either living space or certain common areas). However certain

[1] Rehabilitation expenditures are amounts chargeable to a capital account and incurred for property (or additions or improvements to property) of a character subject to the allowance for depreciation in connection with the rehabilitation of a building. Such term does not include the cost of acquiring the building (or any interest therein). Other rules apply.

[2] The credit period for an existing building does not begin before the credit period for the rehabilitation expenditures.

[3] A present-law rule reduces the $3,000 amount to $2,000 for any building substantially assisted, financed, or operated under Housing and Urban Development ("HUD") section 8, section 221(d)(3), or section 236 programs, or under the USDA Rural Development section 515 program where an assignment of the mortgage secured by the property in the project to HUD or the USDA Rural Development otherwise would occur or when a claim against a Federal mortgage insurance fund would occur. A conforming change is made by the provision so that that the $2,000 amount will be increased to two-thirds of the $6,000 amount as indexed.

"community service facilities" used by non-tenants of the low-income building may be included in the qualified basis of the low-income building if certain requirements are satisfied. For this purpose, a community service facility: (1) means any facility to serve primarily individuals whose income is 60 percent or less of area median income; and (2) may not exceed 10 percent of the eligible basis of the qualified low-income housing credit project of which it is a part.

EXPLANATION OF PROVISION

The provision expands the size of the community service facility with respect to which the low-income housing credit may be claimed. Under the provision the size of the community service facility may not exceed the sum of: (1) 15 percent of so much of the eligible basis of the qualified low-income housing credit project of which it is a part as does not exceed $5,000,000; and (2) 10 percent of any excess over $5,000,000 of the eligible basis of the qualified low-income housing credit project of which it is a part.

EFFECTIVE DATE

The provision is effective for buildings placed in service after the date of enactment.

(d) Clarification of the treatment of Federal grants

PRESENT LAW

The compliance period for any low-income credit building is the period of fifteen taxable years beginning with the taxable year in which the building is placed in service, or at the election of the taxpayer the succeeding taxable year. If during any year of the compliance period, a grant is made with respect to any building or the operation thereof and any portion of the grant is funded with Federal funds, the eligible basis of the building must be reduced by the portion of the grant that is Federally-funded. This basis reduction must be made for the taxable year in which the grant is made and all succeeding taxable years.

EXPLANATION OF PROVISION

The provision clarifies the basis reduction rule to apply to Federally-funded grants received before the compliance period. It also provides that no basis reduction is required for Federally-funded grants to enable the property to be rented to low-income tenants received during the compliance period if those grants do not otherwise increase the taxpayer's eligible basis in the building.

The provision also directs the modification of section 1.42–16(b) of the regulations to provide that none of the following shall be considered a grant made with respect to a building or its operation for purposes of section 42(d)(5)(A) of the Internal Revenue Code of 1986: (1) rental assistance under section 521 of the Housing Act of 1949 (42 U.S.C. 1490a); (2) assistance under section 538(f)(5) of the Housing Act of 1949 (42 U.S.C. 1490p–2(f)(5)); (3) interest reduction payments under section 236 of the National Housing Act (12 U.S.C. 1715z–1); (4) rental assistance under section 202 of the Housing Act of 1959 (12 U.S.C. 1701q); (5) rental assistance under section 811 of the Cranston-Gonzalez National Affordable Housing

Act (42 U.S.C. 8013); (6) modernization, operating, and rental assistance pursuant to section 202 of the Native American Housing Assistance and Self-Determination Act of 1996 (25 U.S.C. 4132); (7) assistance under title IV of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11361 et seq.); (8) tenant-based rental assistance under section 212 of the Cranston-Gonzalez National Affordable Housing Act (42 U.S.C. 12742); (9) assistance under the AIDS Housing Opportunity Act (42 U.S.C. 12901 et seq.); (10) per diem payments under section 2012 of title 38, United States Code; (11) rent supplements under section 101 of the Housing and Urban Development Act of 1965 (12 U.S.C. 1701s); (12) assistance under section 542 of the Housing Act of 1949 (42 U.S.C. 1490r); and (13) any other ongoing payment used to enable the property to be rented to low-income tenants. Further, no basis reduction is required for market rate loans made to owners of qualified low-income housing projects from the proceeds of Federally-funded grants. Nothing contained in this direction to modify the regulations is intended to create any inference with respect to the consideration of any program specified under subsection (a) as a grant made with respect to a building or its operation for purposes of section 42(d)(5)(A) of the Internal Revenue Code of 1986 as in effect on the day before such date of enactment.

EFFECTIVE DATE

The provision is effective for buildings placed in service after the date of enactment.

(e) Modification to the definition of related persons

PRESENT LAW

With certain exceptions,[4] the eligible basis of an existing building is zero for low-income housing credit purposes unless: (1) the building was acquired by purchase; (2) there has been a period of at least 10 years between the acquisition by purchase and the later of the date the building was last placed in service or the date of the most recent nonqualified substantial improvement of the building (e.g., improvements equaling at least 25 percent of the adjusted basis of the building before such improvements); and (3) the building was not previously placed-in-service by the taxpayer or a related person (sec. 42(d)(2)(B)). In order for a building to be acquired by purchase, it may not be acquired from a related party.

The definition of related persons for purposes of these rules is the same as the definition used in sections 267(b) and 707(b)(1) (relating to the disallowance of losses) with one modification.[5] Under the modification, in determining whether two persons are related, "10 percent" is substituted for "50 percent" in determining the threshold level of ownership in certain partnerships and corporations. For example, under the low-income credit provision, two

[4] The Internal Revenue Service may waive the 10-year requirement for any building substantially assisted, financed, or operated under Housing and Urban Development ("HUD") section 8, section 221(d)(3), or section 236 programs, or under the Farmers' Home Administration section 515 program where an assignment of the mortgage secured by the property in the project to HUD or the Farmers' Home Administration otherwise would occur or when a claim against a Federal mortgage insurance fund would occur.

[5] In addition, certain businesses under common control are related persons for purposes of these rules.

partnerships are related if the same persons own more than ten percent of the capital interests or profits interest in each partnership.

EXPLANATION OF PROVISION

The provision repeals the ten-percent attribution rule used to determine whether parties are related for purposes of determining whether an existing building qualifies for the low-income housing credit. Under the provision, two persons are related for this purpose if they bear a relationship to each other specified in sections 267(b) or 707(b)(1).

EFFECTIVE DATE

The provision is effective for buildings placed in service after the date of enactment.

4. Other simplification and reform of low-income housing tax incentives (Sec. 104 of the bill and Sec. 42 of the Code)

(a) Repeal prohibition of the credit for buildings receiving HUD moderate rehabilitation assistance

PRESENT LAW

Generally, the low-income housing credit is available to otherwise qualifying buildings which also receive direct assistance under HUD section 8 programs. No credit is allowed to any building with respect to which moderate rehabilitation assistance is provided at any time during the compliance period, under section 8(e)(2) of the United States Housing Act of 1937 (other than assistance under the Stewart B. McKinney Homeless Assistance Act).

EXPLANATION OF PROVISION

The provision eliminates the present-law prohibition against providing the low-income housing credit to buildings receiving moderate rehabilitation assistance under section 8(e)(2) of the United States Housing Act of 1937.

EFFECTIVE DATE

The provision is effective for buildings placed in service after the date of enactment.

(b) Carryover allocation rule

PRESENT LAW

In general, the allocation of the low-income housing credit must be made not later than the close of the calendar year in which the building is placed in service. One exception to this rule is a carryover allocation. In a carryover allocation, an allocation may be made to a building that has not yet been placed in service, provided that: (1) more than 10 percent of the taxpayer's reasonably expected basis in the project (as of the close of the second calendar year following the calendar year of the allocation) is incurred as of the later of six months after the allocation is made or the end of the calendar year in which the allocation is made; and (2) the

building is placed in service not later than the close of the second calendar year following the calendar year of the allocation.

EXPLANATION OF PROVISION

The provision modifies the first prong of the carryover allocation rule. Under this modification such an allocation will satisfy the first prong provided that more than 10 percent of the taxpayer's reasonably expected basis in the project (as of the close of the second calendar year following the calendar year of the allocation) is incurred as of 12 months after the allocation is made. The second prong of the carryover allocation rules is unchanged.

EFFECTIVE DATE

The provision is effective for buildings placed in service after the date of enactment.

(c) Modification of bond posting requirement

PRESENT LAW

The compliance period for any building is the period beginning on the first day of the first taxable year of the credit period of such building and ending 15 years from such date.

The penalty for any building subject to the 15-year compliance period failing to remain part of a qualified low-income project (due, for example, to noncompliance with the minimum set aside requirement, or the gross rent requirement, or other requirements with respect to the units comprising the set aside) is recapture of the accelerated portion of the credit, with interest, for all prior years.

Generally, any change in ownership by a taxpayer of a building subject to the compliance period is also a recapture event. An exception is provided if the seller satisfies certain bond posting requirements (in an amount and manner prescribed by Treasury), and if it can reasonably be expected that such building will continue to be operated as a qualified low-income building for the remainder of the compliance period.

EXPLANATION OF PROVISION

The provision eliminates the bond posting requirement. In its place the provision extends the otherwise applicable statute of limitation until three years after the Secretary of the Treasury is notified of noncompliance with the low-income housing credit rules. This provision sunsets five years after the date of enactment.

EFFECTIVE DATE

The provision applies with respect to dispositions of interests in buildings after the date of enactment.

Also, at the election of the taxpayer, the provision applies with respect to dispositions of interests in a building on or before the date of enactment if it is reasonably expected that such building will continue to be a qualified low-income building for the remaining compliance period.

(d) Treatment of individuals who previously received foster care assistance

PRESENT LAW

In general, student housing does not qualify for the low-income housing credit. Two exceptions are provided from this general rule.[6] These two exceptions are units occupied by an individual: (1) who is a student and receiving assistance under title IV of the Social Security Act (Temporary Assistance for Needy Families); or (2) enrolled in a job training program receiving assistance under the Job Training Partnership Act or under other similar Federal, State, or local laws.

EXPLANATION OF PROVISION

The provision adds a third exception to the general rule that student housing is not eligible for the low-income housing credit. This new exception applies in the case of a student who was previously under the care and placement responsibility of a foster care program (under part B or E of title IV of the Social Security Act).

EFFECTIVE DATE

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

(e) Additions to housing credit agency allocation plan criteria

PRESENT LAW

Each State must develop a plan for allocating credits, and such plan must include certain allocation criteria including: (1) project location; (2) housing needs characteristics; (3) project characteristics (including whether the project uses existing housing as part of a community revitalization plan); (4) sponsor characteristics; (5) tenant populations with special needs; (6) tenant populations of individuals with children; and (7) projects intended for eventual tenant ownership.

The State allocation plan must also give preference to housing projects: (1) that serve the lowest-income tenants; (2) that are obligated to serve qualified tenants for the longest periods; and (3) that are located in qualified census tracts and the development of which contributes to a concerted community revitalization plan. For this purpose, a qualified census tract is defined as a census tract: (1) designated by the Secretary of HUD; and (2) for the most recent year for which census data is available for such tract, either 50 percent or more of the households have an income that is less than 60 percent of the area median income for that year or which has a poverty rate of at least 25 percent.

Present law also requires that housing credit agencies perform a comprehensive market study of the housing needs of the low-income individuals in the area to be served by the project and a written explanation, available to the general public, for any allocation not made in accordance with the established priorities and selection criteria of the housing credit agency. It also requires that the

[6] See also the discussion of the full-time student rule in item 1.B.2., above.

housing credit agency conduct site visits to monitor for compliance with habitability standards.

EXPLANATION OF PROVISION

The provision adds two additional criteria which States must use in their allocation of credits among potential low-income housing projects. The additional criteria are: (1) the energy efficiency of the project; (2) the historic nature of the project.

EFFECTIVE DATE

The provision is effective for allocations made after December 31, 2008.

(f) Measurement of area median gross income for certain projects located in certain nonmetropolitan areas

PRESENT LAW

In order to be eligible for the low-income housing credit, a qualified low-income building must be part of a qualified low-income housing project. In general, a qualified low-income housing project is defined as a project which satisfies one of two tests at the election of the taxpayer. The first test is met if 20 percent or more of the residential units in the project are both rent-restricted and occupied by individuals whose income is 50 percent or less of area median gross income (the "20–50 test"). The second test is met if 40 percent or more of the residential units in such project are both rent-restricted and occupied by individuals whose income is 60 percent or less of area median gross income (the "40–60 test").

In the case of property placed in service during 2006, 2007, and 2008 in a nonmetropolitan area within the Gulf Opportunity Zone, the income targeting rules of the low-income housing credit are applied by replacing the area median gross income standard with a national nonmetropolitan median gross income standard. These new income targeting rules apply to all such buildings in the Gulf Opportunity Zone regardless of whether the building receives its credit allocation under the otherwise applicable low-income housing credit cap or the additional credit cap (described below). The income targeting rules are not changed for buildings in metropolitan areas in the Gulf Opportunity Zone.

EXPLANATION OF PROVISION

The measurement of area median gross income applied for residential rental property located in certain rural areas is modified in the case of projects subject to the low-income housing volume limits. In the case of such properties located in rural areas (as defined in section 520 of the Housing Act of 1949), the income targeting rules of the low-income housing credit are applied by reference to the greater of the otherwise applicable area median gross income standard, or the national nonmetropolitan median gross income. This new income targeting rule applies to all such buildings if the building receives a low-income housing credit allocation under the otherwise applicable low-income housing credit volume limit. It does not apply in the case of buildings which do not require a low-income housing credit allocation because they are substantially

bond-financed. The area median gross income rules are not changed for buildings in metropolitan areas.

EFFECTIVE DATE

The provision is effective for determinations after the date of enactment.

B. MODIFICATIONS TO TAX-EXEMPT HOUSING BOND RULES

1. Refunding treatment for certain multi-family housing bonds (Sec. 111 of the bill and Sec. 146 of the Code)

PRESENT LAW

In general

Private activity bonds are bonds that nominally are issued by State or local governments, but the proceeds of which are used (directly or indirectly) by a private person and payment of which is derived from funds of such private person. The exclusion from income for interest paid on State and local bonds does not apply to private activity bonds, unless the bonds are issued for certain permitted purposes ("qualified private activity bonds"). The definition of a qualified private activity bond includes, but is not limited to, qualified mortgage bonds, qualified veterans' mortgage bonds, and bonds for qualified residential rental projects.

Qualified residential rental projects

Residential rental property may be financed with qualified private activity bonds if the financed project is a "qualified residential rental project." A project is a qualified residential rental project if 20 percent or more of the residential units in such project are occupied by individuals whose income is 50 percent or less of area median gross income (the "20–50 test"). Alternatively, a project is a qualified residential rental project if 40 percent or more of the residential units in such project are occupied by individuals whose income is 60 percent or less of area median gross income (the "40–60 test"). The issuer must elect to apply either the 20–50 test or the 40–60 test. Operators of qualified residential rental projects must annually certify that such project meets the requirements for qualification, including meeting the 20–50 test or the 40–60 test.

As with most qualified private activity bonds, bonds for qualified residential rental projects are subject to annual State volume limitations (the "State volume cap"). For calendar year 2008, the State volume cap, which is indexed for inflation, equals $85 per resident of the State, or $262.09 million, if greater.

Bonds issued to finance qualified residential rental projects are subject to a term to maturity rule which limits the period of time such bonds may remain outstanding. Generally, this rule provides that the average maturity of a qualified private activity bond cannot exceed 120 percent of the economic life of the property being financed.[7]

[7] Sec. 147(b).

EXPLANATION OF PROVISION

Under the provision, if within 6 months after receipt of a repayment of a conduit loan used to finance a qualified residential rental project, such repayment is used to finance a second qualified residential rental project, any bond issued to refinance the first issue of bonds (i.e., the bond financing the original conduit loan) shall be treated as a refunding issue. Thus, under the provision, the refinancing bond is treated as a refunding notwithstanding a change in obligors under the first and second conduit loans. The provision only applies to the first refunding of the refunded bond and only if such refunding bond is issued within four years of the date of issue of the refunded bond. In addition, the final maturity date for the refunding bonds cannot be later than 34 years after the date of issuance of the refunded bond.

EFFECTIVE DATE

The provision applies to repayments of loans received after the date of enactment.

2. Coordination of certain rules applicable to the low-income housing credit and qualified residential rental project exempt facility bonds (Sec. 112 of the bill and Sec. 142 of the Code)

Next-available-unit rule

PRESENT LAW

In order to be eligible for the low-income housing credit, each of the residential units with respect to which the credit is claimed must be: (1) occupied by low-income tenants; and (2) rent-restricted. If the incomes of any such tenants rise above certain levels, then the credit with respect to that unit is denied unless the next available unit in the low-income building (of a size comparable to or smaller than such unit) is rented to a new tenant who satisfies the income and rent-restriction requirements (the "next-available-unit rule").[8]

Subject to certain requirements, tax-exempt bonds may be issued to finance qualified residential rental projects. The tax-exempt bond rules for qualified residential projects have similar tenant income limitations as the low-income credit, but apply the next available unit rule on a project basis rather than a building-by-building basis.[9] Therefore, to avoid noncompliance when the income of a tenant rises above certain levels, the next available unit (of a size comparable to or smaller than such unit) in the entire project (rather than just the same building) must be rented to a new tenant who satisfies the income and rent-restriction requirements.

EXPLANATION OF PROVISION

In the case of a low-income building which is tax-exempt bond financed and eligible for the low-income housing credit, the provision provides that both the bond and credit restrictions will be satisfied if the next available unit in the building is rented to a new tenant who satisfies the income and rent-restriction requirements.

[8] Sec. 42(g)(2)(D)(ii).
[9] Sec. 142(d)(3)(B).

It therefore conforms the tax-exempt bond rule to the low-income housing credit rule.

EFFECTIVE DATE

The provision applies to determinations of the status of qualified residential rental projects for periods beginning after the date of enactment with respect to bonds issued before, on, or after such date.

Students

PRESENT LAW

In general

The low-income housing credit is not available for any residential unit unless it is available for use by the general public. For these purposes, a residential unit generally is available for use by the general public if the unit is rented in a manner consistent with housing policy governing nondiscrimination as evidenced by the rules and regulations of the Department of Housing and Urban Development ("HUD"). Notwithstanding compliance with the HUD rules and regulations, a residential rental unit is not available for use by the general public if such unit is: (1) provided only for a member of a social organization; or (2) provided by an employer for its employees. Other rules may apply.

Rules for full-time students

For purposes of the low-income housing credit, no credit is allowed with respect to an otherwise eligible unit occupied entirely by full-time students unless those students are comprised entirely of single parents and their children. Further, the single parents may not be dependents of another individual and the children may not be dependents of another individual other than their parents. For purposes of the tax-exempt bond rules, a slightly different full-time student rule applies.

EXPLANATION OF PROVISION

The provision conforms the tax-exempt bond rule with respect to students to the low-income housing credit rule.

The Committee also has become aware of Internal Revenue Service (the "IRS") efforts to apply the social organization prohibition to residential units advertised to members of the artist community but effectively open to all otherwise eligible low-income applicants. While fully supportive of the IRS enforcement efforts with regard to the general public use and other related rules, the Committee expresses its understanding that the present-law rules were never intended to apply to deny otherwise available low-income housing credits with respect to any residential units solely because nondiscriminatory marketing efforts were made to encourage members of a particular category of individuals to reside in such units so long as there is no direct or indirect benefit to an employer or organization.

EFFECTIVE DATE

The full-time student provision applies to determinations of the status of qualified residential rental projects for periods beginning after the date of enactment with respect to bonds issued before, on, or after such date.

Single-room occupancy units

PRESENT LAW

Unlike the requirements for projects financed with tax-exempt bonds, certain single-room occupancy housing used on a nontransient basis may qualify for the low-income credit, even though such housing may provide eating, cooking, and sanitation facilities on a shared basis. An example of housing that may qualify for the credit is a residential hotel used on a nontransient basis that is available to all members of the public.

Among other requirements, qualified residential rental projects financed with tax-exempt bonds generally cannot be used on a transient basis. Treasury regulations clarify that a residential unit will not be treated as used on a transient basis if the unit contains complete facilities for living, including living, sleeping, eating, cooking, and sanitation.[10]

EXPLANATION OF PROVISION

The provision conforms the tax-exempt bond rule to the low-income housing credit rule.

EFFECTIVE DATE

The provision applies to determinations of the status of qualified residential rental projects for periods beginning after the date of enactment with respect to bonds issued before, on, or after such date.

C. Reforms Related to the Low-Income Housing Credit and Tax-Exempt Housing Bonds

1. Hold harmless for reductions in area median gross income (Sec. 121 of the bill and Sec. 42 of the Code)

PRESENT LAW

Tax rules

Tax-exempt bonds

Residential rental property may be financed with exempt facility bonds if the financed project is a "qualified residential rental project." A project is a qualified residential rental project if 20 percent or more of the residential units in such project are occupied by individuals whose income is 50 percent or less of area median gross income (the "20–50 test"). Alternatively, a project is a qualified residential rental project if 40 percent or more of the residential units in such project are occupied by individuals whose income is 60 percent or less of area median gross income (the "40–60 test").

[10] Treas. Reg. sec. 1.103–8(b)(10)(ii).

The issuer must elect to apply either the 20–50 test or the 40–60 test (sec. 142).

Low-income housing tax credit

In order to be eligible for the low-income housing credit, a qualified low-income building must be part of a qualified low-income housing project. In general, a qualified low-income housing project is defined as a project that satisfies one of two tests at the election of the taxpayer (sec. 42(g)). The first test is met if 20 percent or more of the residential units in the project are both rent-restricted, and occupied by individuals whose income is 50 percent or less of area median gross income (the "20–50 test"). The second test is met if 40 percent or more of the residential units in such project are both rent-restricted, and occupied by individuals whose income is 60 percent or less of area median gross income (the "40–60 test"). These income figures are adjusted for family size.

Determination of income and area median gross income

The income of individuals and area median gross income are determined by the Secretary of the Treasury in a manner consistent with determinations of lower-income families and area median gross income under section 8 of the Housing Act of 1937 (sec. 142(d)). These determinations under section 8 are made by HUD. These determinations also include adjustments for family size.

Therefore such determinations (individual and area median gross income) are applicable for purposes of tax-exempt bonds and the low-income housing credit.

HUD hold harmless policy

Generally HUD releases its calculation of area median gross income for a calendar year early in that year. Historically HUD has used the most recent decennial census data and updated it with other data on income, employment and earnings.

Recently HUD modified its methodology to include additional data in its calculation of area median gross income. In some instances this change in methodology resulted in significantly lower numbers for area median gross income in some areas. In response to this result, HUD provided that such areas are not treated as having a lower area median gross income for purposes of HUD housing programs.

EXPLANATION OF PROVISION

In general

The provision makes two modifications to the determination of area median gross income for purposes of tax-exempt bonds and the low-income housing credit.

Determination of income and area median gross income

The provision provides that any determination of area median gross income with respect to a project may not be less than the determination of area median gross income with respect to that project for the preceding calendar year. This modification applies to all projects and is not limited to projects benefiting from the HUD hold harmless policy.

HUD hold harmless policy

In the case of a HUD hold harmless impacted project, the determination of area median gross income for the project is the greater of (i) the amount determined without regard to the special rule for HUD hold harmless impacted projects or (ii) the sum of the area median gross income determined under the HUD hold harmless policy with respect to the project for 2008 plus any increase in area median gross income after 2008.

EFFECTIVE DATE

The provision applies to determinations of area median gross income for calendar years after 2008.

2. Exception from the annual recertification requirement for projects which are entirely low-income use (Sec. 122 of the bill and Sec. 142 of the Code)

PRESENT LAW

Tax rules

In general

Tax-exempt bonds

Residential rental property may be financed with exempt facility bonds if the financed project is a "qualified residential rental project." A project is a qualified residential rental project if 20 percent or more of the residential units in such project are occupied by individuals whose income is 50 percent or less of area median gross income (the "20–50 test"). Alternatively, a project is a qualified residential rental project if 40 percent or more of the residential units in such project are occupied by individuals whose income is 60 percent or less of area median gross income (the "40–60 test"). The issuer must elect to apply either the 20–50 test or the 40–60 test (sec. 142).

Low-income housing tax credits

In order to be eligible for the low-income housing credit, a qualified low-income building must be part of a qualified low-income housing project. In general, a qualified low-income housing project is defined as a project that satisfies one of two tests at the election of the taxpayer (sec. 42(g)). The first test is met if 20 percent or more of the residential units in the project are both rent-restricted, and occupied by individuals whose income is 50 percent or less of area median gross income (the "20–50 test"). The second test is met if 40 percent or more of the residential units in such project are both rent-restricted, and occupied by individuals whose income is 60 percent or less of area median gross income (the "40–60 test"). These income figures are adjusted for family size.

Determination of income and area median gross income

The income of individuals and area median gross income are determined by the Secretary of the Treasury in a manner consistent with determinations of lower-income families and area median gross income under section 8 of the Housing Act of 1937 (sec. 142(d)). These determinations also include adjustments for family size.

Certification

The Code provides that the operator of any qualified residential rental project must submit to the Secretary of the Treasury (at such time and in such manner as the Secretary prescribes) an annual certification that the project continues to satisfy the requirements of a qualified residential rental project. Any failure to comply with the annual certification to the Secretary of the Treasury will subject the operator to penalties but will not affect the tax-exempt status of the underlying bonds (sec. 142(d)(7)).

Similar rules apply for the low-income housing credit regarding tenant incomes (sec. 42(g)(4)). IRS Revenue Procedure 1994–64 allows a taxpayer to request a waiver of this certification under certain circumstances with the consent of the State agency responsible for monitoring the low-income credit project.

Treatment of tenants whose incomes rise above the income limits

Generally a low-income unit will continue to be treated as such even when the tenant's income rises above the income limits provided that the next available unit {of a size comparable to or smaller than such unit) in the project is occupied by a new resident who satisfies the income limits.

HUD rules

A family's eligibility for various types of HUD housing assistance is based on its income and family composition. The HUD Handbook 4350.3 contains the certification and annual recertification rules to be followed by project operators. Under the HUD program requirements tenants have the responsibility to provide timely information to the project operators. Operators have the responsibility to review and verify the tenant information and to make changes to assistance payment and tenant rent to satisfy program requirements.

EXPLANATION OF PROVISION

The provision waives the annual recertification requirements under the low-income credit (sec. 42) and tax-exempt bonds (sec. 142) for any project as long as no residential unit in the project is occupied by tenants who fail to satisfy the otherwise applicable income limits. The provision does not modify the HUD rules; therefore some projects must continue annual certification notwithstanding this provision.

EFFECTIVE DATE

The provision is effective for years ending after the date of enactment.

TITLE II—BENEFITS FOR SINGLE FAMILY HOUSING

A. First-Time Homebuyer Credit (Sec. 131 of the bill and Sec. 36 of the Code)

PRESENT LAW

Qualified mortgage bonds are issued to make mortgage loans to qualified mortgagors for owner-occupied residences. The subsidy

provided for qualified mortgage bonds allows issuers to finance mortgages for homebuyers at reduced interest rates. The Code imposes several limitations on qualified mortgage bonds, including a "first-time homebuyer" requirement. The first-time homebuyer requirement provides that qualified mortgage bonds generally cannot be used to finance a mortgage for a homebuyer who had an ownership interest in a principal residence in the three years preceding the execution of the mortgage. In addition, bond proceeds generally only can be used for new mortgages, i.e., proceeds cannot be used to acquire or refinance existing mortgages.

In addition, prior to 2008, first-time homebuyers of a principal residence in the District of Columbia were eligible for a nonrefundable tax credit of up to $5,000 of the amount of the purchase price. The $5,000 maximum credit applies both to individuals and married couples filing a joint return. A married individual filing separately can claim a maximum credit of $2,500. The instructions to IRS Form 8859 (District of Columbia First-Time Homebuyer Credit) state that if "two or more unmarried individuals buy a main home, they can allocate the credit among the individual owners in any manner they choose." The credit phases out for individual taxpayers with modified adjusted gross income between $70,000 and $90,000 ($110,000–$130,000 for joint filers). For purposes of eligibility, "first-time homebuyer" means any individual if such individual did not have a present ownership interest in a principal residence in the District of Columbia in the one-year period ending on the date of the purchase of the residence to which the credit applies. The credit expired for residences purchased after December 31, 2007.[11]

REASONS FOR CHANGE

The Committee wishes to provide temporary alternatives to assist first-time homebuyers. The provision is intended to provide first-time homebuyers with the equivalent of an interest-free loan, effectively reducing the cost incurred by first-time homebuyers in borrowing to acquire a home.

EXPLANATION OF PROVISION

Under the proposal, a taxpayer who is a first-time homebuyer is allowed a refundable tax credit equal to the lesser of $7,500 or 10 percent of the purchase price of a principal residence. The $7,500 maximum credit applies both to individuals and married couples filing a joint return. A married individual filing separately can claim a maximum credit of $3,750. The credit is allowed for the tax year in which the taxpayer purchases the home.

The credit phases out for individual taxpayers with modified adjusted gross income between $70,000 and $90,000 ($140,000–$160,000 for joint filers) for the year of purchase.

A taxpayer is considered a first-time homebuyer if such individual had no ownership interest in a principal residence in the United States during the 3-year period prior to the purchase of the home to which the credit applies.

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[11] Sec. 1400C. The credit was enacted as part of the Taxpayer Relief Act of 1997 and was originally scheduled to expire on December 31, 2000. It has been extended several times, the last extension through December 31, 2007.

No credit is allowed if the D.C. homebuyer credit is allowable for the taxable year the residence is purchased or a prior taxable year. A taxpayer is not permitted to claim the credit if the taxpayer's financing is from tax-exempt mortgage revenue bonds, if the taxpayer is a nonresident alien, or if the taxpayer disposes of the residence (or it ceases to be a principal residence) before the close of a taxable year for which a credit otherwise would be allowable.

The credit is recaptured ratably over fifteen years with no interest charge beginning in the second taxable year after the taxable year in which the home is purchased. For example, if the taxpayer purchases a home in 2008, the credit is allowed on the 2008 tax return, and repayments commence with the 2010 tax return. If the taxpayer sells the home (or the home ceases to be used as the principal residence of the taxpayer or the taxpayer's spouse) prior to complete repayment of the credit, any remaining credit repayment amount is due on the tax return for the year in which the home is sold (or ceases to be used as the principal residence). However, the credit repayment amount may not exceed the amount of gain from the sale of the residence to an unrelated person. For this purpose, gain is determined by reducing the basis of the residence by the amount of the credit to the extent not previously recaptured. No amount is recaptured after the death of a taxpayer. In the case of an involuntary conversion of the home, recapture is not accelerated if a new principal residence is acquired within a two year period. In the case of a transfer of the residence to a spouse or to a former spouse incident to divorce, the transferee spouse (and not the transferor spouse) will be responsible for any future recapture.

EFFECTIVE DATE

The provision is effective for qualifying home purchases after April 8, 2008 and before April 1, 2009 (without regard to whether or not there was a binding contract to purchase prior to the date of committee action).

B. Additional Standard Deduction for State and Local Real Property Taxes (Sec. 132 of the bill and Sec. 63 of the Code)

PRESENT LAW

An individual taxpayer's taxable income is computed by reducing adjusted gross income either by a standard deduction or, if the taxpayer elects, by the taxpayer's itemized deductions. Unless an individual taxpayer elects, no itemized deduction is allowed for the taxable year. The deduction for certain taxes, including income taxes, real property taxes, and personal property taxes, generally is an itemized deduction.[12]

REASONS FOR CHANGE

The Committee believes an additional standard deduction for real property taxes is appropriate in order to help lessen the impact of rising State and local property tax bills on those individual

[12] If the deduction for State and local taxes is attributable to business or rental income, the deduction is allowed in computing adjusted gross income and therefore is not an itemized deduction.

taxpayers with insufficient total itemized deductions to elect not to take the standard deduction.

EXPLANATION OF PROVISION

The provision increases an individual taxpayer's standard deduction for a taxable year beginning in 2008 by the lesser of (1) the amount allowable [13] to the taxpayer as a deduction for State and local taxes described in section 164(a)(1) (relating to real property taxes), or (2) $350 ($700 in the case of a married individual filing jointly). The increased standard deduction is determined by taking into account real estate taxes for which a deduction is allowable to the taxpayer under section 164 and, in the case of a tenant-stockholder in a cooperative housing corporation, real estate taxes for which a deduction is allowable to the taxpayer under section 216. No taxes deductible in computing adjusted gross income are taken into account in computing the increased standard deduction.

EFFECTIVE DATE

The provision applies to taxable years beginning in 2008.

TITLE III—GENERAL HOUSING PROVISIONS

A. MODIFICATIONS TO QUALIFIED PRIVATE ACTIVITY BOND RULES FOR HOUSING (SEC. 141 OF THE BILL AND SECS. 142, 143, AND 146 OF THE CODE)

PRESENT LAW

In general

Private activity bonds are bonds that nominally are issued by State or local governments, but the proceeds of which are used (directly or indirectly) by a private person and payment of which is derived from funds of such private person. The exclusion from income for interest paid on State and local bonds does not apply to private activity bonds, unless the bonds are issued for certain permitted purposes ("qualified private activity bonds"). The definition of a qualified private activity bond includes, but is not limited to, qualified mortgage bonds, qualified veterans' mortgage bonds, and bonds for qualified residential rental projects.

Qualified private activity bond rules for housing

Qualified mortgage bonds are issued to make mortgage loans to qualified mortgagors for owner-occupied residences. The Code imposes several limitations on qualified mortgage bonds, including income limitations for homebuyers, purchase price limitations for the home financed with bond proceeds, and a "first-time homebuyer" requirement. The income limitations are satisfied if all financing provided by an issue is provided for mortgagors whose family income does not exceed 115 percent of the median family income for the metropolitan area or State, whichever is greater, in which the financed residences are located. The purchase price limitations provide that a residence financed with qualified mortgage bonds may

[13] In the case of an individual taxpayer who does not elect to itemize deductions, although no itemized deductions are allowed to the taxpayer, itemized deductions are nevertheless treated as "allowable." See section 63(e).

not have a purchase price in excess of 90 percent of the average area purchase price for that residence. The first-time homebuyer requirement provides that qualified mortgage bonds generally cannot be used to finance a mortgage for a homebuyer who had an ownership interest in a principal residence in the three years preceding the execution of the mortgage. In addition, bond proceeds generally only can be used for new mortgages, i.e., proceeds cannot be used to acquire or refinance existing mortgages. Under present law, the proceeds of qualified mortgage bonds generally must be used to finance mortgages within 42 months from the date of issuance of the bonds.

Residential rental property may be financed with qualified private activity bonds if the financed project is a "qualified residential rental project." A project is a qualified residential rental project if 20 percent or more of the residential units in such project are occupied by individuals whose income is 50 percent or less of area median gross income (the "20–50 test"). Alternatively, a project is a qualified residential rental project if 40 percent or more of the residential units in such project are occupied by individuals whose income is 60 percent or less of area median gross income (the "40–60 test").

As with most qualified private activity bonds, qualified mortgage bonds and bonds for qualified residential rental projects are subject to annual State volume limitations (the "State volume cap"). For calendar year 2008, the State volume cap, which is indexed for inflation, equals $85 per resident of the State, or $262.09 million, if greater. The interest income from qualified mortgage bonds and bonds for qualified residential rental projects is a preference item for purposes of calculating the alternative minimum tax ("AMT").

REASONS FOR CHANGE

The Committee is concerned that the general deterioration in the credit markets and decline in housing prices is making it difficult for many homeowners to refinance high interest rate mortgages. The Committee believes that additional tools are needed to alleviate the financial burdens faced by homeowners with subprime, adjustable-rate mortgages that are due to reset over the next several years. The Committee also believes that tax-exempt bonds are an effective way to provide these homeowners with lower-cost refinancing options than are otherwise available under current market conditions. Thus, the Committee believes it is appropriate to temporarily expand the purposes for which qualified mortgage bonds may be issued and to temporarily increase the volume cap available for housing projects.

EXPLANATION OF PROVISION

Temporary volume cap increase

The provision authorizes an additional $10 billion of volume cap for 2008 for the purpose of issuing qualified mortgage bonds or private activity bonds for qualified residential rental projects. The additional volume cap is allocated to each State in the same proportion as the population of such State bears to the population of all the States. Qualified mortgage bonds issued with respect to the additional volume cap may be used to finance either mortgages per-

mitted under present law (e.g., new mortgages) or qualified subprime loans as defined under the bill. However, all proceeds of qualified mortgage bonds issued with respect to the additional volume cap must be used within 12 months of the date of issuance of such bonds. Additional volume cap that remains unused at the end of 2008 may be carried forward to 2009 and 2010, but solely for the purpose of issuing qualified mortgage bonds or private activity bonds for qualified residential rental projects.

Qualified mortgage bonds for certain refinancings

The provision creates an exception to the new mortgage requirement for qualified mortgage bonds by authorizing the use of such bonds to refinance a qualified subprime loan. The provision defines a qualified subprime loan as an adjustable rate residential mortgage loan originated after December 31, 2001, and before January 1, 2008, that the issuer determines would be reasonably Iikely to cause financial hardship to the borrower if not refinanced. Under the provision, proceeds of qualified mortgage bonds used to refinance qualified subprime loans must be so used within 12 months from the date of issuance of the bond. In addition, the provision also provides that qualified subprime loans cannot be refinanced by bonds issued after December 31, 2010.

EFFECTIVE DATE

The provision applies to bonds issued after the date of enactment.

B. ALTERNATIVE MINIMUM TAX TREATMENT OF INTEREST ON CERTAIN BONDS, THE LOW-INCOME HOUSING CREDIT, AND THE REHABILITATION CREDIT (SEC. 142 OF THE BILL AND SECS. 38, 56 AND 57 OF THE CODE)

PRESENT LAW

In general

Present law imposes an alternative minimum tax ("AMT") on individuals and corporations. AMT is the amount by which the tentative minimum tax exceeds the regular income tax. The tentative minimum tax is computed based upon a taxpayer's alternative minimum taxable income ("AMTI"). AMTI is the taxpayer's taxable income modified to take into account certain preferences and adjustments.

Tax-exempt bonds

One of the preference items is tax-exempt interest on certain tax-exempt bonds issued for private activities (sec. 57(a)(5)). Also, in the case of a corporation, an adjustment based on current earnings is determined, in part, by taking into account 75 percent of items, including tax-exempt interest, that are excluded from taxable income but included in the corporation's earnings and profits (sec. 56(g)(4)(B)).

Low-income housing and rehabilitation credits

Business tax credits generally may not exceed the excess of the taxpayer's income tax liability over the tentative minimum tax (or,

if greater, 25 percent of the regular tax liability in excess of $25,000). Thus, business tax credits generally cannot offset the alternative minimum tax liability.[14]

Credits in excess of the limitation may be carried back one year and carried forward for up to 20 years.

REASONS FOR CHANGE

The alternative minimum tax limits the intended benefits of tax-exempt housing bonds for some taxpayers who invest in these bonds. Also, the alternative minimum tax limits the intended effects of the low-income housing tax credit and the rehabilitation credit for some taxpayers. The Committee believes that the tax exemption for interest on these housing bonds, the low-income housing tax credit and the rehabilitation credit should be available to taxpayers regardless of their alternative minimum tax status. Accordingly, the bill eliminates the treatment of this interest as a tax preference under the alternative minimum tax and provides that these credits can be utilized to offset both the regular tax and the alternative minimum tax.

EXPLANATION OF PROVISION

Tax-exempt bonds

The bill provides that tax-exempt interest on (i) exempt facility bonds issued as part of an issue 95 percent or more of the net proceeds of which are used to provide qualified residential rental projects (as defined in section 142(d)), (ii) qualified mortgage bonds (as defined in section 143(a)), and (iii) qualified veterans' mortgage bonds (as defined in section 143(b)) is not an item of tax preference for purposes of the alternative minimum tax. Also, this interest is not included in the corporate adjustment based on current earnings. The provision does not apply to interest on any refunding bond unless interest on the refunded bond (or in the case of a series of refundings, the original bond) was not an item of tax preference.

Low-income housing and rehabilitation credits

The bill treats the tentative minimum tax as being zero for purposes of determining the tax liability limitation with respect to the low-income housing credit and the rehabilitation credit.

Thus, the low-income housing tax credit and the rehabilitation credit may offset the alternative minimum tax liability.

EFFECTIVE DATE

The provision applies to interest on bonds issued after the date of enactment.

The provision applies to low-income housing credits determined under section 42 attributable to buildings placed in service after December 31, 2007 (including any carryback of the credits).

The provision applies to rehabilitation credits determined under section 47 attributable to qualified rehabilitation expenses properly

[14] A special rule treats the tentative minimum tax as being zero for purposes of determining the tax liability limitation with respect to certain energy credits, the work opportunity credit and the credit for taxes paid with respect to employee cash tips (sec. 38(c)(4)). Thus, the credits listed in the preceding sentence may offset the alternative minimum tax liability.

taken into account for periods after December 31, 2007 (including any carryback of the credits).

C. Bonds Guaranteed by Federal Home Loan Banks Eligible for Treatment as Tax-Exempt Bonds (Sec. 143 of the bill and Sec. 149 of the Code)

PRESENT LAW

Interest paid on bonds issued by State and local governments generally is excluded from gross income for Federal income tax purposes. However, the exclusion generally does not apply to State and local bonds that are Federally guaranteed. Under present law, a bond is Federally guaranteed if: (1) the payment of principal or interest with respect to such bond is guaranteed (in whole or in part) by the United States (or any agency or instrumentality thereof); (2) such bond is issued as part of an issue and five percent or more of the proceeds of such issue is to be (a) used in making loans the payment of principal or interest with respect to which is guaranteed (in whole or in part) by the United States (or any agency or instrumentality thereof), or (b) invested directly or indirectly in Federally insured deposits or accounts; or (3) the payment of principal or interest on such bond is otherwise indirectly guaranteed (in whole or in part) by the United States (or any agency or instrumentality thereof).

The Federal guarantee restriction was enacted in 1984 with certain exceptions for certain guarantee programs in existence at that time. The exceptions include guarantees by: the Federal Housing Administration; the Department of Veterans' Affairs; the Federal National Mortgage Association; the Federal Home Loan Mortgage Association; the Government National Mortgage Association; the Student Loan Marketing Association; and the Bonneville Power Authority. The exception also includes guarantees for certain housing programs. These are: (a) private activity bonds for a qualified residential rental project or a housing program obligation under section 11(b) of the United States Housing Act of 1937; (b) a qualified mortgage bond; or (c) a qualified veterans' mortgage bond.

REASONS FOR CHANGE

The Committee is concerned that the recent deterioration in the credit markets is increasing the borrowing costs of State and local governments for essential governmental projects. The Committee believes that additional tools are needed to allow State and local governments easier access to the credit markets. Thus, the Committee believes it is appropriate to provide a temporary exception to the Federal guarantee prohibition to reduce the borrowing costs of State and local governments.

EXPLANATION OF PROVISION

Under the provision, bonds issued by State and local governments are not treated as Federally guaranteed by reason of any guarantee provided by any Federal Home Loan Bank of a bond issued after the date of enactment and before January 1, 2011, if such bank made a guarantee of such bond in connection with such issuance.

The exception to the Federal guarantee prohibition does not apply to any guarantee by a Federal home loan bank unless such bank meets safety and soundness collateral requirements for such guarantees which are at least as stringent as the regulatory requirements for guarantees by Federal home loan banks as in effect on April 9, 2008.

EFFECTIVE DATE

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

D. MODIFICATION OF RULES PERTAINING TO FIRPTA NONFOREIGN AFFIDAVITS (SEC. 144 OF THE BILL AND SEC. 1445 OF THE CODE)

PRESENT LAW

In general, nonresident aliens and foreign corporations are not taxed on capital gains.[15] However, such foreign persons must take into account gains and losses from the disposition of an interest in United States real property ("USRPI"), as if such persons were engaged in a trade or business in the United States during the taxable year, and such gain or loss were effectively connected with such trade or business.[16]

Although tax is imposed upon such dispositions on a net basis, in the case of any disposition of a USRPI by a foreign person, the transferee is generally required to deduct and withhold a tax equal to ten percent of the amount realized.[17] The transferee is exempt from this withholding requirement if:

In general, the transferred interest is not a USRPI;

The transferee receives a "qualifying statement" from the Secretary of the Treasury (or his delegate) that states that the transferor is exempt from the tax on the disposition of the USRPI or has reached agreement with the Secretary for payment of such tax, and that any withholding tax has been satisfied or secured;

The USRPI is acquired by the transferee for use by him as a residence and the amount realized does not exceed $300,000; or

The transferor furnishes to the transferee an affidavit by the transferor stating, under penalties of perjury, the transferor's United States taxpayer identification number and that the transferor is not a foreign person. However, this rule does not apply if the transferee has actual knowledge that such affidavit is false or if the transferee receives a notice from a transferor's agent or a transferee's agent that such affidavit is false, or if the transferee fails to meet the Secretary's requirement that the transferee furnish a copy of such affidavit to the Secretary.[18] Regulations require the transferee to retain the trans-

[15] Nonresident aliens present in the United States for a period or period aggregating 183 days or more during a taxable year are taxed at a flat 30 percent on their net U.S. source capital gains. Sec. 871(a)(2).

[16] Sec. 897(a)(1).

[17] Sec. 1445(a).

[18] Sec. 1445(b).

feror's affidavit until the end of the fifth taxable year following the taxable year in which the transfer takes place.[19]

In certain circumstances, agents may be liable for some or all of the withholding tax. In general, if the transferor's agent or the transferee's agent has actual knowledge that the affidavit is false, then such agent is required to notify the transferee pursuant to regulations.[20] An agent that is required to notify the transferee pursuant to regulations yet fails to do so is under the same duty to deduct and withhold that the transferee would have been under if such agent had properly given such notice.[21] However, an agent's liability under these circumstances is limited to the amount of the agent's compensation from the transaction.[22]

In the case of a real estate transaction, a "real estate reporting person" is required to file an information return and to furnish certain written statements to customers.[23] A real estate reporting person means the person (including any attorney or title company) responsible for closing the transaction, if there is such a person.[24]

REASONS FOR CHANGE

The Committee believes that U.S. persons generally are hesitant to provide their social security numbers to persons with whom they do not have an ongoing business relationship. The Committee believes that offering transferors of USRPIs the option of providing nonforeign affidavits solely to the person responsible for closing the transaction should better protect the social security numbers of transferors and provide assurance to transferors that their private information will be secure.

EXPLANATION OF PROVISION

The provision provides an alternate procedure with respect to the nonforeign affidavit. Under this procedure, in lieu of furnishing a nonforeign affidavit to the transferee, a transferor may furnish such affidavit to a "qualified substitute." Such qualified substitute is then required to furnish a statement to the transferee stating, under penalties of perjury, that the qualified substitute has such affidavit in his or her possession. With respect to a disposition of a USRPI, the term "qualified substitute" means (1) the person, including any attorney or title company, responsible for closing the transaction, other than the transferor's agent, and (2) the transferee's agent.

This exemption does not apply if the transferee or qualified substitute has actual knowledge that such affidavit or statement is false, if the transferee or qualified substitute receives a notice from a transferor's agent, transferee's agent, or qualified substitute that such affidavit or statement is false, or if the transferee or qualified substitute fails to meet a regulatory requirement that the trans-

[19] Treas. Reg. sec. 1.1445–2(b)(3).
[20] Sec. 1445(d)(1).
[21] Sec. 1445(d)(2)(A).
[22] Sec. 1445(d)(2)(B).
[23] Sec. 6045(e)(1). There is an exception to this requirement for a sale or exchange of a residence for $250,000 or less ($500,000 if the seller is married), if certain conditions are met. Sec. 6045(e)(5).
[24] If there is no such person, then the real estate reporting person with respect to that transaction is either the mortgage lender, seller's broker, buyer's broker, or other person designated under regulations, in that order. Sec. 6045(e)(2).

feree or qualified substitute furnish a copy of such affidavit or statement to the Secretary.

Moreover, if the transferor's agent, the transferee's agent, or the qualified substitute has actual knowledge that the affidavit or statement is false, then such agent or qualified substitute is required to notify the transferee. As under present law, the time and manner of such notice is to be specified by regulations. An agent or qualified substitute that is required to notify the transferee pursuant to regulations yet fails to do so has the same duty to deduct and withhold that the transferee would have had if such agent or qualified substitute had properly given such notice. An agent's or qualified substitute's liability under these circumstances is limited to the amount of the compensation that such agent or qualified substitute derives from the transaction.

The Secretary of the Treasury is required to prescribe such regulations as may be necessary or appropriate to carry out this provision. It is intended that such rules will require the qualified substitute and transferee to retain the documentation for a period commensurate with the period required under the present-law regulations.

EFFECTIVE DATE

The provision is effective for dispositions after the date of enactment.

E. MODIFY REHABILITATION CREDIT TAX-EXEMPT USE SAFE HARBOR (SEC. 145 OF THE BILL AND SEC. 47 OF THE CODE)

PRESENT LAW

A 10-percent credit is provided for rehabilitation expenditures with respect to buildings first placed in service before 1936. A 20-percent credit is provided for rehabilitation expenditures with respect to a certified historic structure.

Rehabilitation expenditures eligible for the credit do not include any expenditure in connection with the rehabilitation of a building that is allocable to the portion of the property that is (or may reasonably be expected to be) tax-exempt use property. In the case of nonresidential real property, tax-exempt use property generally means the portion of the property leased in a disqualified lease [25] to tax-exempt entities (sec. 168(h)(1)). For this purpose, a tax-exempt entity means (1) the United States, a State or political subdivision, a U.S. possession, or an agency or instrumentality thereof, (2) a tax-exempt organization, (3) a foreign person or entity, or (4) an Indian tribal government.

A safe harbor provides, however, that in the case of nonresidential real property, the property is treated as tax-exempt use property only if the portion of the property leased to tax-exempt entities in disqualified leases is more than 35 percent of the property.

[25] A disqualified lease for this purpose is a lease to a tax-exempt entity in specified circumstances. These are: (1) part or all of the property was financed, directly or indirectly, by tax-exempt bond financing and the entity (or a related entity) participated in the financing; (2) under the lease there is a fixed or determinable price purchase or sale involving the entity or a related entity (or the equivalent of such an option); (3) the term of the lease exceeds 20 years; or (4) there has been a sale and leaseback of the property and the entity (or a related entity) used the property before the sale, transfer, or lease (sec. 168(h)(1)(B)).

REASONS FOR CHANGE

The Committee is concerned that the rehabilitation tax credit may not be providing an incentive to rehabilitate buildings when a tax-exempt entity leases a portion of the building in some circumstances. For example, when a governmental entity such as a post office uses a portion of the building exceeding 35 percent, the amount of the tax credit for rehabilitating the building is reduced. The Committee believes that increasing the present-law percentage of permitted tax-exempt use somewhat, from 35 percent to 50 percent, will encourage the rehabilitation of more buildings.

EXPLANATION OF PROVISION

The provision increases from 35 percent to 50 percent the percentage of the property that may be leased to a tax-exempt entity in a disqualified lease without requiring allocation of rehabilitation expenditures under the rehabilitation credit. Under the provision, for determining rehabilitation expenditures eligible for the credit, nonresidential real property is treated as "tax-exempt use" property only if the portion of the property leased to tax-exempt entities in disqualified leases is more than 50 percent of the property. For this purpose, a tax-exempt entity continues to have the same meaning provided by present law.

EFFECTIVE DATE

The provision is effective for expenditures properly taken into account for periods after December 31, 2007.

TITLE IV—REAL ESTATE INVESTMENT TRUST ("REIT") MODIFICATIONS

(SECS. 201–241 OF THE BILL AND SECS. 856 AND 857 OF THE CODE)

PRESENT LAW

In general

A real estate investment trust ("REIT") is an entity that otherwise would be taxed as a U.S. corporation and that elects to be taxed under a special REIT tax regime. In order to qualify as a REIT, an entity must meet a number of requirements. At least 90 percent of REIT income (other than net capital gain) must be distributed annually;[26] the REIT must derive most of its income from passive, generally real-estate-related investments; and REIT assets must be primarily real- estate-related. In addition, a REIT must have transferable interests and at least 100 shareholders, and no more than 50 percent of the REIT interests may be owned by 5 or fewer individual shareholders (as determined using specified attribution rules). Other requirements also apply.[27]

If an electing entity meets the requirements for REIT status, the portion of its income that is distributed to its shareholders each year as a dividend is deductible by the REIT (unlike the case of a regular subchapter C corporation, which cannot deduct dividends).

[26] Even if a REIT meets the 90 percent income distribution requirement for REIT qualification, more stringent distribution requirements must be met in order to avoid an excise tax under section 4981.

[27] Secs. 856 and 857.

As a result, the distributed income of the REIT is not taxed at the entity level; instead, it is taxed only at the investor level.[28]

Income tests

In general

A REIT is restricted to earning certain types of generally passive income. Among other requirements, at least 75 percent of the gross income of a REIT in a taxable year must consist of real-estate-related income. This includes rents from real property, income from the sale or exchange of real property (including interests in real property) that is not stock in trade, inventory, or held by the taxpayer primarily for sale to customers in the ordinary course of its trade or business, interest on mortgages secured by real property or interests in real property, and certain income from foreclosure property (the "75-percent income test").[29] Amounts attributable to most types of services provided to tenants (other than certain "customary services"), or to more than specified amounts of personal property, are not qualifying rents.[30] In addition, rents received from any entity in which the REIT owns more than 10 percent of the vote or value also generally are not qualifying income. However, there is an exception for certain rents received from taxable REIT subsidiaries (described further below), in which a REIT may own more than 10 percent of the vote or value.

In addition, 95 percent of REIT gross income for the taxable year must be from the 75-percent required sources, plus a permitted second category of other, generally passive investments such as dividends, capital gains, and interest income (the "95-percent income test").[31]

Income from certain hedging transactions

Except as provided by regulations, income from a hedging transaction which is clearly identified,[32] including gain from the sale or disposition of such a transaction, is not included as gross income under the 95-percent income test, to the extent the transaction hedges any indebtedness incurred or to be incurred by the REIT to acquire or carry real estate assets.[33]

Foreign currency exchange gain

A REIT must be a U.S. domestic entity, but it is permitted to hold foreign real estate or other foreign-based assets, provided the 75-percent and 95-percent income tests and the other requirements for REIT qualification are met.[34] A REIT that holds foreign real estate or other foreign-based assets may have foreign currency exchange gain under the foreign currency transaction rules of the

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[28] A REIT that has net capital gain can either distribute that gain as a "capital gain" dividend or retain that gain without distributing it but cause the shareholders to be treated as if they had received and reinvested a capital gain dividend. In either case, the gain is in effect taxed only as net capital gain of the shareholders. Sec. 857(b)(3).

[29] Secs. 856(c)(3) and 1221(a)(1). Income from sales that are not prohibited transactions solely by virtue of section 857(b)(6) is also qualified REIT income.

[30] Sec. 856(d). Amounts attributable to the provision of certain services by an independent contractor or by a taxable REIT subsidiary can be qualified rents. Sec. 856(d)(7).

[31] Sec. 856(c)(3).

[32] A hedging transaction for this purpose is one defined in clause (ii) or (iii) of section 1221(b)(2)(A). The identification requirement is defined in section 1221(a)(7).

[33] Sec. 856(c)(5)(G).

[34] See Rev. Rul. 74–191, 1974–1 C.B. 170.

Code (described below). Foreign currency exchange gain is not explicitly included in the statutory definitions of qualifying income for purposes of the 75-percent and 95-percent income tests, though the IRS has issued some guidance that allows foreign currency gain to be treated as qualified income in certain circumstances.

The foreign currency transaction rules of sections 985 through 989 apply whenever a taxpayer engages in a business or investment activity using a currency other than the taxpayer's functional currency (a "nonfunctional currency"). Section 985 provides in general that all determinations for Federal income tax purposes are made in the taxpayer's functional currency. A taxpayer's functional currency is the dollar except in the case of a qualified business unit ("QBU"), in which case the functional currency is "the currency of the economic environment in which a significant part of such unit's activities are conducted and which is used by such unit in keeping its books and records."[35] A QBU is any separate and clearly identified unit of a trade or business of a taxpayer if the unit maintains separate books and records.[36]

A taxpayer that engages in a business or investment activity using a currency other than the U.S. dollar may have gain or loss under section 987 or 988, depending on the nature of the activity and type of entity (if any) through which the activity is conducted.

A U.S. taxpayer becomes subject to section 988 when it enters into a "section 988 transaction." Among other things, a "section 988 transaction" includes the acquisition of a debt instrument, becoming an obligor under a debt instrument, the accrual of items of expense or gross income, or the disposition of any nonfunctional currency.[37]

When a REIT holds a mortgage (or other instrument or arrangement described in section 988)[38] denominated in a nonfunctional currency or determined by reference to the value of a nonfunctional currency and the applicable foreign currency exchange rate changes between the time interest on an obligation to (or an obligation of) the REIT accrues and the time it is paid, the REIT may have foreign currency gain or loss under the rules of section 988. In May 2007, the IRS ruled in Rev. Rul. 2007–33 that if section 988 currency gain is recognized by a REIT with respect to an item of income, the section 988 gain will be qualifying income for purposes of the 95-percent and 75-percent income tests of sections 856(c)(2) and (3), respectively, to the extent the underlying income so qualifies. Analogous relief was not provided for section 988 gain with respect to any items other than income items.[39]

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[35] Sec. 985(b)(1).

[36] Sec. 989(a).

[37] Sec. 988(c)(1)(B) and (C).

[38] Section 988 applies to (i) the acquisition of a debt instrument or becoming the obligor under a debt instrument; (ii) accruing (or otherwise taking into account) any item of expense or gross income or receipts which is to be paid after the date on which so accrued or taken into account, and (iii) entering into or acquiring any forward contract, futures contract, option, or similar financial instrument (except for any regulated futures contract or nonequity option which would be marked to market under section 1256 if held on the last day of the taxable year). Section 988 also applies to the disposition of any nonfunctional currency. Nonfunctional currency includes "coin or currency, and nonfunctional currency denominated demand or time deposits or similar instruments issued by a bank or other financial institution." Sec. 988(c)(1).

[39] Rev. Rul. 2007–33, 2007–21 I.R.B. 1281. This ruling does not address the treatment of currency gain that might arise with respect to the payment of principal on an obligation that would produce qualified income. The ruling also does not address the treatment of foreign currency gain that might arise in connection with an indebtedness denominated in a foreign currency that is incurred to acquire assets that produce qualifying income. A private letter ruling con-

Section 987 applies when there is a remittance from a foreign business or investment activity conducted through a QBU that is a branch that keeps its books and records in a functional currency other than the dollar. If a REIT has a QBU that keeps its books and records in a foreign currency, the REIT could have foreign currency exchange gain or loss under section 987 with respect to remittances.[40]

The IRS has ruled in several private rulings that a REIT may establish a REIT subsidiary that itself qualifies as a separate REIT (and, thus, would not be treated as a branch) to conduct qualified REIT activity with respect to foreign investments in a particular foreign currency, and that subsidiary can itself be treated as a QBU whose functional currency is that particular foreign currency, if that subsidiary keeps its books and records in that particular foreign currency.[41] While this structure provides a method of doing business abroad, this structure effectively requires a separate REIT subsidiary for each different currency in which the REIT may conduct activities.[42]

At the same time that it issued Rev. Rul. 2007–33, the IRS also issued a notice regarding the application of section 987 to a QBU of a REIT. The notice states that until further guidance is issued, a REIT that has a QBU that uses a functional currency other than the U.S. dollar may apply the principles of proposed regulations issued on September 7, 2006, to determine whether section 987 currency gain is derived from income described in sections 856(c)(2) or (3).[43]

Certain other items

Certain private letter rulings issued to particular taxpayers have permitted various other types of income to be ignored for purposes of the 75-percent or 95-percent income tests, due to the relationship of the income to REIT qualifying assets or income. A few examples include a settlement payment received by a REIT with respect to construction of a mall or a payment received as a "breakup" fee in a proposed merger.[44]

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cluded that section 988 currency gain attributable to fluctuation in the exchange rates of currency used to make payments on non-dollar debt obligations incurred to acquire investments that produced qualifying non-dollar income would be treated as qualifying income, where the borrowings were to be used to finance the acquisition of the investments on a cost-effective basis, and not to speculate in foreign currency. PLR 200808024. A private letter ruling may be relied upon only by the taxpayer to which the ruling is issued.

[40] Recent proposed regulations under section 987 would replace previously proposed rules in an attempt to limit the ability of taxpayers to recognize non-economic foreign currency losses that could reduce otherwise taxable income, as well as to prevent non-economic currency gains that could arise. The 2006 proposed regulations would provide certain tracing-type rules. See REG–208270–86 (Sept. 7, 2006). See also Notice 2000–20 (March 22, 2000), discussing concerns regarding earlier proposed regulations issued in 1991. The 2006 proposed regulations when originally issued did not by their terms apply to REITs, RICs, or certain other types of entities. Prop. Reg. Sec. 1.987–1(b)(iii). But see Notice 2007–42, 2007–21 I.R.B. 1288, infra.

[41] See, e.g., PLR 200625019 and PLR 200550025. A private letter ruling may be relied upon only by the taxpayer to which the ruling was issued.

[42] In this structure, the parent REIT treats the dividends paid by the subsidiary REIT as a qualified REIT dividend, minimizing any currency gains by exchanging the foreign currency into dollars at the time of the dividend distribution.

[43] Notice 2007–42, 2007–21 I.R.B. 1288. Compare REG–208270–86 (Sept. 7, 2006), which by its terms did not apply to REITs.

[44] PLR 200039027 and PLR 200127024. A private letter ruling may be relied upon only by the taxpayer to which the ruling was issued.

Asset tests

At least 75 percent of the value of a REIT's assets must be real estate assets, cash and cash items (including receivables) and Government securities (the "75-percent asset test"). Real estate assets are real property (including interests in real property and mortgages on real property) and shares (or transferable certificates of beneficial interest) in other REITs.[45] No more than 25 percent of a REIT's assets may be securities other than such real estate assets.[46]

Except with respect to a taxable REIT subsidiary (described further below), not more than 5 percent of the value of a REIT's assets may be securities of any one issuer, and the REIT may not possess securities representing more than 10 percent of the outstanding value or voting power of any one issuer.[47] In addition, not more than 20 percent of the value of a REIT's assets may be securities of one or more taxable REIT subsidiaries.[48]

The asset tests must be met as of the close of each quarter. However, a REIT that has met the asset tests as of the close of any quarter does not lose its REIT status solely because of a discrepancy during a subsequent quarter between the value of the REIT's investments and such requirements, unless such discrepancy exists immediately after the acquisition of any security or other property and is wholly or partly the result of such acquisition.[49]

Taxable REIT subsidiaries

A REIT generally cannot own more than 10 percent of the vote or value of a single entity; however, there is an exception for ownership of a taxable REIT subsidiary ("TRS") that is taxed as a corporation, provided that securities of one or more TRSs do not represent more than 20 percent of the value of REIT assets.

A TRS generally can engage in any kind of business activity except that it is not permitted directly or indirectly to operate either a lodging facility or a health care facility. However, a TRS is permitted to rent hotel, motel, or other transient lodging facilities from its parent REIT and is permitted to hire an independent contractor to operate such facilities.[50]

Furthermore, rent paid to the REIT by the TRS with respect to hotel, motel, or other transient lodging facilities operated by an independent contractor is qualified rent for purposes of the REIT's 75-percent and 95-percent income tests. This lodging facility rental rule is an exception to the general rule that rent paid to a REIT by any corporation (including a TRS) in which the REIT owns 10 percent or more of the vote or value is not qualified rental income for purposes of the 75-percent or 95-percent REIT income tests, unless, in the case of a TRS, at least 90 percent of the space is rented

[45] Sec. 856(c)(4)(A). Certain stock or debt instruments that are temporary investments also qualify if they are temporary investments of new capital, but only for the one-year period beginning on the date the REIT receives such capital. Sec. 856(c)(5)(B).

[46] Sec. 856(c)(4)(B)(i).

[47] Sec. 856(c)(4)(B)(iii).

[48] Sec. 856(c)(4)(B)(ii).

[49] Sec. 856(c)(4). In the case of such an acquisition, the REIT also has a grace period of 30 days after the close of the quarter to eliminate the discrepancy.

[50] An independent contractor will not fail to be treated as such for this purpose because the TRS bears the expenses of operation of the facility under the contract, or because the TRS receives the revenues from the operation of the facility, net of expenses for such operation and fees payable to the operator pursuant to the contract, or both. Sec. 857(d)(9)(B).

to unrelated parties and the rent paid by the TRS is comparable to the rent paid by the unrelated parties.[51]

Prohibited transactions tax

REITs are subject to a prohibited transactions tax ("PTT") of 100 percent of the net income derived from prohibited transactions. For this purpose, a prohibited transaction is a sale or other disposition of property that is "stock in trade of a taxpayer or other property which would properly be included in the inventory of the taxpayer if on hand at the close of the taxable year, or property held for sale to customers by the taxpayer in the ordinary course of his trade or business" (sec. 1221(a)(1))[52] and is not foreclosure property. The PTT for a REIT does not apply if the sale satisfies certain safe harbor requirements in sections 857(b)(6)(C) or (D), including an asset holding period of at least four years.[53] If the conditions are met, the REIT may either i) make no more than 7 sales within a taxable year (other than sales of foreclosure property or involuntary conversions under section 1033), or ii) sell no more than 10 percent of the aggregate bases of all its assets as of the beginning of the taxable year (computed without regard to sales of foreclosure property or involuntary conversions under section 1033), without being subject to the PTT tax.

REASONS FOR CHANGE

The Committee believes that present law contains undesirable uncertainty and complexity in determining the effect of foreign currency gain on REIT qualification when a REIT invests in otherwise qualified foreign assets that produce otherwise qualified foreign income. If foreign currency gain is attributable to otherwise qualifying REIT income from foreign investments, such currency gain should not cause disqualification of a REIT. The Treasury Department has issued some guidance to that effect in the case of certain income items.[54] The Committee wishes to assure that the same result will occur with respect to foreign currency gain on a REIT's receipt of payments of principal (rather than income) on an asset that would produce qualified REIT income (for example, the receipt of principal payments on a mortgage that is secured by real property and denominated in foreign currency). If a REIT borrows in a foreign currency to facilitate the acquisition of qualified assets denominated in a foreign currency, the Committee wishes to assure that the same result will occur with respect to payments of interest and principal on such a borrowing.

Similarly, although the Treasury Department has indicated that a REIT may operate in a foreign country with a qualified business unit that uses a nonfunctional currency and that the REIT may rely on the principles of the 2006 proposed Treasury regulations to

[51] REITs are also subject to a tax equal to 100 percent of redetermined rents, redetermined deductions, and excess interest. These are defined generally as the amounts of specified REIT transactions with a TRS of the REIT, to the extent such amounts differ from an arm's length amount.

[52] This definition is the same as the definition of certain property the sale or other disposition of which would produce ordinary income rather than capital gain under section 1221(a)(1).

[53] Additional requirements for the safe harbor limit the amount of expenditures the REIT can make during the four year period prior to the sale that are includible in the adjusted basis of the property, require marketing to be done by an independent contractor, and forbid a sales price that is based on the income or profits of any person.

[54] Rev. Rul. 2007–33, 2007–21 I.R.B. 1281.

determine whether currency gain on remittances is qualified REIT income,[55] the Committee wishes to provide a simpler method to determine that foreign currency gain on remittances from a qualified business unit will not adversely affect REIT qualification. The Committee therefore has adopted rules that are intended both to assure that appropriate foreign currency gain will not disqualify a REIT and to preclude the treatment of income from foreign currency speculation as qualified income.

The Committee also believes it is desirable to grant regulatory authority to the Treasury Department to permit other types of income that are not statutorily designated as qualified income to be disregarded for purposes of the REIT gross income tests in appropriate cases. Under present law, the Internal Revenue Service has issued private rulings that have reached this result in cases involving income related to the conduct of permitted REIT activities, for example, income relating to settlement of a lawsuit over construction of a mall in which a REIT was investing,[56] and income from a "breakup" fee related to the termination of a proposed acquisition of another REIT.[57] However, a private ruling may be relied upon only by the taxpayer to whom the ruling is issued. The Committee believes it is desirable for the Treasury Department to be permitted to issue generally applicable guidance in appropriate cases.

With respect to taxable REIT subsidiaries ("TRSs"), the Committee believes it is appropriate to allow a greater percentage of a REIT's assets to consist of stock of such subsidiaries. The Committee believes that a 25 percent limitation is consistent with the present law rule that at least 75 percent of REIT assets must be real estate assets, cash, cash items, and Government securities.

The Committee also believes it is desirable to extend to health care facilities the rules that permit a TRS to bear the costs and receive the revenues of a qualified lodging facility, and to pay qualified arm's length rent to the REIT for such a facility, provided the facility is operated by an independent contractor and the TRS pays an arm's length fee to the independent contractor for such operation. Also, the Committee desires to provide that a taxable REIT subsidiary is not considered to be directly or indirectly operating a lodging or health care facility (i.e., without the required use of an independent contractor) merely because it possesses a license to do so.

Finally, the Committee is concerned that the four-year holding period for the safe harbor from prohibited transactions tax may inappropriately deter REITs from selling their properties, and that the present law rule requiring use of basis for purposes of the 10-percent safe harbor limitation may unfairly affect a REIT that sells more recently acquired, higher-basis assets instead of longer-held assets with greater appreciation. The Committee thus desires to shorten the required holding period for REIT asset sales that can qualify for the safe harbor from the prohibited transactions tax ("PTT"), and to allow a REIT that makes more than 7 sales in a taxable year to make sales under the alternative safe harbor equal to 10 percent of the aggregate fair market value of the REIT assets, where the basis of property sold during the year exceeds the

[55] Notice 2007–42, 2007–21 I.R.B. 1288.
[56] PLR 200039027.
[57] PLR 200127024.

amount permitted under the present law rule (10 percent of aggregate basis of REIT assets). The Committee believes these changes will enable REITs to sell properties more readily and thus capture asset values for shareholders with more flexibility.

EXPLANATION OF PROVISION

Foreign currency gain

The provision treats certain foreign currency gains recognized under section 987 or section 988 as qualifying income for purposes of the 75-percent and 95-percent income tests. In the case of a section 988 transaction, foreign currency gain that is "attributable to" income items that otherwise are treated as qualifying income for purposes of the 75-percent and 95-percent income tests respectively (and including any other 988 gain attributable to the acquisition or ownership of, or to becoming the obligor under, obligations secured by mortgages on real property or on interests in real property), are treated as qualifying income for those tests.[58] The provision reaches a result similar to that in Rev. Rul. 2007–33 in the case of gain attributable to an item of REIT income, and in addition provides a similar result in the case of currency gain attributable to principal payments received on certain REIT assets or to principal or interest payments with respect to certain liabilities of a REIT.

In the case of a QBU with a functional currency other than the U.S. dollar, section 987 foreign currency gain is treated as qualifying income for purposes of both the 75-percent and 95-percent income tests if such gain is attributable to a QBU that independently meets the 75-percent income and asset tests (before application of the provision).[59] The provision thus allows currency gain on remittances to qualify as good REIT income without requiring for that purpose the particular tracing-type rules of the existing section 987 proposed regulations as allowed for REITs under Notice 2007–42. The QBU itself does not have to meet the 95-percent income test in order for currency gain on its remittances to be treated as qualified income. The REIT still is required to meet the 95-percent income test, as well as all the other REIT requirements, on an overall basis that includes the income and assets of its QBU. However, for this purpose, any currency gains on remittances from a QBU that meets the 75 percent income and asset tests are added to qualifying income for purposes of both the 75-percent and 95-percent income tests.

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[58] In the case of a section 988 transaction, it is intended that the provision only apply to foreign currency gains that are directly attributable to income items that otherwise are treated as qualifying income for purposes of the 75-percent and 95-percent income tests, respectively, (or directly attributable to the acquisition or ownership of, or to becoming the obligor under, obligations secured by mortgages on real property or on interests on real property). As one example, foreign currency gains attributable to gain arising between the time of the accrual of interest income on a foreign-currency denominated obligation secured by a mortgage on real property and the time of payment, would constitute qualifying income for purposes of both 75-percent and 95-percent income tests, assuming that the interest accruals themselves constitute qualifying income for purposes of such tests. However, any additional foreign currency gains arising from subsequent disposition of the foreign currency received in payment of the accrued interest would be attributable to holding the foreign currency after its receipt and would not constitute qualifying income under either test.

[59] In the case of a QBU that meets those tests, section 987 foreign currency gain on remittances as of the time of remittance is qualified income. Any currency gain arising from holding the currency after remittance is not qualifying income.

In addition, any other foreign currency gain may, if so determined by the Secretary of the Treasury, be considered qualified income.

The provision makes several changes to other REIT provisions. First, the present law rule that excludes certain hedging income from the computation of the 95-percent income test is extended to exclude such hedging income from the computation of the 75-percent income test as well. Second, the provision excludes currency hedging income for purposes of the 75-percent or 95-percent tests, respectively, where the income from the hedged item, if any, would be good income under the provision for such 75-percent or 95-percent income tests, respectively. Third, the rule that if a REIT has met the asset tests as of the close of any quarter it will not fail them solely because of a discrepancy due to variations in value that are not attributable to the acquisition of investments is clarified to include a discrepancy caused solely by the change in the foreign currency exchange rate used to value a foreign asset. Fourth, the term "cash" for purposes of the REIT asset qualification rules is defined to include foreign currency if the REIT or its QBU uses such currency as its functional currency. Fifth, permitted foreclosure property income also includes foreign currency gain that is attributable to otherwise permitted income from foreclosure property. Finally, foreign currency gain under section 988(b)(1), or loss under section 988(b)(2), that is attributable to any prohibited transaction is taken into account in determining the amount of prohibited transaction net income subject to the 100 percent tax.

Treasury authority regarding other items of income

The provision authorizes the Treasury Department to issue guidance that would allow other items of income to be excluded from the computation of qualifying gross income in appropriate cases.

Taxable REIT subsidiary limit increase

The provision increases the percentage of the value of REIT assets that can be held in securities of a taxable REIT subsidiary to 25 percent from the present 20 percent.

Holding period under safe harbor for prohibited transactions

The provision shortens from four years to two years the minimum holding period under the prohibited transactions tax safe harbor. The provision makes clear that the safe harbor is an exception from the prohibited transactions tax only and does not cause a sale that otherwise does not qualify for capital gains treatment (i.e., because it was a sale of property held for sale to customers in the ordinary course of business under section 1221(a)(1)) to become a capital gain transaction. Consequently, capital gain treatment continues to be determined based on all the facts and circumstances as under present law, without regard to the prohibited transactions tax safe harbor.

Permitted extent of sales under safe harbor for prohibited transactions

The provision changes the prohibited transactions tax safe harbor provisions concerning maximum amount of sales within a taxable year that are consistent with the alternative prohibited trans-

actions tax safe harbor (that is an alternative to the test for no more than 7 sales). Instead of the present alternative limit of 10-percent of the aggregate bases of all the assets of the REIT as of the beginning of the taxable year, the limit under the provision is either 10 percent of such basis or 10 percent of the aggregate fair market value of all the assets of the REIT as of such time.

Health care facilities held by a taxable REIT subsidiary

The provision expands the taxable REIT subsidiary exception for hotel, motel, and other transient facilities so that it also applies to health care facilities. Thus, a taxable REIT subsidiary is permitted to rent a health care facility from its parent REIT and hire an independent contractor to operate such a facility; the rents paid to the parent REIT are qualifying rental income for purposes of the 75-percent and 95-percent income tests. Under the provision, a taxable REIT subsidiary is not be considered to be operating or managing a qualified health care property or a qualified lodging facility other than through an independent contractor solely because the taxable REIT subsidiary directly or indirectly possesses a license, permit, or similar instrument enabling it to do so.

EFFECTIVE DATE

The provision generally is effective for taxable years beginning after the date of enactment. However, the rules treating certain foreign currency gain as qualified income for purposes of the income tests apply to gains and items of income recognized after the date of enactment. The hedging rules are effective for transactions entered into after such date of enactment. The Treasury authority to exclude items from income for purposes of the income qualification tests applies after the date of enactment. The foreign currency amendment relating to gain from foreclosure property applies to gains recognized after the date of enactment, and the provision relating to net prohibited transactions income applies to gains and deductions recognized after the date of enactment. The provisions relating to the prohibited transactions tax safe harbor apply to sales made after the date of enactment.

TITLE V—REVENUE PROVISIONS

A. Broker Reporting of Customer's Basis in Securities Transactions (Sec. 301 of the bill and Sec. 6045 and New Secs. 6045A and 6045B of the Code)

PRESENT LAW

In general

Gain or loss generally is recognized for Federal income tax purposes on realization of that gain or loss (for example, through the sale of property giving rise to the gain or loss). The taxpayer's gain or loss on a disposition of property is the difference between the amount realized and the adjusted basis.[60]

To compute adjusted basis, a taxpayer must first determine the property's unadjusted or original basis and then make adjustments

[60] Sec. 1001.

prescribed by the Code.[61] The original basis of property is its cost, except as otherwise prescribed by the Code (for example, in the case of property acquired by gift or bequest or in a tax-free exchange). Once determined, the taxpayer's original basis generally is adjusted downward to take account of depreciation or amortization, and generally is adjusted upward to reflect income and gain inclusions or capital outlays with respect to the property.

Basis computation rules

If a taxpayer has acquired stock in a corporation on different dates or at different prices and sells or transfers some of the shares of that stock, and the lot from which the stock is sold or transferred is not adequately identified, the shares deemed sold are the earliest acquired shares (the "first-in-first-out rule").[62] If a taxpayer makes an adequate identification of shares of stock that it sells, the shares of stock treated as sold are the shares that have been identified.[63] A taxpayer who owns shares in a regulated investment company ("RIC") generally is permitted to elect, in lieu of the specific identification or first-in-first-out methods, to determine the basis of RIC shares sold under one of two average-cost-basis methods described in Treasury regulations.[64]

Information reporting

Present law imposes information reporting requirements on participants in certain transactions. Under these requirements, information is generally reported to the IRS and furnished to taxpayers. These requirements are intended to assist taxpayers in preparing their income tax returns and to help the IRS determine whether taxpayers' tax returns are correct and complete. For example, every person engaged in a trade or business generally is required to file information returns for each calendar year for payments of $600 or more made in the course of the payor's trade or business.[65]

Section 6045(a) requires brokers to file with the IRS annual information returns showing the gross proceeds realized by customers from various sale transactions. The Secretary is authorized to require brokers to report additional information related to customers.[66] Brokers are required to furnish to every customer information statements with the same gross proceeds information that is included in the returns filed with the IRS for that customer.[67] These information statements are required to be furnished by January 31 of the year following the calendar year for which the return under section 6045(a) is required to be filed.[68]

A person who is required to file information returns but who fails to do so by the due date for the returns, includes on the returns incorrect information, or files incomplete returns generally is subject to a penalty of $50 for each return with respect to which such a failure occurs, up to a maximum of $250,000 in any calendar year.[69] Similar penalties, with a $100,000 calendar year maximum,

[61] Sec. 1016.
[62] Treas. Reg. sec. 1.1012–1(c)(1).
[63] Treas. Reg. sec. 1.1012–1(c).
[64] Treas. Reg. sec. 1.1012–1(e).
[65] Sec. 6041(a).
[66] Sec. 6045(a).
[67] Sec. 6045(b).
[68] Id.
[69] Sec. 6721.

apply to failures to furnish correct information statements to recipients of payments for which information reporting is required.[70]

Present law does not require broker information reporting with respect to a customer's basis in property but does impose an obligation to keep records, as described below.

Basis recordkeeping requirements

Taxpayers are required to "keep such records . . . as the Secretary may from time to time prescribe."[71] Treasury regulations impose recordkeeping requirements on any person required to file information returns.[72]

Treasury regulations provide that donors and donees should keep records that are relevant in determining a donee's basis in property.[73] IRS Publication 552 states that a taxpayer should keep basis records for property until the period of limitations expires for the year in which the taxpayer disposes of the property.

REASONS FOR CHANGE

The Committee believes that there may be significant underreporting of capital gain income as a result of misreporting of basis. Requiring brokers to report basis to the IRS and to their customers may reduce capital gain underreporting: When coupled with the present-law requirement to report gross proceeds, mandatory basis reporting will give both taxpayers and the IRS information needed to compute gain (or loss) from securities sales. The provision also includes rules—such as mandatory broker-to-broker reporting and issuer reporting of certain organizational actions—intended to facilitate accurate reporting of tax basis.

EXPLANATION OF PROVISION

In general

Under the provision, every broker that is required to file a return under section 6045(a) reporting the gross proceeds from the sale of a covered security must include in the return (1) the customer's adjusted basis in the security and (2) whether any gain or loss with respect to the security is long-term or short-term (within the meaning of section 1222).

Covered securities

A covered security is any specified security acquired on or after an applicable date if the security was (1) acquired through a transaction in the account in which the security is held or (2) was transferred to that account from an account in which the security was a covered security, but only if the transferee broker received a statement under section 6045A (described below) with respect to the transfer. Under this rule, certain securities acquired by gift or inheritance are not covered securities.

A specified security is any share of stock in a corporation (including stock of a regulated investment company); any note, bond, debenture, or other evidence of indebtedness; any commodity or a

[70] Sec. 6722.
[71] Sec. 6001.
[72] Treas. Reg. sec. 1.6001–1(a).
[73] Treas. Reg. sec. 1.1015–1(g).

contract or a derivative with respect to the commodity if the Secretary determines that adjusted basis reporting is appropriate; and any other financial instrument with respect to which the Secretary determines that adjusted basis reporting is appropriate.

For stock in a corporation (other than stock for which an average basis method is permissible under section 1012), the applicable date is January 1, 2010. For any stock for which an average basis method is permissible under section 1012, the applicable date is January 1, 2011. Consequently, the applicable date for certain stock acquired through a dividend reinvestment plan (for which stock additional rules are described below) and for stock in open-end funds (defined below) is January 1, 2011. Open-end funds are permitted to elect to treat as a covered security any stock in the fund acquired before January 1, 2011. This election is described below. For any specified security other than stock in a corporation or stock for which an average basis method is permitted, the applicable date is January 1, 2012, or a later date determined by the Secretary.

Computation of adjusted basis

The customer's adjusted basis required to be reported to the IRS is determined under the following rules. The adjusted basis of any security other than stock for which an average basis method is permissible under section 1012 is determined under the first-in, first-out method unless the customer notifies the broker by means of making an adequate identification (under the rules of section 1012 for specific identification) of the stock sold or transferred. The adjusted basis of stock for which an average basis method is permissible under section 1012 is determined in accordance with the broker's default method under section 1012 (that is, the first-in, first-out method, the average cost method, or the specific identification method) unless the customer notifies the broker that the customer elects another permitted method. This notification is made separately for each account in which stock for which the average cost method is permissible is held and, once made, applies to all stock held in that account. As a result of this rule, a broker's basis computation method used for stock held in one account with that broker may differ from the basis computation method used for stock held in another account with that broker.

For any sale, exchange, or other disposition of a specified security after the applicable date (defined previously), the provision modifies section 1012 so that the conventions prescribed by regulations under that section for determining adjusted basis (the first-in, first-out, specific identification, and average cost conventions) apply on an account-by-account basis. Under this rule, for example, if a customer holds shares of the same specified security in accounts with different brokers, each broker makes its adjusted basis determinations by reference only to the shares held in the account with that broker, and only shares in the account from which the sale is made may be identified as the shares sold. Unless the election described next applies, stock in an open-end fund acquired before January 1, 2011 is treated as a separate account. A consequence of this rule is that if adjusted basis is being determined using the average cost convention, average cost is computed without regard to any open-end stock acquired before January 1, 2011.

An open-end fund, however, may elect (at the time and in the form and manner prescribed by the Secretary), on a stockholder-by-stockholder basis, to treat as covered securities all stock in the fund held by the stockholder without regard to when the stock was acquired. When this election applies, the average cost of a customer's open-end stock is determined by taking into account shares of stock acquired before, on, and after January 1, 2011. A similar election is allowed for any broker holding stock in an open-end fund as a nominee of the beneficial owner of the stock.

An open-end fund generally is a regulated investment company (as defined in section 851) that offers for sale or has outstanding any redeemable security of which it is the issuer. Any stock, however, that is traded on an established securities exchange is not treated as stock in an open-end fund. So-called exchange traded funds, funds in which there is intra-day pricing and in which shares may be purchased on an exchange (rather than from the funds directly) therefore are not open-end funds. If a regulated investment company offers two or more classes of shares one or more of which is traded on an established securities exchange and one or more of which is not traded on such an exchange, the regulated investment company will be treated as an open-end fund only with respect to the class or classes of shares that are not traded on an established securities exchange.

If stock is acquired on or after January 1, 2011, in connection with a dividend reinvestment plan, the basis of that stock is determined under one of the basis computation methods permissible for stock in an open-end fund. Accordingly, an average cost method may be used for determining the basis of this stock. In determining basis under this rule, the account-by-account rules described previously, including the election available to open-end funds, apply. The special rule for stock acquired through a dividend reinvestment plan, however, applies only while the stock is held as part of the dividend reinvestment plan. If stock to which this rule applies is transferred to another account, the stock will have a cost basis in that other account equal to its basis in the dividend reinvestment plan immediately before the transfer (with any proper adjustment for charges incurred in connection with the transfer). After the transfer, however, the transferee broker may use the otherwise applicable convention (that is, the first-in, first-out method or the specific identification method) for determining which shares are sold when a sale is made of some but not all shares of a particular security. It is expected that when stock acquired through a dividend reinvestment plan is transferred to another account, the broker executing the transfer will provide information necessary in applying an allowable convention for determining which shares are sold. Accordingly, the transferor broker will be expected to state that shares transferred have a long-term holding period or, for shares that have a short-term holding period, the dates on which the shares were acquired.

A dividend reinvestment plan means any arrangement under which dividends on stock are reinvested in stock identical to the stock with respect to which the dividends are paid. Stock is treated as acquired in connection with such a plan if the stock is acquired pursuant to the plan or if the dividends paid on the stock are subject to the plan.

Exception for wash sales

Unless the Secretary provides otherwise, a customer's adjusted basis in a covered security generally is determined without taking into account the effect on basis of the wash sale rules of section 1091. If, however, the acquisition and sale transactions resulting in a wash sale under section 1091 occur in the same account and are in identical securities, adjusted basis is determined by taking into account the effect of the wash sale rules. Securities are identical for this purpose only if they have the same Committee on Uniform Security Identification Procedures number.

Special rules for short sales

The provision provides that in the case of a short sale, gross proceeds and basis reporting under section 6045 generally is required in the year in which the short sale is closed (rather than, as under the present law rule for gross proceeds reporting, the year in which the short sale is entered into).

Reporting requirements for options

The provision generally eliminates the present-law regulatory exception from section 6045(a) reporting for certain options. If a covered security is acquired or disposed of by reason of the exercise of an option that was granted or acquired in the same account as the covered security, the amount of the premium received or paid with respect to the acquisition of the option is treated as an adjustment to the gross proceeds from the subsequent sale of the covered security or as an adjustment to the customer's adjusted basis in that security. Gross proceeds and basis reporting also is required when there is a lapse of, or a closing transaction with respect to, an option on a specified security or an exercise of a cash-settled option. Reporting is required for the calendar year that includes the date of the lapse, closing transaction, or exercise. For example, if a taxpayer acquires for $5 a cash settlement stock option with a strike price of $100 and settles the option when the stock trades at $120, a broker through which the acquisition and cash settlement are executed is required to report gross proceeds of $20 from the cash settlement and a basis in the option of $5. These reporting rules related to options transactions apply only to options granted or acquired on or after January 1, 2012.

Treatment of S corporations

The provision provides that for purposes of section 6045, an S corporation (other than a financial institution) is treated in the same manner as a partnership. This rule applies to any sale of a covered security acquired by an S corporation (other than a financial institution) after December 31, 2011. When this rule takes effect, brokers generally will be required to report gross proceeds and basis information to customers that are S corporations.

Time for providing statements to customers

The provision changes to February 15 the present-law January 31 deadline for furnishing certain information statements to customers. The statements to which the new February 15 deadline applies are (1) statements showing gross proceeds (under section

statements with respect to reportable items (including, but not limited to, interest, dividends, and royalties) that are furnished with consolidated reporting statements (as defined in regulations). The term "consolidated reporting statement" is intended to refer to annual account information statements that brokerage firms customarily provide to their customers and that include tax-related information. It is intended that the February 15 deadline for consolidated reporting statements apply in the same manner to statements furnished for any account or accounts, taxable and retirement, held by a customer with a mutual fund or other broker.

Broker-to-broker and issuer reporting

Every broker (as defined in section 6045(c)(1)), and any other person specified in Treasury regulations, that transfers to a broker (as defined in section 6045(c)(l)) a security that is a covered security when held by that broker or other person must, under new section 6045A, furnish to the transferee broker a written statement that allows the transferee broker to satisfy the provision's basis and holding period reporting requirements. The Secretary may provide regulations that prescribe the content of this statement and the manner in which it must be furnished. It is contemplated that the Secretary will permit this broker-to-broker reporting requirement to be satisfied electronically rather than by paper. Unless the Secretary provides otherwise, the statement required by this rule must be furnished not later than 15 days after the date of the transfer of the covered security.

Present law penalties for failure to furnish correct payee statements apply to failures to furnish correct statements in connection with the transfer of covered securities.

New section 6045B requires, according to forms or regulations prescribed by the Secretary, any issuer of a specified security to file a return setting forth a description of any organizational action (such as a stock split or a merger or acquisition) that affects the basis of the specified security, the quantitative effect on the basis of that specified security, and any other information required by the Secretary. This return must be filed within 45 days after the date of the organizational action or, if earlier, by January 15 of the year following the calendar year during which the action occurred. Every person required to file this return for a specified security also must furnish, according to forms or regulations prescribed by the Secretary, to the nominee with respect to that security (or to a certificate holder if there is no nominee) a written statement showing the name, address, and phone number of the information contact of the person required to file the return, the information required to be included on the return with respect to the security, and any other information required by the Secretary. This statement must be furnished to the nominee or certificate holder on or before January 15 of the year following the calendar year in which the organizational action took place. No return or information statement is required to be provided under new section 6045B for any action with respect to a specified security if the action occurs before the applicable date (as defined previously) for that security.

The Secretary may waive the return filing and information statement requirements if the person to which the requirements apply makes publicly available, in the form and manner determined by

the Secretary, the name, address, phone number, and e-mail address of the information contact of that person, and the information about the organizational action and its effect on basis otherwise required to be included in the return.

The present-law penalties for failure to file correct information returns apply to failures to file correct returns in connection with organizational actions. Similarly, the present-law penalties for failure to furnish correct payee statements apply to a failure under new section 6045B to furnish correct statements to nominees or holders or to provide required publicly-available information in lieu of returns and written statements.

EFFECTIVE DATE

The provision generally takes effect on January 1, 2010. The change to February 15 of the present-law January 31 deadline for furnishing certain information statements to customers applies to statements required to be furnished after December 31, 2008.

B. Delay Implementation of Worldwide Interest Allocation (Sec. 302 of the bill and Sec. 864(f) of the Code)

PRESENT LAW

In general

In order to compute the foreign tax credit limitation, a taxpayer must determine the amount of its taxable income from foreign sources. Thus, the taxpayer must allocate and apportion deductions between items of U.S.-source gross income, on the one hand, and items of foreign-source gross income, on the other.

In the case of interest expense, the rules generally are based on the approach that money is fungible and that interest expense is properly attributable to all business activities and property of a taxpayer, regardless of any specific purpose for incurring an obligation on which interest is paid.[74] For interest allocation purposes, all members of an affiliated group of corporations generally are treated as a single corporation (the so-called "one-taxpayer rule") and allocation must be made on the basis of assets rather than gross income. The term "affiliated group" in this context generally is defined by reference to the rules for determining whether corporations are eligible to file consolidated returns.

For consolidation purposes, the term "affiliated group" means one or more chains of includible corporations connected through stock ownership with a common parent corporation which is an includible corporation, but only if: (1) The common parent owns directly stock possessing at least 80 percent of the total voting power and at least 80 percent of the total value of at least one other includible corporation; and (2) stock meeting the same voting power and value standards with respect to each includible corporation (excluding the common parent) is directly owned by one or more other includible corporations.

Generally, the term "includible corporation" means any domestic corporation except certain corporations exempt from tax under section 501 (for example, corporations organized and operated exclu-

[74] However, exceptions to the fungibility principle are provided in particular cases, some of which are described below.

sively for charitable or educational purposes), certain life insurance companies, corporations electing application of the possession tax credit, regulated investment companies, real estate investment trusts, and domestic international sales corporations. A foreign corporation generally is not an includible corporation.

Subject to exceptions, the consolidated return and interest allocation definitions of affiliation generally are consistent with each other.[75] For example, both definitions generally exclude all foreign corporations from the affiliated group. Thus, while debt generally is considered fungible among the assets of a group of domestic affiliated corporations, the same rules do not apply as between the domestic and foreign members of a group with the same degree of common control as the domestic affiliated group.

Banks, savings institutions, and other financial affiliates

The affiliated group for interest allocation purposes generally excludes what are referred to in the Treasury regulations as "financial corporations" (Treas. Reg. sec. 1.861–11T(d)(4)). These include any corporation, otherwise a member of the affiliated group for consolidation purposes, that is a financial institution (described in section 581 or section 591), the business of which is predominantly with persons other than related persons or their customers, and which is required by State or Federal law to be operated separately from any other entity which is not a financial institution (sec. 864(e)(5)(C)). The category of financial corporations also includes, to the extent provided in regulations, bank holding companies (including financial holding companies), subsidiaries of banks and bank holding companies (including financial holding companies), and savings institutions predominantly engaged in the active conduct of a banking, financing, or similar business (sec. 864(e)(5)(D)).

A financial corporation is not treated as a member of the regular affiliated group for purposes of applying the one-taxpayer rule to other non-financial members of that group. Instead, all such financial corporations that would be so affiliated are treated as a separate single corporation for interest allocation purposes.

Worldwide interest allocation

In general

The American Jobs Creation Act of 2004 ("AJCA")[76] modifies the interest expense allocation rules described above (which generally apply for purposes of computing the foreign tax credit limitation) by providing a one-time election (the "worldwide affiliated group election") under which the taxable income of the domestic members of an affiliated group from sources outside the United States generally is determined by allocating and apportioning interest expense of the domestic members of a worldwide affiliated group on a worldwide-group basis (i.e., as if all members of the worldwide group were a single corporation). If a group makes this election, the taxable income of the domestic members of a worldwide affiliated group from sources outside the United States is determined by allocating and apportioning the third-party interest expense of those

[75] One such exception is that the affiliated group for interest allocation purposes includes section 936 corporations that are excluded from the consolidated group.

[76] Pub. L. No. 108–357, sec. 401 (2004).

domestic members to foreign-source income in an amount equal to the excess (if any) of (1) the worldwide affiliated group's worldwide third-party interest expense multiplied by the ratio which the foreign assets of the worldwide affiliated group bears to the total assets of the worldwide affiliated group,[77] over (2) the third-party interest expense incurred by foreign members of the group to the extent such interest would be allocated to foreign sources if the principles of worldwide interest allocation were applied separately to the foreign members of the group.[78]

For purposes of the new elective rules based on worldwide fungibility, the worldwide affiliated group means all corporations in an affiliated group as well as all controlled foreign corporations that, in the aggregate, either directly or indirectly,[79] would be members of such an affiliated group if section 1504(b)(3) did not apply (i.e., in which at least 80 percent of the vote and value of the stock of such corporations is owned by one or more other corporations included in the affiliated group). Thus, if an affiliated group makes this election, the taxable income from sources outside the United States of domestic group members generally is determined by allocating and apportioning interest expense of the domestic members of the worldwide affiliated group as if all of the interest expense and assets of 80 percent or greater owned domestic corporations (i.e., corporations that are part of the affiliated group, as modified to include insurance companies) and certain controlled foreign corporations were attributable to a single corporation.

The common parent of the domestic affiliated group must make the worldwide affiliated group election. It must be made for the first taxable year beginning after December 31, 2008, in which a worldwide affiliated group exists that includes at least one foreign corporation that meets the requirements for inclusion in a worldwide affiliated group. Once made, the election applies to the common parent and all other members of the worldwide affiliated group for the taxable year for which the election was made and all subsequent taxable years, unless revoked with the consent of the Secretary of the Treasury.

Financial institution group election

Taxpayers are allowed to apply the bank group rules to exclude certain financial institutions from the affiliated group for interest allocation purposes under the worldwide fungibility approach. The rules also provide a one-time "financial institution group" election that expands the bank group. At the election of the common parent of the pre-election worldwide affiliated group, the interest expense allocation rules are applied separately to a subgroup of the worldwide affiliated group that consists of (1) all corporations that are part of the bank group, and (2) all "financial corporations." For this purpose, a corporation is a financial corporation if at least 80 per-

[77] For purposes of determining the assets of the worldwide affiliated group, neither stock in corporations within the group nor indebtedness (including receivables) between members of the group is taken into account.

[78] Although the interest expense of a foreign subsidiary is taken into account for purposes of allocating the interest expense of the domestic members of the electing worldwide affiliated group for foreign tax credit limitation purposes, the interest expense incurred by a foreign subsidiary is not deductible on a U.S. return.

[79] Indirect ownership is determined under the rules of section 958(a)(2) or through applying rules similar to those of section 958(a)(2) to stock owned directly or indirectly by domestic partnerships, trusts, or estates.

cent of its gross income is financial services income (as described in section 904(d)(2)(C)(i) and the regulations thereunder) that is derived from transactions with unrelated persons.[80] For these purposes, items of income or gain from a transaction or series of transactions are disregarded if a principal purpose for the transaction or transactions is to qualify any corporation as a financial corporation.

The common parent of the pre-election worldwide affiliated group must make the election for the first taxable year beginning after December 31, 2008, in which a worldwide affiliated group includes a financial corporation. Once made, the election applies to the financial institution group for the taxable year and all subsequent taxable years. In addition, anti-abuse rules are provided under which certain transfers from one member of a financial institution group to a member of the worldwide affiliated group outside of the financial institution group are treated as reducing the amount of indebtedness of the separate financial institution group. Regulatory authority is provided with respect to the election to provide for the direct allocation of interest expense in circumstances in which such allocation is appropriate to carry out the purposes of these rules, to prevent assets or interest expense from being taken into account more than once, or to address changes in members of any group (through acquisitions or otherwise) treated as affiliated under these rules.

Effective date of worldwide interest allocation under AJCA

The worldwide interest allocation rules under AJCA are effective for taxable years beginning after December 31, 2008.

REASONS FOR CHANGE

The Committee believes that it is appropriate to delay implementation of the worldwide interest allocation rules.

EXPLANATION OF PROVISION

The provision delays the effective date of worldwide interest allocation rules for one year, until taxable years beginning after December 31, 2009. The required dates for making the worldwide affiliated group election and the financial institution group election are changed accordingly.

The provision also provides a special phase-in rule in the case of the first taxable year to which the worldwide interest allocation rules apply. For that year, the amount of the taxpayer's taxable income from foreign sources is reduced by 22 percent of the excess of (i) the amount of its taxable income from foreign sources as calculated using the worldwide interest allocation rules over (ii) the amount of its taxable income from foreign sources as calculated using the present-law interest allocation rules. Any foreign tax credits disallowed by virtue of this reduction in foreign-source taxable income may be carried back or forward under the normal rules for carrybacks and carryforwards of excess foreign tax credits.

EFFECTIVE DATE

The provision is effective on the date of enactment.

[80] See Treas. Reg. sec. 1.904–4(e)(2).

C. MODIFICATIONS TO CORPORATE ESTIMATED TAX PAYMENTS (SEC. 303 OF THE BILL)

PRESENT LAW

In general

In general, corporations are required to make quarterly estimated tax payments of their income tax liability. For a corporation whose taxable year is a calendar year, these estimated tax payments must be made by April 15, June 15, September 15, and December 15.

Tax Increase Prevention and Reconciliation Act of 2005 ("TIPRA")

TIPRA provided the following special rules:

In case of a corporation with assets of at least $1 billion, the payments due in July, August, and September, 20I2, shall be increased to 106.25 percent of the payment otherwise due and the next required payment shall be reduced accordingly.

In case of a corporation with assets of at least $1 billion, the payments due in July, August, and September, 2013, shall be increased to 100.75 percent of the payment otherwise due and the next required payment shall be reduced accordingly.

Subsequent legislation

Several public laws have been enacted since TIPRA which further increase the percentage of payments due under each of the two special rules enacted by TIPRA described above.

REASONS FOR CHANGE

The Committee believes it is appropriate to adjust the corporate estimated tax payments.

EXPLANATION OF PROVISION

The provision makes two modifications to the corporate estimated tax payment rules.

First, in case of a corporation with assets of at least $1 billion, the payments due in July, August, and September, 2013, are increased by 13 percent points of the payment otherwise due and the next required payment shall be reduced accordingly.

Second, in case of a corporation with assets of at least $1 billion, the increased payments due in July, August, and September, 2012 under the special rules in TIPRA and subsequent legislation are repealed. In effect the general rule is applied (i.e., such corporations are required to make quarterly estimated tax payments based on their income tax liability.)

EFFECTIVE DATE

The provision is effective on the date of enactment.

III. VOTES OF THE COMMITTEE

In compliance with clause 3(b) of rule XIII of the Rules of the House of Representatives, the following statements are made concerning the vote of the Committee on Ways and Means in its consideration of H.R. 5720, the "Housing Assistance Tax Act of 2008"

MOTION TO REPORT RECOMMENDATIONS

The Chairman's Amendment in the Nature of a Substitute, as amended, was ordered favorably reported by a roll call vote of 35 yeas and 5 nays (with a quorum being present). The vote was as follows:

Representatives	Yea	Nay	Present	Representative	Yea	Nay	Present
Mr. RANGEL.....	X			Mr. MCCRERY.....	X		
Mr. STARK.....	X			Mr. HERGER.....		X	
Mr. LEVIN.....	X			Mr. CAMP.....	X		
Mr. MCDERMOTT...	X			Mr. RAMSTAD.....	X		
Mr. LEWIS (GA)...	X			Mr. JOHNSON.....	X		
Mr. NEAL.....	X			Mr. ENGLISH.....	X		
Mr. MCNULTY.....	X			Mr. WELLER.....	X		
Mr. TANNER.....	X			Mr. HULSHOF.....	X		
Mr. BECERRA.....	X			Mr. LEWIS (KY)...	X		
Mr. DOGGETT.....	X			Mr. BRADY.....		X	
Mr. POMEROY.....	X			Mr. REYNOLDS....	X		
Ms. TUBBS JONES...	X			Mr. RYAN.....		X	
Mr. THOMPSON.....	X			Mr. CANTOR.....		X	
Mr. LARSON.....				Mr. LINDER.....	X		
Mr. EMANUEL.....	X			Mr. NUNES.....		X	
Mr. BLUMENAUER.	X			Mr. TIBERI.....	X		
Mr. KIND.....	X			Mr. PORTER.....	X		
Mr. PASCRELL	X						
Ms. BERKLEY	X						
Mr. CROWLEY	X						
Mr. VAN HOLLEN	X						
Mr. MEEK	X						
Ms. SCHWARTZ	X						
Mr. DAVIS	X						

IV. BUDGET EFFECTS OF THE BILL

A. Committee Estimate of Budgetary Effects

In compliance with clause 3(d)(2) of rule XIII of the Rules of the House of Representatives, the following statement is made concerning the effects on the budget of the revenue provisions of the bill, H.R. 5720, as reported.

The bill is estimated to have the following effects on Federal budget receipts for fiscal years 2008–2018:

JOINT COMMITTEE ON TAXATION
April 24, 2008
JCX-34-08

ESTIMATED REVENUE EFFECTS OF H.R. 5720,
THE "HOUSING ASSISTANCE TAX ACT OF 2008,"
AS REPORTED BY THE COMMITTEE ON WAYS AND MEANS

Fiscal Years 2008 - 2018

[Millions of Dollars]

Provision	Effective	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018	2008-13	2008-18
I. Benefits for Multi-Family Low-Income Housing														
A. Low-Income Housing Tax Credit														
1. Temporary increase in volume cap for low-income housing tax credit ($0.20 per capita in each of 2008 and 2009)	amfcya 2007	-1	-34	-74	-109	-119	-119	-119	-119	-119	-119	-119	-456	-1,051
2. Determination of credit rate	bpisa DOE	[1]	[1]	-1	-1	-1	-1	-1	-1	-1	-1	-1	-4	-9
3. Modifications to definition of eligible basis	bpisa DOE	[1]	-3	-4	-6	-8	-9	-11	-13	-15	-17	-18	-32	-104
4. Other simplification and reform of low- income housing tax credit	bpisa DOE	[1]	-2	-3	-5	-6	-8	-9	-10	-10	-11	-12	-24	-73
B. Modifications to Tax-Exempt Housing Bond Rules														
1. Volume cap exception for certain refundings of qualified residential projects	rolra DOE	[1]	-1	-4	-8	-14	-25	-41	-63	-89	-116	-147	-52	-509
2. Coordination of certain rules applicable to low-income housing credit and qualified residential rental project exempt facility bonds	biob/a DOE	[1]	[1]	[1]	-1	-1	-1	-1	-1	-1	-2	-2	-3	-10
C. Reforms Related to the Low-Income Housing Credit and Tax-Exempt Housing Bonds														
1. Hold harmless for reductions in area median gross income	pbacy 2006	-1	-2	-3	-4	-5	-7	-8	-9	-10	-12	-12	-22	-73
2. Exception from the annual recertification requirement for projects which are entirely low-income use	yea DOE	[1]	[1]	[1]	[1]	[1]	[1]	[1]	[1]	[1]	[1]	[1]	[1]	-1
Total of Benefits for Multi-Family Low-Income Housing		**-2**	**-42**	**-89**	**-134**	**-154**	**-170**	**-190**	**-216**	**-245**	**-278**	**-311**	**-593**	**-1,830**

Provision	Effective	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018	2008-13	2008-18
II. Benefits for Single Family Housing														
A. Refundable First-Time Homebuyer Credit ($7,500)	po/a 4/9/08	-629	-7862	-2585	1147	1421	1261	1101	941	721	354	138	-7,247	-3,991
B. Additional Standard Deduction for State and Local Property Taxes (cap at $350 ($700 for joint returns)) (sunset 1/1/09)	tyba 12/31/07	-58	-1,111	---	---	---	---	---	---	---	---	---	-1,169	-1,169
Total of Benefits for Single Family Housing		**-687**	**-8,973**	**-2,585**	**1,147**	**1,421**	**1,261**	**1,101**	**941**	**721**	**354**	**138**	**-8,416**	**-5,160**
III. General Housing Provisions														
A. Modifications to Qualified Private Activity Bond Rules for Housing ($10 billion volume cap increase)	bia DOE	-22	-90	-146	-154	-153	-148	-141	-135	-129	-125	-125	-712	-1,368
B. Repeal of Alternative Minimum Tax Limitations on Tax-Exempt Housing Bonds, Low-Income Housing Credit, and Rehabilitation Credit [2]	[3]	-68	-137	-206	-207	-206	-203	-203	-204	-206	-208	-210	-1,026	-2,057
C. Bonds Guaranteed by Federal Home Loan Banks Eligible for Treatment as Tax-Exempt Bonds [4]	[5]	[1]	49	-81	-13	-21	-15	-9	-9	-9	-9	-9	-81	-126
D. Modification of Rules Pertaining to FIRPTA Nonforeign Affidavits	doUSrpia DOE	[1]	-1	-2	-2	-2	-2	-2	-2	-2	-2	-3	-9	-20
E. Modify Rehabilitation Credit Tax-Exempt Use Safe Harbor	ea 12/31/07	-10	-16	-22	-23	-24	-25	-26	-27	-29	-30	-31	-121	-265
Total of General Housing Provisions		**-100**	**-195**	**-457**	**-399**	**-406**	**-393**	**-381**	**-377**	**-375**	**-374**	**-378**	**-1,949**	**-3,836**
IV. Real Estate Investment Trust ("REIT") Modifications														
A. Foreign Currency and Other Qualified Activities	[6]	[1]	[1]	[1]	-1	-1	-2	-2	-3	-3	-3	-4	-5	-20
B. Conforming Taxable REIT Subsidiary Asset Test	tyba DOE	[1]	-1	-2	-4	-7	-9	-11	-13	-14	-16	-17	-23	-93
C. Holding Period Under Safe Harbor	sma DOE	4	36	19	6	2	[1]	-1	-2	-3	-3	-5	67	53
D. Determining Value of Sales Under Safe Harbor	sma DOE	[1]	-1	-3	-6	-8	-11	-13	-16	-18	-19	-21	-28	-115
E. Conformity for Health Care Facilities	tyba DOE	[1]	-1	-3	-7	-10	-14	-17	-19	-22	-24	-26	-35	-144
Total of Real Estate Investment Trust Modifications [7]		**4**	**39**	**14**	**-12**	**-25**	**-35**	**-44**	**-54**	**-61**	**-67**	**-72**	**-16**	**-314**

Provision	Effective	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018	2008-13	2008-18
V. Revenue Provisions														
A. Broker Reporting of Customer's Basis in Securities Transactions	generally 1/1/10 [8]	---	---	---	34	214	465	794	1,286	1,611	1,737	1,840	713	7,980
B. Delay for One Year Implementation of Worldwide Interest Allocation and Apply 22% Limitation on the First Year of Worldwide Interest Allocation	DOE	---	1,029	1,774	375	---	---	---	---	---	---	---	3,178	3,178
C. Modify Timing for Corporate Estimated Tax Payment [9]	DOE	---	---	---	---	-9,934	17,296	-7,362	---	---	---	---	7,362	---
Total of Revenue Provisions		**---**	**1,029**	**1,774**	**409**	**-9,720**	**17,761**	**-6,568**	**1,286**	**1,611**	**1,737**	**1,840**	**11,253**	**11,158**
NET TOTAL		**-785**	**-8,142**	**-1,343**	**1,011**	**-8,884**	**18,424**	**-6,082**	**1,580**	**1,651**	**1,372**	**1,217**	**279**	**18**

Joint Committee on Taxation

NOTE: Details may not add to totals due to rounding. Date of enactment is assumed to be June 1, 2008.

Legend for "Effective" column:

amfcya = allocations made for calendar years after
bia = bonds issued after
biob/a = bonds issued on, before or after
bpisa = buildings placed in service after
DOE = date of enactment
doUSrpia = dispositions of U.S. real property interests after
ea = expenditures after
pbacy = plans beginning after calendar year
po/a = purchases on or after
rolra = repayments of loans received after
sma = sales made after
tyba = taxable years beginning after
yea = years ending after

[1] Loss of less than $500,000.

[2] Estimate includes interaction with item III.F.

[3] Effective date applies to low income housing credits attributable to buildings placed in service after December 31, 2007, to prehistoric rehabilitation expenditures after 12/31/07 and bonds issued after date of enactment.

[4] The estimate includes effects estimated by the Congressional Budget Office of revenues and outlays related to the Affordable Housing Program of the Federal Home Loan Banks and outlays of the Department of the Treasury for interest on bonds issued by the Resolution Funding Corporation.

[5] Effective for guarantees made in connection with bonds issued after date of the enactment and before December 31, 2010 (or a renewal or extension of a guarantee so made).

[6] Generally effective for taxable years beginning after the date of enactment. Under section 201(a), effective for gains and items of income recognized after the date of enactment. Under section 201(c), effective for transactions entered into after the date of enactment. Section 201(d) applies after the date of enactment. Under section 203(a), effective for gains recognized after the date of enactment. Under section 203(b), effective for gains and deductions recognized after the date of enactment.

[7] The revenue estimates for each provision and for Title IV. are measured against present law. The sum of provision estimates for each year do not add to the total for the year because of interactions among the provisions.

[8] The effective date for mutual funds is January 1, 2011.

[9] Reduce to 100 percent the required corporate estimated tax payments factor for corporations with assets of at least $1 billion for payments due in July, August, and September 2012; increase by 13 percentage points such payments due in July, August, and September 2013.

B. Statement Regarding New Budget Authority and Tax Expenditures Budget Authority

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

C. Cost Estimate Prepared by the Congressional Budget Office

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

U.S. Congress,
Congressional Budget Office,
Washington, DC, April 24, 2008.

Hon. Charles B. Rangel,
Chairman, Committee on Ways and Means,
House of Representatives, Washington, DC.

Dear Mr. Chairman: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 5720, the Housing Assistance Tax Act of 2008.

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

Sincerely,

Robert A. Sunshine
(For Peter R. Orszag, Director).

Enclosure.

H.R. 5720—Housing Assistance Tax Act of 2008

Summary: H.R. 5720 would amend tax law relating to a variety of housing matters, such as the low-income housing credit, tax-exempt housing bonds, and refundable credits for first-time home buyers. The Joint Committee on Taxation (JCT) and the Congressional Budget Office estimate that enacting H.R. 5720 would decrease revenues by $0.6 billion in 2008 and increase revenues by $3.9 billion over the 2008–2018 period. CBO and JCT estimate that enacting the bill would increase direct spending by $3.9 billion over the 2008–2018 period. On net, the bill would reduce budget deficits (or increase surpluses) by a total of $279 million over the 2008–2013 period and $18 million over the 2008–2018 period.

JCT has reviewed the bill and determined that it contains no intergovernmental mandates as defined in the Unfunded Mandates Reform Act (UMRA). JCT has also determined that the bill contains two private-sector mandates: the adjustment of rules governing the reporting of information by brokers and the delay in implementing worldwide allocation of interest expense until 2010. JCT estimates that the costs required to comply with the mandates would exceed the annual threshold established by UMRA ($136 million in 2008, adjusted annually for inflation) in each of the next five years (2009 through 2013).

Estimated cost to the Federal Government: The estimated budgetary impact of H.R. 5720 is shown in the following table. The costs of this legislation fall within budget functions 600 (income security) and 900 (net interest).

	By fiscal year, in millions of dollars—												
	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018	2008–2013	2008–2018
CHANGES IN REVENUES													
Refundable Credit for First-Time Homebuyers ..	−419	−5,241	−1,636	1,147	1,421	1,261	1,101	941	721	354	138	−3,467	−211
Repeal Certain Alternative Minimum Tax Limitations	−68	−137	−206	−207	−206	−203	−203	−204	−206	−208	−210	−1,026	−2,057
Rules for Mortgage Bonds	−22	−90	−146	−154	−153	−148	−141	−135	−129	−125	−125	−712	−1,368
Increased Cap for LIHTC	−1	−34	−74	−109	−119	−119	−119	−119	−119	−119	−119	−456	−1,051
Brokers' Reporting Rules	0	0	0	34	214	465	794	1,286	1,611	1,737	1,840	713	7,980
Delay in Worldwide Interest Allocation Rules ...	0	1,029	1,774	375	0	0	0	0	0	0	0	3,178	3,178
Corporate Estimated Tax Payment Due in 2013	0	0	0	0	−9,934	17,296	−7,362	0	0	0	0	7,362	0
Other Provisions	−65	−1,100	−23	−15	−73	−123	−152	−189	−227	−267	−307	−1,403	−2,543
Total Changes in Revenues	−575	−5,573	−311	1,071	−8,850	18,429	−6,082	1,580	1,651	1,372	1,217	4,189	3,928
CHANGES IN DIRECT SPENDING													
Refundable Credit for First-Time Homebuyers:													
Estimated Budget Authority	210	2,621	949	0	0	0	0	0	0	0	0	3,780	3,780
Estimated Outlays	210	2,621	949	0	0	0	0	0	0	0	0	3,780	3,780
Treatment of Guaranteed Bonds:													
Estimated Budget Authority	0	−52	91	69	22	0	0	0	0	0	0	130	130
Estimated Outlays	0	−52	83	60	34	5	0	0	0	0	0	130	130
Total Changes in Direct Spending:													
Estimated Budget Authority	210	2,569	1,040	69	22	0	0	0	0	0	0	3,910	3,910
Estimated Outlays	210	2,569	1,032	60	34	5	0	0	0	0	0	3,910	3,910
NET CHANGE IN THE BUDGET DEFICIT OR SURPLUS													
Net Change in the Budget Deficit or Surplus [1]	−785	−8,142	−1,343	1,011	−8,884	18,424	−6,082	1,580	1,651	1,372	1,217	279	18

Sources: Congressional Budget Office and Joint Committee on Taxation.
Note: LIHTC = low-income housing tax credit.
[1] Negative numbers indicate increases in deficits (or decreases in surpluses); positive numbers indicate decreases in deficits (or increases in surpluses).

Basis of the estimate: JCT estimated the effects of H.R. 5720 on revenues, with the exception of one provision. CBO estimated effects on direct spending and revenues from the provision that would modify the treatment of certain bonds guaranteed by the Federal Home Loan Banks. For this estimate, JCT and CBO assume the bill will be enacted by June 1, 2008.

Revenues

The effects on revenues would be attributable to a number of provisions. This section describes several of those provisions that have significant effects.

Refundable Credit for Certain First-Time Homebuyers. For certain taxpayers who have not had ownership interest in a principal residence within the past three years, H.R. 5720 would allow such persons, upon purchasing a home, to claim a refundable tax credit of up to $7,500. The home must be purchased between April 8, 2008, and April 1, 2009, and the amount of the credit would be paid back in higher tax liability over a 15-year period beginning two years after the home purchase. JCT estimates that enacting this provision would decrease revenues by $3.5 billion over the 2008–2013 period and by $211 million over the 2008–2018 period. The provision also would affect direct spending (see the "Direct Spending" section).

Repeal of Certain Alternative Minimum Tax Limitations. Under current law, the low-income housing credit and the rehabilitation credit, which provide incentives for investment in low-income housing and reconstruction of certain types of buildings, may not be claimed against a taxpayer's alternative minimum tax (AMT) liability. H.R. 5720 would allow those credits to offset the AMT. In addition, the bill would exclude interest on tax-exempt housing bonds from the AMT. JCT estimates that this provision would reduce revenues by $2.1 billion over the 2008–2018 period.

Mortgage Revenue Bonds and Multifamily Housing Bonds. The bill would authorize state housing authorities to issue a total of $10 billion in additional private-activity bonds, to be used as mortgage revenue bonds and multifamily bonds (which finance multifamily housing projects). Those bonds, which would have to be issued by the end of 2010, could be used to refinance subprime mortgage loans. Additionally, the interest earned on such mortgage revenue bonds would be exempt from the alternative minimum tax. JCT estimates that enacting those provisions would decrease revenues by $1.4 billion over the 2008–2018 period.

Increase Volume Cap for Low-Income Housing Credit. Certain owners of low-income housing projects may claim a credit against their taxable income if they receive a low-income housing credit allocation from their state or local housing credit agency. Each state is provided with an annual ceiling on its authority to allocate such credits. Under the bill, the state ceilings would be raised for calendar years 2008 and 2009. JCT estimates that this provision would decrease revenues by $1.1 billion over the 2008–2018 period.

Broker Reporting of Customers' Basis in Securities Transactions. The bill would adjust the rules and requirements imposed on brokers for the reporting of their customers' adjusted basis in certain financial securities. A customer's basis in a security, such as stock in a corporation, is a figure used to calculate the gain or loss on

the sale of a security. For many securities, the adjusted basis is the cost incurred to acquire the security. Under H.R. 5720, brokers involved in the sale of certain types of securities would be required to file information returns with the IRS that include their customers' adjusted basis in the applicable security. This additional information reporting would be necessary for certain types of securities generally acquired after December 31, 2009. JCT estimates that enacting these provisions would increase revenues by $8.0 billion over the 2008–2018 period.

Delay the Application of Worldwide Interest Allocation. The bill would delay until 2010 the effective date of a provision enacted in the American Jobs Creation Act of 2004 that, starting in 2009, allows businesses to use an alternative method for allocating their interest expenses between the United States and foreign sources. Additionally, the bill would require a phase-in of the alternative allocation in the first tax year in which the new rules apply. JCT estimates that the changes would increase revenues by $3.2 billion over the 2009–2011 period.

Other Provisions. H.R. 5720 would shift revenues out of 2012 and 2014 and into 2013 by adjusting the portion of corporate estimated tax payments due in July through September of 2012 and 2013. JCT estimates that this change would reduce revenues by $9.9 billion in 2012, increase them by $17.3 billion in 2013, and reduce them by $7.4 billion in 2014. The bill would also modify the tax rules applicable to real estate investment trusts. JCT estimates that this and other provisions would decrease revenues by $2.5 billion over the 2008–2018 period.

Direct spending

Refundable Credit for First-Time Homebuyers. As discussed above, the bill would allow certain persons, upon purchasing a home, to receive a refundable tax credit for up to $7,500. JCT estimates that the provision would increase outlays from the refundable credit by $3.8 billion over the 2008–2010 period.

Modify Treatment of Certain Guaranteed Bonds. Under the bill, interest on certain bonds guaranteed by Federal Home Loan Banks (FHLBs) before January 1, 2011, would be excluded from gross income for purposes of federal income taxes. CBO estimates that enacting this provision would increase direct spending by $130 million over the 2009–2013 period.

CBO expects that authorizing the FHLBs to guarantee certain tax-exempt debt would increase their profitability by allowing them to provide new services on favorable terms. Any additional income earned by the FHLBs would be subject to statutory fees that are spent for an Affordable Housing Program (AHP) and for a portion of the interest due on bonds issued by the Resolution Funding Corporation (REFCORP). Based on JCT's projections of that additional income, CBO estimates that the FHLBs would have to set aside $128 million for the AHP; that amount would appear as both a revenue and an outlay on the federal budget over the 2009–2013 period. (The FHLBs are government sponsored enterprises, not government agencies; most of their activities are not reflected in the federal budget.)

Changes in the FHLBs' payments on REFCORP bonds affect direct spending because any amounts not paid by the banks are paid

by the U.S. Treasury. The effect on direct spending for the REFCORP bonds is projected to be small—$2 million over the five-year period—because CBO's baseline projections anticipate that the FHLBs will have satisfied their interest obligation by the end of 2010, so any additional payments in 2009 (which would reduce the amount paid by the Treasury by an estimated $55 million) would be offset by lower contributions in 2010 (which would increase Treasury payments by $57 million).

Intergovernmental and private-sector impact: JCT has reviewed the bill and determined that it contains no intergovernmental mandates as defined in UMRA. JCT has also determined that the bill contains two private-sector mandates as defined in UMRA. The bill would require that brokers report their customers' basis in securities transactions, and it would also delay and limit the implementation of worldwide interest allocation. JCT estimates the costs required to comply with the mandates would exceed the annual threshold established by UMRA ($136 million in 2008, adjusted annually for inflation) in each of the next five years.

Estimate prepared by: Federal Revenues: Zachary Epstein; Federal Spending: Kathleen Gramp.

Estimate approved by: G. Thomas Woodward, Assistant Director for Tax Analysis; Peter H. Fontaine, Assistant Director for Budget Analysis.

D. Macroeconomic Impact Analysis

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

E. PAY-GO Rule

In compliance with clause 10 of rule XXI of the Rules of the House of Representatives, the following statement is made concerning the effects on the budget of title X of the bill, H.R. 5720, as reported: the provisions of the bill affecting revenues have the net effect of not increasing the deficit or reducing the surplus for either: (1) the period comprising the current fiscal year and the five fiscal years beginning with the fiscal year that ends in the following calendar year; and (2) the period comprising the current fiscal year and the ten fiscal years beginning with the fiscal year that ends in the following calendar year.

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

A. Committee Oversight Findings and Recommendations

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

B. Statement of General Performance Goals and Objectives

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

C. Constitutional Authority Statement

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

Information Relating to Unfunded Mandates

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

The Committee has determined that the following tax provisions of the reported bill contain Federal private sector mandates within the meaning of Public Law No. 104–4, the Unfunded Mandates Reform Act of 1995: (1) broker reporting of customers' basis in securities transactions (sec. 301 of the bill); and (2) delay for one year implementation of worldwide interest allocation and apply 22% limitation on the first year of worldwide interest allocation (sec. 302 of the bill). The costs required to comply with each Federal private sector mandate generally are no greater than the aggregate estimated budget effects of the provision.

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

D. Applicability of House Rule XXI 5(b)

Clause 5 of rule XXI 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 provisions of the bill, and states that the provisions of the bill do not involve any Federal income tax rate increases within the meaning of the rule.

E. Tax Complexity Analysis

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

amends the Internal Revenue Code and has widespread applicability to individuals or small businesses.

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

F. LIMITED TAX BENEFITS

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

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

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

INTERNAL REVENUE CODE OF 1986

Subtitle A—Income Taxes

* * * * * * *

CHAPTER 1—NORMAL TAXES AND SURTAXES

* * * * * * *

Subchapter A—Determination of Tax Liability

* * * * * * *

PART IV—CREDITS AGAINST TAX

* * * * * * *

Subpart A—Nonrefundable Personal Credits

* * * * * * *

SEC. 26. LIMITATION BASED ON TAX LIABILITY; DEFINITION OF TAX LIABILITY.

(a) * * *

(b) REGULAR TAX LIABILITY.—For purposes of this part—

(1) * * *

(2) EXCEPTION FOR CERTAIN TAXES.—For purposes of paragraph (1), any tax imposed by any of the following provisions shall not be treated as tax imposed by this chapter:

(A) * * *

* * * * * * *

(U) section 223(f)(4) (relating to additional tax on health savings account distributions not used for qualified medical expenses), [and]

(V) subsections (a)(1)(B)(i) and (b)(4)(A) of section 409A (relating to interest and additional tax with respect to certain deferred compensation)[.], *and*

(W) section 36(f) (relating to recapture of homebuyer credit).

* * * * * * *

Subpart C—Refundable Credits

Sec. 31. Tax withheld on wages.

* * * * * * *

Sec. 36. First-time homebuyer credit.
Sec. [36] *37.* Overpayments of tax.

* * * * * * *

SEC. 36. FIRST-TIME HOMEBUYER CREDIT.

(a) ALLOWANCE OF CREDIT.—In the case of an individual who is a first-time homebuyer of a principal residence in the United States during a taxable year, there shall be allowed as a credit against the tax imposed by this subtitle for such taxable year an amount equal to 10 percent of the purchase price of the residence.

(b) LIMITATIONS.—

(1) DOLLAR LIMITATION.—

(A) IN GENERAL.—Except as otherwise provided in this paragraph, the credit allowed under subsection (a) shall not exceed $7,500.

(B) MARRIED INDIVIDUALS FILING SEPARATELY.—In the case of a married individual filing a separate return, subparagraph (A) shall be applied by substituting "$3,750" for "$7,500".

(C) OTHER INDIVIDUALS.—If two or more individuals who are not married purchase a principal residence, the amount of the credit allowed under subsection (a) shall be allocated among such individuals in such manner as the Secretary may prescribe, except that the total amount of the credits allowed to all such individuals shall not exceed $7,500.

(2) LIMITATION BASED ON MODIFIED ADJUSTED GROSS INCOME.—

(A) IN GENERAL.—The amount allowable as a credit under subsection (a) (determined without regard to this paragraph) for the taxable year shall be reduced (but not below zero) by the amount which bears the same ratio to the amount which is so allowable as—

(i) the excess (if any) of—

(I) the taxpayer's modified adjusted gross income for such taxable year, over

(II) $70,000 ($140,000 in the case of a joint return), bears to

(ii) $20,000.

(B) MODIFIED ADJUSTED GROSS INCOME.—For purposes of subparagraph (A), the term "modified adjusted gross income" means the adjusted gross income of the taxpayer for the taxable year increased by any amount excluded from gross income under section 911, 931, or 933.

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

(1) FIRST-TIME HOMEBUYER.—The term "first-time homebuyer" means any individual if such individual (and if married, such individual's spouse) had no present ownership interest in a principal residence during the 3-year period ending on the date of the purchase of the principal residence to which this section applies.

(2) PRINCIPAL RESIDENCE.—The term "principal residence" has the same meaning as when used in section 121.

(3) PURCHASE.—

(A) IN GENERAL.—The term "purchase" means any acquisition, but only if—

(i) the property is not acquired from a person related to the person acquiring it, and

(ii) 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).

(B) CONSTRUCTION.—A residence which is constructed by the taxpayer shall be treated as purchased by the taxpayer on the date the taxpayer first occupies such residence.

(4) PURCHASE PRICE.—The term "purchase price" means the adjusted basis of the principal residence on the date such residence is purchased.

(5) RELATED PERSONS.—A person shall be treated as related to another person if the relationship between such persons 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).

(d) EXCEPTIONS.—No credit under subsection (a) shall be allowed to any taxpayer for any taxable year with respect to the purchase of a residence if—

(1) a credit under section 1400C (relating to first-time homebuyer in the District of Columbia) is allowable to the taxpayer (or the taxpayer's spouse) for such taxable year or any prior taxable year,

(2) the residence is financed by the proceeds of a qualified mortgage issue the interest on which is exempt from tax under section 103,

(3) the taxpayer is a nonresident alien, or

(4) the taxpayer disposes of such residence (or such residence ceases to be the principal residence of the taxpayer (and, if married, the taxpayer's spouse)) before the close of such taxable year.

(e) REPORTING.—If the Secretary requires information reporting under section 6045 by a person described in subsection (e)(2) thereof to verify the eligibility of taxpayers for the credit allowable by this section, the exception provided by section 6045(e) shall not apply.

(f) RECAPTURE OF CREDIT.—

(1) IN GENERAL.—Except as otherwise provided in this subsection, if a credit under subsection (a) is allowed to a taxpayer, the tax imposed by this chapter shall be increased by 6⅔ percent of the amount of such credit for each taxable year in the recapture period.

(2) ACCELERATION OF RECAPTURE.—If a taxpayer disposes of the principal residence with respect to which a credit was allowed under subsection (a) (or such residence ceases to be the principal residence of the taxpayer (and, if married, the taxpayer's spouse)) before the end of the recapture period—

(A) the tax imposed by this chapter for the taxable year of such disposition or cessation, shall be increased by the excess of the amount of the credit allowed over the amounts of tax imposed by paragraph (1) for preceding taxable years, and

(B) paragraph (1) shall not apply with respect to such credit for such taxable year or any subsequent taxable year.

(3) LIMITATION BASED ON GAIN.—In the case of the sale of the principal residence to a person who is not related to the taxpayer, the increase in tax determined under paragraph (2) shall not exceed the amount of gain (if any) on such sale. Solely for purposes of the preceding sentence, the adjusted basis of such residence shall be reduced by the amount of the credit allowed under subsection (a) to the extent not previously recaptured under paragraph (1).

(4) EXCEPTIONS.—

(A) DEATH OF TAXPAYER.—Paragraphs (1) and (2) shall not apply to any taxable year ending after the date of the taxpayer's death.

(B) INVOLUNTARY CONVERSION.—Paragraph (2) shall not apply in the case of a residence which is compulsorily or involuntarily converted (within the meaning of section 1033(a)) if the taxpayer acquires a new principal residence during the 2-year period beginning on the date of the disposition or cessation referred to in paragraph (2). Paragraph (2) shall apply to such new principal residence during the recapture period in the same manner as if such new principal residence were the converted residence.

(C) TRANSFERS BETWEEN SPOUSES OR INCIDENT TO DIVORCE.—In the case of a transfer of a residence to which section 1041(a) applies—

(i) paragraph (2) shall not apply to such transfer, and

(ii) in the case of taxable years ending after such transfer, paragraphs (1) and (2) shall apply to the transferee in the same manner as if such transferee were the transferor (and shall not apply to the transferor).

(5) JOINT RETURNS.—In the case of a credit allowed under subsection (a) with respect to a joint return, half of such credit

shall be treated as having been allowed to each individual filing such return for purposes of this subsection.

(6) RECAPTURE PERIOD.—For purposes of this subsection, the term "recapture period" means the 15 taxable years beginning with the second taxable year following the taxable year in which the purchase of the principal residence for which a credit is allowed under subsection (a) was made.

(g) APPLICATION OF SECTION.—This section shall only apply to a principal residence purchased by the taxpayer on or after April 9, 2008, and before April 1, 2009.

SEC. [36.] *37.* OVERPAYMENTS OF TAX.

For credit against the tax imposed by this subtitle for overpayments of tax, see section 6401.

* * * * * * *

Subpart D—Business Related Credits

* * * * * * *

SEC. 38. GENERAL BUSINESS CREDIT.

(a) * * *

* * * * * * *

(c) LIMITATION BASED ON AMOUNT OF TAX.—

(1) * * *

* * * * * * *

(4) SPECIAL RULES FOR SPECIFIED CREDITS.—

(A) * * *

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

(i) * * *

(ii) the credit determined under section 42 to the extent attributable to buildings placed in service after December 31, 2007,

[(ii)**]** *(iii)* the credit determined under section 45 to the extent that such credit is attributable to electricity or refined coal produced—

(I) * * *

* * * * * * *

[(iii)**]** *(iv)* the credit determined under section 45B, **[**and**]**

(v) the credit determined under section 47 to the extent attributable to qualified rehabilitation expenditures properly taken into account for periods after December 31, 2007, and

[(iv)**]** *(vi)* the credit determined under section 51.

* * * * * * *

SEC. 42. LOW-INCOME HOUSING CREDIT.

(a) * * *

[(b) APPLICABLE PERCENTAGE: 70 PERCENT PRESENT VALUE CREDIT FOR CERTAIN NEW BUILDINGS; 30 PERCENT PRESENT VALUE CREDIT FOR CERTAIN OTHER BUILDINGS.—For purposes of this section—

[(1) BUILDING PLACED IN SERVICE DURING 1987.—In the case of any qualified low-income building placed in service by the taxpayer during 1987, the term "applicable percentage" means—

[(A) 9 percent for new buildings which are not federally subsidized for the taxable year, or

[(B) 4 percent for—

[(i) new buildings which are federally subsidized for the taxable year, and

[(ii) existing buildings.

[(2) BUILDINGS PLACED IN SERVICE AFTER 1987.—

[(A) IN GENERAL.—In the case of any qualified low-income building placed in service by the taxpayer after 1987, the term "applicable percentage" means the appropriate percentage prescribed by the Secretary for the earlier of—

[(i) the month in which such building is placed in service, or

[(ii) at the election of the taxpayer—

[(I) the month in which the taxpayer and the housing credit agency enter into an agreement with respect to such building (which is binding on such agency, the taxpayer, and all successors in interest) as to the housing credit dollar amount to be allocated to such building, or

[(II) in the case of any building to which subsection (h)(4)(B) applies, the month in which the tax-exempt obligations are issued.

A month may be elected under clause (ii) only if the election is made not later than the 5th day after the close of such month. Such an election, once made, shall be irrevocable.

[(B) METHOD OF PRESCRIBING PERCENTAGES.—The percentages prescribed by the Secretary for any month shall be percentages which will yield over a 10-year period amounts of credit under subsection (a) which have a present value equal to—

[(i) 70 percent of the qualified basis of a building described in paragraph (1)(A), and

[(ii) 30 percent of the qualified basis of a building described in paragraph (1)(B).

[(C) METHOD OF DISCOUNTING.—The present value under subparagraph (B) shall be determined—

[(i) as of the last day of the 1st year of the 10-year period referred to in subparagraph (B),

[(ii) by using a discount rate equal to 72 percent of the average of the annual Federal mid-term rate and the annual Federal long-term rate applicable under section 1274(d)(1) to the month applicable under clause (i) or (ii) of subparagraph (A) and compounded annually, and

[(iii) by assuming that the credit allowable under this section for any year is received on the last day of such year.

[(3) CROSS REFERENCES.—

[(A) For treatment of certain rehabilitation expenditures as separate new buildings, see subsection (e).

[(B) For determination of applicable percentage for increases in qualified basis after the 1st year of the credit period, see subsection (f)(3).

[(C) For authority of housing credit agency to limit applicable percentage and qualified basis which may be taken into account under this section with respect to any building, see subsection (h)(7).]

(b) APPLICABLE PERCENTAGE.—For purposes of this section—

(1) IN GENERAL.—The term "applicable percentage" means, with respect to any building, the appropriate percentage prescribed by the Secretary for the earlier of—

(A) the month in which such building is placed in service, or

(B) at the election of the taxpayer—

(i) the month in which the taxpayer and the housing credit agency enter into an agreement with respect to such building (which is binding on such agency, the taxpayer, and all successors in interest) as to the housing credit dollar amount to be allocated to such building, or

(ii) in the case of any building to which subsection (h)(4)(B) applies, the month in which the tax-exempt obligations are issued.

A month may be elected under clause (ii) only if the election is made not later than the 5th day after the close of such month. Such an election, once made, shall be irrevocable.

(2) METHOD OF PRESCRIBING PERCENTAGES.—

(A) IN GENERAL.—For purposes of paragraph (1), the percentages prescribed by the Secretary for any month shall be—

(i) in the case of any building which is not federally subsidized for the taxable year, the greater of—

(I) the average percentage determined under subclause (II) for months in the preceding calendar year, or

(II) the percentage which will yield over a 10-year period amounts of credit under subsection (a) which have a present value equal to 70 percent of the qualified basis of such building, and

(ii) in the case of any other building, the percentage which will yield over a 10-year period amounts of credit under subsection (a) which have a present value equal to 30 percent of the qualified basis of such building.

(B) METHOD OF DISCOUNTING.—The present value under subparagraph (A) shall be determined—

(i) as of the last day of the 1st year of the 10-year period referred to in subparagraph (A),

(ii) by using a discount rate equal to 72 percent of the average of the annual Federal mid-term rate and the annual Federal long-term rate applicable under section 1274(d)(1) to the month applicable under subparagraph (A) and compounded annually, and

(iii) by assuming that the credit allowable under this section for any year is received on the last day of such year.

(3) CROSS REFERENCES.—

(A) For treatment of certain rehabilitation expenditures as separate buildings, see subsection (e).

(B) For determination of applicable percentage for increases in qualified basis after the 1st year of the credit period, see subsection (f)(3).

(C) For authority of housing credit agency to limit applicable percentage and qualified basis which may be taken into account under this section with respect to any building, see subsection (h)(7).

(c) QUALIFIED BASIS; QUALIFIED LOW-INCOME BUILDING.—For purposes of this section—

(1) * * *

(2) QUALIFIED LOW-INCOME BUILDING.—The term "qualified low-income building" means any building—

(A) which is part of a qualified low-income housing project at all times during the period—

(i) beginning on the 1st day in the compliance period on which such building is part of such a project, and

(ii) ending on the last day of the compliance period with respect to such building, and

(B) to which the amendments made by section 201(a) of the Tax Reform Act of 1986 apply.

[Such term does not include any building with respect to which moderate rehabilitation assistance is provided, at any time during the compliance period, under section 8(e)(2) 1 of the United States Housing Act of 1937 (other than assistance under the McKinney-Vento Homeless Assistance Act (as in effect on the date of the enactment of this sentence)).**]**

* * * * * * *

(d) ELIGIBLE BASIS.—For purposes of this section—

(1) * * *

(2) EXISTING BUILDINGS.—

(A) * * *

(B) REQUIREMENTS.—A building meets the requirements of this subparagraph if—

(i) * * *

(ii) there is a period of at least 10 years between the date of its acquisition by the taxpayer and **[**the later of—

[(I) the date the building was last placed in service, or

[(II) the date of the most recent nonqualified substantial improvement of the building,**]** *the date the building was last placed in service,*

* * * * * * *

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

[(i) NONQUALIFIED SUBSTANTIAL IMPROVEMENT.—For purposes of subparagraph (B)(ii)—

[(I) IN GENERAL.—The term "nonqualified substantial improvement" means any substantial im-

provement if section 167(k) (as in effect on the day before the date of the enactment of the Revenue Reconciliation Act of 1990) was elected with respect to such improvement or section 168 (as in effect on the day before the date of the enactment of the Tax Reform Act of 1986) applied to such improvement.

[(II) DATE OF SUBSTANTIAL IMPROVEMENT.—The date of a substantial improvement is the last day of the 24-month period referred to in subclause (III).

[(III) SUBSTANTIAL IMPROVEMENT.—The term "substantial improvement" means the improvements added to capital account with respect to the building during any 24-month period, but only if the sum of the amounts added to such account during such period equals or exceeds 25 percent of the adjusted basis of the building (determined without regard to paragraphs (2) and (3) of section 1016(a)) as of the 1st day of such period.]

[(ii)] *(i)* SPECIAL RULES FOR CERTAIN TRANSFERS.—For purposes of determining under subparagraph (B)(ii) when a building was last placed in service, there shall not be taken into account any placement in service—

(I) * * *

* * * * * * *

[(iii) RELATED PERSON, ETC.—

[(I) APPLICATION OF SECTION 179.—For purposes of subparagraph (B)(i), section 179(d) shall be applied by substituting "10 percent" for "50 percent" in section 2267(b) and 707(b) and in section 179(d)(7).]

[(II)] *(ii)* RELATED PERSON.—For purposes of subparagraph (B)(iii), a person (hereinafter in this subclause referred to as the "related person") is related to any person if the related person bears a relationship to such person specified in section 267(b) or 707(b)(1), or the related person and such person are engaged in trades or businesses under common control (within the meaning of subsections (a) and (b) of section 52). [For purposes of the preceding sentence, in applying section 267(b) or 707(b)(1), "10 percent" shall be substituted for "50 percent".]

* * * * * * *

(4) SPECIAL RULES RELATING TO DETERMINATION OF ADJUSTED BASIS.—For purposes of this subsection—

(A) * * *

* * * * * * *

(C) INCLUSION OF BASIS OF PROPERTY USED TO PROVIDE SERVICES FOR CERTAIN NONTENANTS.—

(i) * * *

(ii) LIMITATION.—The increase in the adjusted basis of any building which is taken into account by reason of clause (i) shall not exceed [10 percent of the eligible basis of the qualified low-income housing project of which it is a part. For purposes of] *the sum of—*

(I) 15 percent of so much of the eligible basis of the qualified low-income housing project of which it is a part as does not exceed $5,000,000, plus

(II) 10 percent of so much of the eligible basis of such project as is not taken into account under subclause (I).

For purposes of the preceding sentence, all community service facilities which are part of the same qualified low-income housing project shall be treated as one facility.

* * * * * * *

(5) SPECIAL RULES FOR DETERMINING ELIGIBLE BASIS.—

[(A) ELIGIBLE BASIS REDUCED BY FEDERAL GRANTS.—If, during any taxable year of the compliance period, a grant is made with respect to any building or the operation thereof and any portion of such grant is funded with Federal funds (whether or not includible in gross income), the eligible basis of such building for such taxable year and all succeeding taxable years shall be reduced by the portion of such grant which is so funded.

[(B) ELIGIBLE BASIS NOT TO INCLUDE EXPENDITURES WHERE SECTION 167(K) SELECTED.—The eligible basis of any building shall not include any portion of its adjusted basis which is attributable to amounts with respect to which an election is made under section 167(k) (as in effect on the day before the date of the enactment of the Revenue Reconciliation Act of 1990).]

(A) FEDERAL GRANTS NOT TAKEN INTO ACCOUNT IN DETERMINING ELIGIBLE BASIS.—The eligible basis of a building shall not include any costs financed with the proceeds of a Federally funded grant.

[(C)] *(B)* INCREASE IN CREDIT FOR BUILDINGS IN HIGH COST AREAS.—

(i) * * *

* * * * * * *

(v) BUILDINGS DESIGNATED BY STATE HOUSING CREDIT AGENCY.—Any building which is designated by the State housing credit agency as requiring the increase in credit under this subparagraph in order for such building to be financially feasible as part of a qualified low-income housing project shall be treated for purposes of this subparagraph as located in a difficult development area which is designated for purposes of this subparagraph. The preceding sentence shall not apply to any building if paragraph (1) of subsection (h) does not apply to any portion of the eligible basis of such building by reason of paragraph (4) of such subsection.

(e) REHABILITATION EXPENDITURES TREATED AS SEPARATE NEW BUILDING.—

(1) * * *

* * * * * * *

(3) MINIMUM EXPENDITURES TO QUALIFY.—

(A) IN GENERAL.—Paragraph (1) shall apply to rehabilitation expenditures with respect to any building only if—

(i) * * *

(ii) the amount of such expenditures during any 24-month period meets the requirements of whichever of the following subclauses requires the greater amount of such expenditures:

(I) The requirement of this subclause is met if such amount is not less than [10 percent] *20 percent* of the adjusted basis of the building (determined as of the 1st day of such period and without regard to paragraphs (2) and (3) of section 1016(a)).

(II) The requirement of this subclause is met if the qualified basis attributable to such amount, when divided by the number of low-income units in the building, is [$3,000] *$6,000* or more.

(B) EXCEPTION FROM 10 PERCENT REHABILITATION.—In the case of a building acquired by the taxpayer from a governmental unit, at the election of the taxpayer, subparagraph (A)(ii)(I) shall not apply and the credit under this section for such rehabilitation expenditures shall be determined using the percentage applicable under [subsection (b)(2)(B)(ii)] *subsection (b)(2)(A)(ii)*.

* * * * * * *

(D) INFLATION ADJUSTMENT.—In the case of any expenditures which are treated under paragraph (4) as placed in service during any calendar year after 2009, the $6,000 amount in subparagraph (A)(ii)(II) shall 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 such calendar year by substituting "calendar year 2008" for "calendar year 1992" in subparagraph (B) thereof.

Any increase under the preceding sentence which is not a multiple of $100 shall be rounded to the nearest multiple of $100.

(f) DEFINITION AND SPECIAL RULES RELATING TO CREDIT PERIOD.—

(1) * * *

* * * * * * *

(5) CREDIT PERIOD FOR EXISTING BUILDINGS NOT TO BEGIN BEFORE REHABILITATION CREDIT ALLOWED.—

(A) * * *

(B) ACQUISITION CREDIT ALLOWED FOR CERTAIN BUILDINGS NOT ALLOWED A REHABILITATION CREDIT.—

(i) * * *

(ii) BUILDING DESCRIBED.—A building is described in this clause if—

(I) * * *

(II) a credit would be allowed for rehabilitation expenditures with respect to such building if subsection (e)(3)(A)(ii)(I) did not apply and [if subsection (e)(3)(A)(ii)(II) were applied by substituting "$2,000" for "$3,000".] *if the dollar amount in effect under subsection (e)(3)(A)(ii)(II) were two-thirds of such amount.*

* * * * * * *

(h) LIMITATION ON AGGREGATE CREDIT ALLOWABLE WITH RESPECT TO PROJECTS LOCATED IN A STATE.—

(1) CREDIT MAY NOT EXCEED CREDIT AMOUNT ALLOCATED TO BUILDING.—

(A) * * *

* * * * * * *

(E) EXCEPTION WHERE 10 PERCENT OF COST INCURRED.—

(i) * * *

(ii) QUALIFIED BUILDING.—For purposes of clause (i), the term "qualified building" means any building which is part of a project if the taxpayer's basis in such project [(as of the later of the date which is 6 months after the date that the allocation was made or the close of the calendar year in which the allocation is made)] *(as of the date which is 1 year after the date that the allocation was made)* is more than 10 percent of the taxpayer's reasonably expected basis in such project (as of the close of the second calendar year referred to in clause (i)). Such term does not include any existing building unless a credit is allowable under subsection (e) for rehabilitation expenditures paid or incurred by the taxpayer with respect to such building for a taxable year ending during the second calendar year referred to in clause (i) or the prior taxable year.

* * * * * * *

(3) HOUSING CREDIT DOLLAR AMOUNT FOR AGENCIES.—

(A) * * *

* * * * * * *

(I) INCREASE IN STATE HOUSING CREDIT CEILING FOR 2008 AND 2009.—In the case of calendar years 2008 and 2009, the dollar amount in effect under subparagraph (C)(ii)(I) for such calendar year (after any increase under subparagraph (H)) shall be increased by $0.20.

(4) CREDIT FOR BUILDINGS FINANCED BY TAX-EXEMPT BONDS SUBJECT TO VOLUME CAP NOT TAKEN INTO ACCOUNT.—

(A) IN GENERAL.—Paragraph (1) shall not apply to the portion of any credit allowable under subsection (a) which is attributable to eligible basis financed by any obligation the interest on which is exempt from tax under section 103 if—

(i) * * *

(ii) principal payments on such financing are applied within a reasonable period to redeem obligations the proceeds of which were used to provide such financing

or such financing is refunded as described in section 146(i)(6).

* * * * * * *

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

(1) * * *

(2) DETERMINATION OF WHETHER BUILDING IS FEDERALLY SUBSIDIZED.—

(A) IN GENERAL.—Except as otherwise provided in this paragraph, for purposes of subsection (b)(1), a [new building] *building* shall be treated as federally subsidized for any taxable year if, at any time during such taxable year or any prior taxable year, there is or was outstanding any obligation the interest on which is exempt from tax under section 103[, or any below market Federal loan,] the proceeds of which are or were used (directly or indirectly) with respect to such building or the operation thereof.

(B) ELECTION TO REDUCE ELIGIBLE BASIS BY [BALANCE OF LOAN OR] PROCEEDS OF OBLIGATIONS.—A [loan or] tax-exempt obligation shall not be taken into account under subparagraph (A) if the taxpayer elects to exclude from the eligible basis of the building for purposes of [subsection (d)—

[(i) in the case of a loan, the principal amount of such loan, and

[(ii) in the case of a tax-exempt obligation, the proceeds of such obligation.] *subsection (d) the proceeds of such obligation.*

(C) SPECIAL RULE FOR SUBSIDIZED CONSTRUCTION FINANCING.—Subparagraph (A) shall not apply to any tax-exempt obligation [or below market Federal loan] used to provide construction financing for any building if—

(i) such obligation [or loan (when issued or made)] *(when issued)* identified the building for which [the proceeds of such obligation or loan] *the proceeds of such obligation* would be used, and

(ii) such obligation is redeemed[, and such loan is repaid,] before such building is placed in service.

[(D) BELOW MARKET FEDERAL LOAN.—For purposes of this paragraph, the term "below market Federal loan" means any loan funded in whole or in part with Federal funds if the interest rate payable on such loan is less than the applicable Federal rate in effect under section 1274(d)(1) (as of the date on which the loan was made). Such term shall not include any loan which would be a below market Federal loan solely by reason of assistance provided under section 106, 107, or 108 of the Housing and Community Development Act of 1974 (as in effect on the date of the enactment of this sentence).

[(E) BUILDINGS RECEIVING HOME ASSISTANCE OR NATIVE AMERICAN HOUSING ASSISTANCE.—

[(i) IN GENERAL.—Assistance provided under the HOME Investment Partnerships Act (as in effect on the date of the enactment of this subparagraph or the Native American Housing Assistance and Self-Deter-

mination Act of 1996 (25 U.S.C. 4101 et seq.) (as in effect on October 1, 1997)) with respect to any building shall not be taken into account under subparagraph (D) if 40 percent or more of the residential units in the building are occupied by individuals whose income is 50 percent or less of area median gross income. Subsection (d)(5)(C) shall not apply to any building to which the preceding sentence applies.

[(ii) SPECIAL RULE FOR CERTAIN HIGH-COST HOUSING AREAS.—In the case of a building located in a city described in section 142(d)(6), clause (i) shall be applied by substituting "25 percent" for "40 percent".]

(3) LOW-INCOME UNIT.—

(A) * * *

* * * * * * *

(D) CERTAIN STUDENTS NOT TO DISQUALIFY UNIT.—A unit shall not fail to be treated as a low-income unit merely because it is occupied—

(i) by an individual who is—

(I) a student and receiving assistance under title IV of the Social Security Act, [or]

(II) a student who was previously under the care and placement responsibility of the State agency responsible for administering a plan under part B or part E of title IV of the Social Security Act, or

[(II)] *(III)* enrolled in a job training program receiving assistance under the Job Training Partnership Act or under other similar Federal, State, or local laws, or

* * * * * * *

(8) TREATMENT OF RURAL PROJECTS.—For purposes of this section, in the case of any project for residential rental property located in a rural area (as defined in section 520 of the Housing Act of 1949), any income limitation measured by reference to area median gross income shall be measured by reference to the greater of area median gross income or national non-metropolitan median income. The preceding sentence shall not apply with respect to any building if paragraph (1) of section 42(h) does not apply by reason of paragraph (4) thereof to any portion of the credit determined under this section with respect to such building.

* * * * * * *

(j) RECAPTURE OF CREDIT.—

(1) * * *

* * * * * * *

[(6) NO RECAPTURE ON DISPOSITION OF BUILDING (OR INTEREST THEREIN) WHERE BOND POSTED.—In the case of a disposition of a building or an interest therein, the taxpayer shall be discharged from liability for any additional tax under this subsection by reason of such disposition if—

[(A) the taxpayer furnishes to the Secretary a bond in an amount satifactory to the Secretary and for the period required by the Secretary, and

[(B) it is reasonably expected that such building will continue to be operated as a qualified low-income building for the remaining compliance period with respect to such building.]

(6) NO RECAPTURE ON DISPOSITION OF BUILDING WHICH CONTINUES IN QUALIFIED USE.—

(A) IN GENERAL.—The increase in tax under this subsection shall not apply solely by reason of the disposition of a building (or an interest therein) if it is reasonably expected that such building will continue to be operated as a qualified low-income building for the remaining compliance period with respect to such building.

(B) STATUTE OF LIMITATIONS.—If a building (or an interest therein) is disposed of during any taxable year and there is any reduction in the qualified basis of such building which results in an increase in tax under this subsection for such taxable or any subsequent taxable year, then—

(i) the statutory period for the assessment of any deficiency with respect to such increase in tax shall not expire before the expiration of 3 years from the date the Secretary is notified by the taxpayer (in such manner as the Secretary may prescribe) of such reduction in qualified basis, and

(ii) such deficiency may be assessed before the expiration of such 3-year period notwithstanding the provisions of any other law or rule of law which would otherwise prevent such assessment.

* * * * * * *

(m) RESPONSIBILITIES OF HOUSING CREDIT AGENCIES.—

(1) PLANS FOR ALLOCATION OF CREDIT AMONG PROJECTS.—

(A) * * *

* * * * * * *

(C) CERTAIN SELECTION CRITERIA MUST BE USED.—The selection criteria set forth in a qualified allocation plan must include—

(i) * * *

* * * * * * *

(vii) tenant populations of individuals with children, [and]

(viii) projects intended for eventual tenant ownership[.],

(ix) the energy efficiency of the project, and

(x) the historic nature of the project.

* * * * * * *

Subpart E—Rules for Computing Investment Credit

* * * * * * *

SEC. 47. REHABILITATION CREDIT.

(a) * * *

* * * * * * *

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

(1) * * *
(2) QUALIFIED REHABILITATION EXPENDITURE DEFINED.—
(A) * * *
(B) CERTAIN EXPENDITURES NOT INCLUDED.—The term "qualified rehabilitation expenditure" does not include—
(i) * * *

* * * * * * *

(v) TAX-EXEMPT USE PROPERTY.—
(I) IN GENERAL.—Any expenditure in connection with the rehabilitation of a building which is allocable to the portion of such property which is (or may reasonably be expected to be) tax-exempt use property (within the meaning of [section 168(h)] *section 168(h), except that "50 percent" shall be substituted for "35 percent" in paragraph (1)(B)(iii) thereof*).

* * * * * * *

PART VI—ALTERNATIVE MINIMUM TAX

* * * * * * *

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

(a) * * *

* * * * * * *

(g) ADJUSTMENTS BASED ON ADJUSTED CURRENT EARNINGS.—
(1) * * *

* * * * * * *

(4) ADJUSTMENTS.—In determining adjusted current earnings, the following adjustments shall apply:
(A) * * *
(B) INCLUSION OF ITEMS INCLUDED FOR PURPOSES OF COMPUTING EARNINGS AND PROFITS.—
(i) * * *

* * * * * * *

(iii) TAX EXEMPT INTEREST ON CERTAIN HOUSING BONDS.—Clause (i) shall not apply in the case of any interest on a bond to which section 57(a)(5)(C)(iii) applies.

* * * * * * *

SEC. 57. ITEMS OF TAX PREFERENCE.

(a) GENERAL RULE.—For purposes of this part, the items of tax preference determined under this section are—
(1) * * *

* * * * * * *

(5) TAX-EXEMPT INTEREST.—
(A) * * *

* * * * * * *

(C) SPECIFIED PRIVATE ACTIVITY BONDS.—

(i) * * *

* * * * * * *

(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).

[(iii)**]** *(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.

[(iv)**]** *(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) * * *

* * * * * * *

Subchapter B—Computation of Taxable Income

* * * * * * *

PART I—DEFINITION OF GROSS INCOME, ADJUSTED GROSS INCOME, TAXABLE INCOME, ETC

* * * * * * *

SEC. 63. TAXABLE INCOME DEFINED.

(a) * * *

* * * * * * *

(c) STANDARD DEDUCTION.—For purposes of this subtitle—

(1) IN GENERAL.—Except as otherwise provided in this subsection, the term "standard deduction" means the sum of—

(A) the basic standard deduction, **[**and**]**

(B) the additional standard deduction**[**.**]**, *and*

(C) in the case of any taxable year beginning in 2008, the real property tax deduction.

* * * * * * *

(7) REAL PROPERTY TAX DEDUCTION.—For purposes of paragraph (1), the real property tax deduction is the lesser of—

(A) the amount allowable as a deduction under this chapter for State and local taxes described in section 164(a)(1), or

(B) $350 ($700 in the case of a joint return).

Any taxes taken into account under section 62(a) shall not be taken into account under this paragraph.

* * * * * * *

PART IV—TAX EXEMPTION REQUIREMENTS FOR STATE AND LOCAL BONDS

* * * * * * *

Subpart A—Private Activity Bonds

* * * * * * *

SEC. 142. EXEMPT FACILITY BOND.

(a) * * *

* * * * * * *

(d) QUALIFIED RESIDENTIAL RENTAL PROJECT.—For purposes of this section—

(1) * * *

(2) DEFINITIONS AND SPECIAL RULES.—For purposes of this subsection—

(A) * * *

* * * * * * *

(C) STUDENTS.—Rules similar to the rules of 42(i)(3)(D) shall apply for purposes of this subsection.

(D) SINGLE-ROOM OCCUPANCY UNITS.—A unit shall not fail to be treated as a residential unit merely because such unit is a single-room occupancy unit (within the meaning of section 42).

(E) HOLD HARMLESS FOR REDUCTIONS IN AREA MEDIAN GROSS INCOME.—

(i) IN GENERAL.—Any determination of area median gross income under subparagraph (B) with respect to any project for any calendar year after 2008 shall not be less than the area median gross income determined under such subparagraph with respect to such project for the calendar year preceding the calendar year for which such determination is made.

(ii) SPECIAL RULE FOR CERTAIN CENSUS CHANGES.—In the case of a HUD hold harmless impacted project, the area median gross income with respect to such project for any calendar year after 2008 (hereafter in this clause referred to as the current calendar year) shall be the greater of the amount determined without regard to this clause or the sum of—

(I) the area median gross income determined under the HUD hold harmless policy with respect to such project for calendar year 2008, plus

(II) any increase in the area median gross income determined under subparagraph (B) (determined without regard to the HUD hold harmless

policy and this subparagraph) with respect to such project for the current calendar year over the area median gross income (as so determined) with respect to such project for calendar year 2008.

(iii) HUD HOLD HARMLESS POLICY.—The term "HUD hold harmless policy" means the regulations under which a policy similar to the rules of clause (i) applied to prevent a change in the method of determining area median gross income from resulting in a reduction in the area median gross income determined with respect to certain projects in calendar years 2007 and 2008.

(iv) HUD HOLD HARMLESS IMPACTED PROJECT.—The term "HUD hold harmless impacted project" means any project with respect to which area median gross income was determined under subparagraph (B) for calendar year 2007 or 2008 if such determination would have been less but for the HUD hold harmless policy.

(3) CURRENT INCOME DETERMINATIONS.—For purposes of this subsection—

(A) IN GENERAL.—The determination of whether the income of a resident of a unit in a project exceeds the applicable income limit shall be made at least annually on the basis of the current income of the resident. *The preceding sentence shall not apply with respect to any project for any year if during such year no residential unit in the project is occupied by a new resident whose income exceeds the applicable income limit.*

* * * * * * *

(C) EXCEPTION FOR PROJECTS WITH RESPECT TO WHICH AFFORDABLE HOUSING CREDIT IS ALLOWED.—In the case of a project with respect to which credit is allowed under section 42, the second sentence of subparagraph (B) shall be applied by substituting "building (within the meaning of section 42)" for "project".

* * * * * * *

SEC. 143. MORTGAGE REVENUE BONDS: QUALIFIED MORTGAGE BOND AND QUALIFIED VETERANS' MORTGAGE BOND.

(a) * * *

* * * * * * *

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

(1) * * *

* * * * * * *

(12) SPECIAL RULES FOR SUBPRIME REFINANCINGS.—

(A) IN GENERAL.—Notwithstanding the requirements of subsection (i)(1), the proceeds of a qualified mortgage issue may be used to refinance a mortgage on a residence which was originally financed by the mortgagor through a qualified subprime loan.

(B) SPECIAL RULES.—In applying subparagraph (A) to any refinancing—

(i) subsection (a)(2)(D)(i) shall be applied by substituting "12-month period" for "42-month period" each place it appears,

(ii) subsection (d) (relating to 3-year requirement) shall not apply, and

(iii) subsection (e) (relating to purchase price requirement) shall be applied by using the market value of the residence at the time of refinancing in lieu of the acquisition cost.

(C) QUALIFIED SUBPRIME LOAN.—The term "qualified subprime loan" means an adjustable rate single-family residential mortgage loan made after December 31, 2001, and before January 1, 2008, that the bond issuer determines would be reasonably likely to cause financial hardship to the borrower if not refinanced.

(D) TERMINATION.—This paragraph shall not apply to any bonds issued after December 31, 2010.

* * * * * * *

SEC. 146. VOLUME CAP.

(a) * * *

* * * * * * *

(d) STATE CEILING.—For purposes of this section—

(1) * * *

* * * * * * *

(5) INCREASE AND SET ASIDE FOR HOUSING BONDS FOR 2008.—

(A) INCREASE FOR 2008.—In the case of calendar year 2008, the State ceiling for each State shall be increased by an amount equal to $10,000,000,000 multiplied by a fraction—

(i) the numerator of which is the population of such State, and

(ii) the denominator of which is the total population of all States.

(B) SET ASIDE.—

(i) IN GENERAL.—Any amount of the State ceiling for any State which is attributable to an increase under this paragraph shall be allocated solely for one or more qualified housing issues.

(ii) QUALIFIED HOUSING ISSUE.—For purposes of this paragraph, the term "qualified housing issue" means—

(I) an issue described in section 142(a)(7) (relating to qualified residential rental projects), or

(II) a qualified mortgage issue (determined by substituting "12-month period" for "42-month period" each place it appears in section 143(a)(2)(D)(i)).

* * * * * * *

(f) ELECTIVE CARRYFORWARD OF UNUSED LIMITATION FOR SPECIFIED PURPOSE.—

(1) * * *

* * * * * * *

(6) SPECIAL RULES FOR INCREASED VOLUME CAP UNDER SUBSECTION (d)(5).—No amount which is attributable to the increase under subsection (d)(5) may be used—

(A) for any issue other than a qualified housing issue (as defined in subsection (d)(5)), or

(B) to issue any bond after calendar year 2010.

* * * * * * *

(i) TREATMENT OF REFUNDING ISSUES.—For purposes of the volume cap imposed by this section—

(1) * * *

* * * * * * *

(6) TREATMENT OF CERTAIN RESIDENTIAL RENTAL PROJECT BONDS AS REFUNDING BONDS IRRESPECTIVE OF OBLIGOR.—

(A) IN GENERAL.—If, during the 6-month period beginning on the date of a repayment of a loan financed by an issue 95 percent or more of the net proceeds of which are used to provide projects described in section 142(d), such repayment is used to provide a new loan for any project so described, any bond which is issued to refinance such issue shall be treated as a refunding issue to the extent the principal amount of such refunding issue does not exceed the principal amount of the bonds refunded.

(B) LIMITATIONS.—Subparagraph (A) shall apply to only one refunding of the original issue and only if—

(i) the refunding issue is issued not later than 4 years after the date on which the original issue was issued,

(ii) the latest maturity date of any bond of the refunding issue is not later than 34 years after the date on which the refunded bond was issued, and

(iii) the refunding issue is approved in accordance with section 147(f) before the issuance of the refunding issue.

* * * * * * *

Subpart B—Requirements Applicable to All State and Local Bonds

* * * * * * *

SEC. 149. BONDS MUST BE REGISTERED TO BE TAX EXEMPT; OTHER REQUIREMENTS.

(a) * * *

(b) FEDERALLY GUARANTEED BOND IS NOT TAX EXEMPT.—

(1) * * *

* * * * * * *

(3) EXCEPTIONS.—

(A) CERTAIN INSURANCE PROGRAMS.—A bond shall not be treated as federally guaranteed by reason of—

(i) * * *

(ii) any guarantee of student loans and any guarantee by the Student Loan Marketing Association to finance student loans, **[**or**]**

(iii) any guarantee by the Bonneville Power Authority pursuant to the Northwest Power Act (16 U.S.C. 839d) as in effect on the date of the enactment of the Tax Reform Act of 1984[.], *or*

(iv) any guarantee by a Federal home loan bank made in connection with the original issuance of a bond during the period beginning on the date of the enactment of this Act and ending on December 31, 2010 (or a renewal or extension of a guarantee so made).

* * * * * * *

(E) SAFETY AND SOUNDNESS REQUIREMENTS FOR FEDERAL HOME LOAN BANKS.—Clause (iv) of subparagraph (A) shall not apply to any guarantee by a Federal home loan bank unless such bank meets safety and soundness collateral requirements for such guarantees which are at least as stringent as such requirements which apply under regulations applicable to such guarantees by Federal home loan banks as in effect on April 9, 2008.

* * * * * * *

Subchapter M—Regulated Investment Companies and Real Estate Investment Trusts

* * * * * * *

PART II—REAL ESTATE INVESTMENT TRUSTS

* * * * * * *

SEC. 856. DEFINITION OF REAL ESTATE INVESTMENT TRUST.

(a) * * *

* * * * * * *

(c) LIMITATIONS.—A corporation, trust, or association shall not be considered a real estate investment trust for any taxable year unless—

(1) * * *

(2) at least 95 percent (90 percent for taxable years beginning before January 1, 1980) of its gross income (excluding gross income from prohibited transactions) is derived from—

(A) * * *

* * * * * * *

(G) amounts (other than amounts the determination of which depends in whole or in part on the income or profits of any person) received or accrued as consideration for entering into agreements (i) to make loans secured by mortgages on real property or on interests in real property or (ii) to purchase or lease real property (including interests in real property and interests in mortgages on real property); [and]

* * * * * * *

(I) passive foreign exchange gains; and

(J) any other item of income or gain as determined by the Secretary;

(3) at least 75 percent of its gross income (excluding gross income from prohibited transactions) is derived from—

(A) * * *

* * * * * * *

(H) gain from the sale or other disposition of a real estate asset which is not a prohibited transaction solely by reason of section 857(b)(6); [and]

(I) qualified temporary investment income; [and]

(J) real estate foreign exchange gains; and

(K) any other item of income or gain as determined by the Secretary; and

(4) at the close of each quarter of the taxable year—

(A) * * *

(B)(i) * * *

(ii) not more than [20 percent] *25 percent* of the value of its total assets is represented by securities of one or more taxable REIT subsidiaries, and

(iii) except with respect to a taxable REIT subsidiary and securities includible under subparagraph (A)—

(I) * * *

* * * * * * *

(III) the trust does not hold securities having a value of more than 10 percent of the total value of the outstanding securities of any one issuer.

A real estate investment trust which meets the requirements of this paragraph at the close of any quarter shall not lose its status as a real estate investment trust because of a discrepancy during a subsequent quarter between the value of its various investments and such requirements *(including a discrepancy caused solely by the change in the foreign currency exchange rate used to value a foreign asset)* unless such discrepancy exists immediately after the acquisition of any security or other property and is wholly or partly the result of such acquisition. A real estate investment trust which does not meet such requirements at the close of any quarter by reason of a discrepancy existing immediately after the acquisition of any security or other property which is wholly or partly the result of such acquisition during such quarter shall not lose its status for such quarter as a real estate investment trust if such discrepancy is eliminated within 30 days after the close of such quarter and in such cases it shall be considered to have met such requirements at the close of such quarter for purposes of applying the preceding sentence.

(5) For purposes of this part—

(A) * * *

* * * * * * *

[(G) Treatment of certain hedging instruments Except to the extent provided by regulations, any income of a real estate investment trust from a hedging transaction (as defined in clause (ii) or (iii) of section 1221(b)(2)(A)) which is clearly identified pursuant to section 1221(a)(7), including gain from the sale or disposition of such a transaction, shall not constitute gross income under paragraph (2) to the extent that the transaction hedges any indebtedness

incurred or to be incurred by the trust to acquire or carry real estate assets.]

(G) TREATMENT OF CERTAIN HEDGING INSTRUMENTS.—Except to the extent as determined by the Secretary—

(i) any income of a real estate investment trust from a hedging transaction (as defined in clause (ii) or (iii) of section 1221(b)(2)(A)) which is clearly identified pursuant to section 1221(a)(7), including gain from the sale or disposition of such a transaction, shall not constitute gross income under paragraphs (2) and (3) to the extent that the transaction hedges any indebtedness incurred or to be incurred by the trust to acquire or carry real estate assets, and

(ii) any income of a real estate investment trust from a transaction entered into by the trust primarily to manage risk of currency fluctuations with respect to any item described in paragraph (2) or (3), including gain from the termination of such a transaction, shall not constitute gross income under paragraphs (2) and (3), but only if such transaction is clearly identified as such before the close of the day on which it was acquired, originated, or entered into (or such other time as the Secretary may prescribe).

(H) SECRETARIAL AUTHORITY TO EXCLUDE OTHER ITEMS OF INCOME.—The Secretary is authorized to determine whether any item of income or gain which does not otherwise qualify under paragraph (2) or (3) may be considered as not constituting gross income solely for purposes of this part.

(I) CASH.—The term "cash" includes foreign currency if the real estate investment trust or its qualified business unit (as defined in section 989) uses such foreign currency as its functional currency (as defined in section 985(b)).

* * * * * * *

(d) RENTS FROM REAL PROPERTY DEFINED.—

(1) * * *

* * * * * * *

(8) SPECIAL RULE FOR TAXABLE REIT SUBSIDIARIES.—For purposes of this subsection, amounts paid to a real estate investment trust by a taxable REIT subsidiary of such trust shall not be excluded from rents from real property by reason of paragraph (2)(B) if the requirements of either of the following subparagraphs are met:

(A) * * *

[(B) EXCEPTION FOR CERTAIN LODGING FACILITIES.—The requirements of this subparagraph are met with respect to an interest in real property which is a qualified lodging facility leased by the trust to a taxable REIT subsidiary of the trust if the property is operated on behalf of such subsidiary by a person who is an eligible independent contractor.]

(B) EXCEPTION FOR CERTAIN LODGING FACILITIES AND HEALTH CARE PROPERTY.—The requirements of this subparagraph are met with respect to an interest in real prop-

erty which is a qualified lodging facility or a qualified health care property (as defined in subsection (e)(6)(D)(i)) leased by the trust to a taxable REIT subsidiary of the trust if the property is operated on behalf of such subsidiary by a person who is an eligible independent contractor. For purposes of this section, a taxable REIT subsidiary is not considered to be operating or managing a qualified health care property or qualified lodging facility solely because it directly or indirectly possesses a license, permit or similar instrument enabling it to do so.

(9) ELIGIBLE INDEPENDENT CONTRACTOR.—For purposes of paragraph (8)(B)—

[(A) IN GENERAL.—The term "eligible independent contractor" means, with respect to any qualified lodging facility, any independent contractor if, at the time such contractor enters into a management agreement or other similar service contract with the taxable REIT subsidiary to operate the facility, such contractor (or any related person) is actively engaged in the trade or business of operating qualified lodging facilities for any person who is not a related person with respect to the real estate investment trust or the taxable REIT subsidiary.

[(B) SPECIAL RULES.—Solely for purposes of this paragraph and paragraph (8)(B), a person shall not fail to be treated as an independent contractor with respect to any qualified lodging facility by reason of any of the following:

[(i) The taxable REIT subsidiary bears the expenses for the operation of the facility pursuant to the management agreement or other similar service contract.

[(ii) The taxable REIT subsidiary receives the revenues from the operation of such facility, net of expenses for such operation and fees payable to the operator pursuant to such agreement or contract.

[(iii) The real estate investment trust receives income from such person with respect to another property that is attributable to a lease of such other property to such person that was in effect as of the later of—

[(I) January 1, 1999, or

[(II) the earliest date that any taxable REIT subsidiary of such trust entered into a management agreement or other similar service contract with such person with respect to such qualified lodging facility.]

(A) IN GENERAL.—The term "eligible independent contractor" means, with respect to any qualified lodging facility or qualified health care property (as defined in subsection (e)(6)(D)(i)), any independent contractor if, at the time such contractor enters into a management agreement or other similar service contract with the taxable REIT subsidiary to operate such qualified lodging facility or qualified health care property, such contractor (or any related person) is actively engaged in the trade or business of operating qualified lodging facilities or qualified health care properties, respectively, for any person who is not a related

person with respect to the real estate investment trust or the taxable REIT subsidiary.

(B) SPECIAL RULES.—Solely for purposes of this paragraph and paragraph (8)(B), a person shall not fail to be treated as an independent contractor with respect to any qualified lodging facility or qualified health care property (as so defined) by reason of the following:

(i) The taxable REIT subsidiary bears the expenses for the operation of such qualified lodging facility or qualified health care property pursuant to the management agreement or other similar service contract.

(ii) The taxable REIT subsidiary receives the revenues from the operation of such qualified lodging facility or qualified health care property, net of expenses for such operation and fees payable to the operator pursuant to such agreement or contract.

(iii) The real estate investment trust receives income from such person with respect to another property that is attributable to a lease of such other property to such person that was in effect as of the later of—

(I) January 1, 1999, or

(II) the earliest date that any taxable REIT subsidiary of such trust entered into a management agreement or other similar service contract with such person with respect to such qualified lodging facility or qualified health care property.

* * * * * * *

(l) TAXABLE REIT SUBSIDIARY.—For purposes of this part—

(1) * * *

* * * * * * *

(3) EXCEPTIONS.—The term "taxable REIT subsidiary" shall not include—

(A) * * *

* * * * * * *

Subparagraph (B) shall not apply to rights provided to an eligible independent contractor to operate or manage a lodging facility *or a health care facility* if such rights are held by such corporation as a franchisee, licensee, or in a similar capacity and such lodging facility *or health care facility* is either owned by such corporation or is leased to such corporation from the real estate investment trust.

* * * * * * *

(n) RULES REGARDING FOREIGN CURRENCY TRANSACTIONS.—With respect to any taxable year—

(1) REAL ESTATE FOREIGN EXCHANGE GAINS.—For purposes of subsection (c)(3)(J), the term "real estate foreign exchange gains" means—

(A) foreign currency gains (as defined in section 988(b)(1)) which are attributable to—

(i) any item described in subsection (c)(3) (other than in subparagraph (J) thereof),

(ii) the acquisition or ownership of obligations secured by mortgages on real property or on interests in

real property (other than foreign currency gains attributable to any item described in clause (i)), or

(iii) becoming or being the obligor under obligations secured by mortgages on real property or on interests in real property (other than foreign currency gains attributable to any item described in clause (i)),

(B) gains described in section 987 attributable to a qualified business unit (as defined by section 989) of the real estate investment trust, but only if such qualified business unit meets the requirements under—

(i) subsection (c)(3) (without regard to subparagraph (J) thereof) for the taxable year, and

(ii) subsection (c)(4)(A) at the close of each quarter that the real estate investment trust has directly or indirectly held the qualified business unit, and

(C) any other foreign currency gains as determined by the Secretary.

(2) PASSIVE FOREIGN EXCHANGE GAINS.—For purposes of subsection (c)(2)(I), the term "passive foreign exchange gains" means—

(A) real estate foreign exchange gains,

(B) foreign currency gains (as defined in section 988(b)(1)) which are not described in subparagraph (A) and which are attributable to any item described in subsection (c)(2) (other than in subparagraph (I) thereof), and

(C) any other foreign currency gains as determined by the Secretary.

* * * * * * *

SEC. 857. TAXATION OF REAL ESTATE INVESTMENT TRUSTS AND THEIR BENEFICIARIES.

(a) * * *

(b) METHOD OF TAXATION OF REAL ESTATE INVESTMENT TRUSTS AND HOLDERS OF SHARES OR CERTIFICATES OF BENEFICIAL INTEREST.—

(1) * * *

* * * * * * *

(4) INCOME FROM FORECLOSURE PROPERTY.—

(A) * * *

(B) NET INCOME FROM FORECLOSURE PROPERTY.—For purposes of this part, the term "net income from foreclosure property" means the excess of—

[(i) gain from the sale or other disposition of foreclosure property described in section 1221(a)(1) and the gross income for the taxable year derived from foreclosure property (as defined in section 856(e)), but only to the extent such gross income is not described in subparagraph (A), (B), (C), (D), (E), or (G) of section 856(c)(3), over]

(i) gain (including any foreign currency gain, as defined in section 988(b)(1)) from the sale or other disposition of foreclosure property described in section 1221(a)(1) and the gross income for the taxable year derived from foreclosure property (as defined in section 856(e)), but only to the extent such gross income is not

described in (or, in the case of foreign currency gain, not attributable to gross income described in) section 856(c)(3) other than subparagraph (F) thereof, over

* * * * * * *

(6) INCOME FROM PROHIBITED TRANSACTIONS.—

(A) IMPOSITION OF TAX.—There is hereby imposed for each taxable year of every real estate investment trust a tax equal to 100 percent of the net income derived from prohibited transactions.

(B) DEFINITIONS.—For purposes of this part—

[(i) the term "net income derived from prohibited transactions" means the excess of the gain from prohibited transactions over the deductions allowed by this chapter which are directly connected with prohibited transactions;**]**

(i) the term "net income derived from prohibited transactions" means the excess of the gain (including any foreign currency gain, as defined in section 988(b)(1)) from prohibited transactions over the deductions (including any foreign currency loss, as defined in section 988(b)(2)) allowed by this chapter which are directly connected with prohibited transactions;

* * * * * * *

(C) CERTAIN SALES NOT TO CONSTITUTE PROHIBITED TRANSACTIONS.—For purposes of this part, the term "prohibited transaction" does not include a sale of property which is a **[**real estate asset as defined in section 856(c)(5)(B) if**]** *real estate asset (as defined in section 856(c)(5)(B)) and which is described in section 1221(a)(1) if—*

(i) the trust has held the property for not less than **[**4 years**]** *2 years*;

(ii) aggregate expenditures made by the trust, or any partner of the trust, during the **[**4-year period**]** *2-year period* preceding the date of sale which are includible in the basis of the property do not exceed 30 percent of the net selling price of the property;

(iii) (I) during the taxable year the trust does not make more than 7 sales of property (other than sales of foreclosure property or sales to which section 1033 applies), or (II) the aggregate adjusted bases (as determined for purposes of computing earnings and profits) of property (other than sales of foreclosure property or sales to which section 1033 applies) sold during the taxable year does not exceed 10 percent of the aggregate bases (as so determined) of all of the assets of the trust as of the beginning of the taxable year**[**;**]***, or (III) the fair market value of property (other than sales of foreclosure property or sales to which section 1033 applies) sold during the taxable year does not exceed 10 percent of the fair market value of all of the assets of the trust as of the beginning of the taxable year;*

(iv) in the case of property, which consists of land or improvements, not acquired through foreclosure (or

deed in lieu of foreclosure), or lease termination, the trust has held the property for not less than [4 years] *2 years* for production of rental income; and

* * * * * * *

(D) CERTAIN SALES NOT TO CONSTITUTE PROHIBITED TRANSACTIONS.—For purposes of this part, the term "prohibited transaction" does not include a sale of property which is a [real estate asset (as defined in section 856(c)(5)(B)) if] *real estate asset (as defined in section 856(c)(5)(B)) and which is described in section 1221(a)(1) if—*

(i) the trust held the property for not less than [4 years] *2 years* in connection with the trade or business of producing timber,

(ii) the aggregate expenditures made by the trust, or a partner of the trust, during the [4-year period] *2-year period* preceding the date of sale which—

(I) * * *

* * * * * * *

(iii) the aggregate expenditures made by the trust, or a partner of the trust, during the [4-year period] *2-year period* preceding the date of sale which—

(I) * * *

* * * * * * *

(iv)(I) * * *

(II) the aggregate adjusted bases (as determined for purposes of computing earnings and profits) of property (other than sales of foreclosure property or sales to which section 1033 applies) sold during the taxable year does not exceed 10 percent of the aggregate bases (as so determined) of all of the assets of the trust as of the beginning of the taxable year, *or*

(III) the fair market value of property (other than sales of foreclosure property or sales to which section 1033 applies) sold during the taxable year does not exceed 10 percent of the fair market value of all of the assets of the trust as of the beginning of the taxable year,

* * * * * * *

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

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

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SEC. 864. DEFINITIONS AND SPECIAL RULES.

(a) * * *

* * * * * * *

(f) ELECTION TO ALLOCATE INTEREST, ETC. ON WORLDWIDE BASIS.—For purposes of this subchapter, at the election of the worldwide affiliated group—

(1) * * *

* * * * * * *

(5) ELECTION TO EXPAND FINANCIAL INSTITUTION GROUP OF WORLDWIDE GROUP.—

(A) * * *

* * * * * * *

(D) ELECTION.—An election under this paragraph with respect to any financial institution group may be made only by the common parent of the pre-election worldwide affiliated group and may be made only for the first taxable year beginning after [December 31, 2008] *December 31, 2009*, in which such affiliated group includes 1 or more financial corporations. Such an election, once made, shall apply to all financial corporations which are members of the electing financial institution group for such taxable year and all subsequent years unless revoked with the consent of the Secretary.

* * * * * * *

(6) ELECTION.—An election to have this subsection apply with respect to any worldwide affiliated group may be made only by the common parent of the domestic affiliated group referred to in paragraph (1)(C) and may be made only for the first taxable year beginning after [December 31, 2008] *December 31, 2009*, in which a worldwide affiliated group exists which includes such affiliated group and at least 1 foreign corporation. Such an election, once made, shall apply to such common parent and all other corporations which are members of such worldwide affiliated group for such taxable year and all subsequent years unless revoked with the consent of the Secretary.

* * * * * * *

(7) TRANSITION.—In the case of the first taxable year to which this subsection applies, the increase (if any) in the amount of the interest expense allocable to sources within the United States by reason of the application of this subsection shall be 78 percent of the amount of such increase determined without regard to this paragraph.

* * * * * * *

Subchapter O—Gain or Loss on Disposition of Property

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PART II—BASIS RULES OF GENERAL APPLICATION

* * * * * * *

SEC. 1012. BASIS OF PROPERTY-COST.

[The basis of property]

(a) IN GENERAL.—The basis of property shall be the cost of such property, except as otherwise provided in this subchapter and subchapters C (relating to corporate distributions and adjustments), K (relating to partners and partnerships), and P (relating to capital gains and losses). [The cost of real property]

(b) SPECIAL RULE FOR APPORTIONED REAL ESTATE TAXES.—The cost of real property shall not include any amount in respect of real property taxes which are treated under section 164(d) as imposed on the taxpayer.

(c) DETERMINATIONS BY ACCOUNT.—

(1) IN GENERAL.—In the case of the sale, exchange, or other disposition of a specified security on or after the applicable date, the conventions prescribed by regulations under this section shall be applied on an account by account basis.

(2) APPLICATION TO OPEN-END FUNDS.—

(A) IN GENERAL.—Except as provided in subparagraph (B), any stock in an open-end fund acquired before January 1, 2011, shall be treated as a separate account from any such stock acquired on or after such date.

(B) ELECTION BY OPEN-END FUND FOR TREATMENT AS SINGLE ACCOUNT.—If an open-end fund elects to have this subparagraph apply with respect to one or more of its stockholders—

(i) subparagraph (A) shall not apply with respect to any stock in such fund held by such stockholders, and

(ii) all stock in such fund which is held by such stockholders shall be treated as covered securities described in section 6045(g)(3) without regard to the date of the acquisition of such stock.

A rule similar to the rule of the preceding sentence shall apply with respect to a broker holding stock in an open-end fund as a nominee.

(3) DEFINITIONS.—For purposes of this section—

(A) OPEN-END FUND.—The term "open-end fund" means a regulated investment company (as defined in section 851) which is offering for sale or has outstanding any redeemable security of which it is the issuer. Any stock which is traded on an established securities exchange shall not be treated as stock in an open-end fund.

(B) SPECIFIED SECURITY; APPLICABLE DATE.—The terms "specified security" and "applicable date" shall have the meaning given such terms in section 6045(g).

(d) AVERAGE BASIS FOR STOCK ACQUIRED PURSUANT TO A DIVIDEND REINVESTMENT PLAN.—

(1) IN GENERAL.—In the case of any stock acquired after December 31, 2010, in connection with a dividend reinvestment plan, the basis of such stock while held as part of such plan shall be determined using one of the methods which may be used for determining the basis of stock in an open-end fund.

(2) TREATMENT AFTER TRANSFER.—In the case of the transfer to another account of stock to which paragraph (1) applies, such stock shall have a cost basis in such other account equal to its basis in the dividend reinvestment plan immediately before such transfer (properly adjusted for any fees or other charges taken into account in connection with such transfer).

(3) SEPARATE ACCOUNTS; ELECTION FOR TREATMENT AS SINGLE ACCOUNT.—Rules similar to the rules of subsection (c)(2) shall apply for purposes of this subsection.

(4) DIVIDEND REINVESTMENT PLAN.—For purposes of this subsection—

(A) IN GENERAL.—The term "dividend reinvestment plan" means any arrangement under which dividends on any stock are reinvested in stock identical to the stock with respect to which the dividends are paid.

(B) INITIAL STOCK ACQUISITION TREATED AS ACQUIRED IN CONNECTION WITH PLAN.—Stock shall be treated as acquired in connection with a dividend reinvestment plan if such stock is acquired pursuant to such plan or if the dividends paid on such stock are subject to such plan.

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CHAPTER 3—WITHHOLDING OF TAX ON NONRESIDENT ALIENS AND FOREIGN CORPORATIONS

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Subchapter A—Nonresident Aliens and Foreign Corporations

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SEC. 1445. WITHHOLDING OF TAX ON DISPOSITIONS OF UNITED STATES REAL PROPERTY INTERESTS.

(a) * * *

(b) EXEMPTIONS.—

(1) * * *

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[(7) SPECIAL RULES FOR PARAGRAPHS (2) AND (3).—Paragraph (2) or (3) (as the case may be) shall not apply to any disposition—

[(A) if—

[(i) the transferee has actual knowledge that the affidavit referred to in such paragraph is false, or

[(ii) the transferee receives a notice (as described in subsection (d)) from a transferor's agent or a transferee's agent that such affidavit is false, or

[(B) if the Secretary by regulations requires the transferee to furnish a copy of such affidavit to the Secretary and the transferee fails to furnish a copy of such affidavit to the Secretary at such time and in such manner as required by such regulations.**]**

(7) SPECIAL RULES FOR PARAGRAPHS (2), (3), AND (9).—Paragraph (2), (3), or (9) (as the case may be) shall not apply to any disposition—

(A) if—

(i) the transferee or qualified substitute has actual knowledge that the affidavit referred to in such para-

graph, or the statement referred to in paragraph (9)(A)(ii), is false, or

(ii) the transferee or qualified substitute receives a notice (as described in subsection (d)) from a transferor's agent, transferee's agent, or qualified substitute that such affidavit or statement is false, or

(B) if the Secretary by regulations requires the transferee or qualified substitute to furnish a copy of such affidavit or statement to the Secretary and the transferee or qualified substitute fails to furnish a copy of such affidavit or statement to the Secretary at such time and in such manner as required by such regulations.

* * * * * * *

(9) ALTERNATIVE PROCEDURE FOR FURNISHING NONFOREIGN AFFIDAVIT.—For purposes of paragraphs (2) and (7)—

(A) IN GENERAL.—Paragraph (2) shall be treated as applying to a transaction if, in connection with a disposition of a United States real property interest—

(i) the affidavit specified in paragraph (2) is furnished to a qualified substitute, and

(ii) the qualified substitute furnishes a statement to the transferee stating, under penalty of perjury, that the qualified substitute has such affidavit in his possession.

(B) REGULATIONS.—The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out this paragraph.

* * * * * * *

(d) LIABILITY OF TRANSFEROR'S AGENTS [OR TRANSFEREE'S AGENTS], *TRANSFEREE'S AGENTS, OR QUALIFIED SUBSTITUTES.*—

[(1) NOTICE OF FALSE AFFIDAVIT; FOREIGN CORPORATIONS.—If—

[(A) the transferor furnishes the transferee an affidavit described in paragraph (2) of subsection (b) or a domestic corporation furnishes the transferee an affidavit described in paragraph (3) of subsection (b), and

[(B) in the case of—

[(i) any transferor's agent—

[(I) such agent has actual knowledge that such affidavit is false, or

[(II) in the case of an affidavit described in subsection (b)(2) furnished by a corporation, such corporation is a foreign corporation, or

[(ii) any transferee's agent, such agent has actual knowledge that such affidavit is false,such agent shall so notify the transferee at such time and in such manner as the Secretary shall require by regulations.

[(2) FAILURE TO FURNISH NOTICE.—

[(A) IN GENERAL.—If any transferor's agent or transferee's agent is required by paragraph (1) to furnish notice, but fails to furnish such notice at such time or times and in such manner as may be required by regulations, such agent shall have the same duty to deduct and withhold

that the transferee would have had if such agent had complied with paragraph (1).

[(B) LIABILITY LIMITED TO AMOUNT OF COMPENSATION.—An agent's liability under subparagraph (A) shall be limited to the amount of compensation the agent derives from the transaction.]

(1) NOTICE OF FALSE AFFIDAVIT; FOREIGN CORPORATIONS.—If—

(A) the transferor furnishes the transferee or qualified substitute an affidavit described in paragraph (2) of subsection (b) or a domestic corporation furnishes the transferee an affidavit described in paragraph (3) of subsection (b), and

(B) in the case of—

(i) any transferor's agent—

(I) such agent has actual knowledge that such affidavit is false, or

(II) in the case of an affidavit described in subsection (b)(2) furnished by a corporation, such corporation is a foreign corporation, or

(ii) any transferee's agent or qualified substitute, such agent or substitute has actual knowledge that such affidavit is false,

such agent or qualified substitute shall so notify the transferee at such time and in such manner as the Secretary shall require by regulations.

(2) FAILURE TO FURNISH NOTICE.—

(A) IN GENERAL.—If any transferor's agent, transferee's agent, or qualified substitute is required by paragraph (1) to furnish notice, but fails to furnish such notice at such time or times and in such manner as may be required by regulations, such agent or substitute shall have the same duty to deduct and withhold that the transferee would have had if such agent or substitute had complied with paragraph (1).

(B) LIABILITY LIMITED TO AMOUNT OF COMPENSATION.—An agent's or substitute's liability under subparagraph (A) shall be limited to the amount of compensation the agent or substitute derives from the transaction.

* * * * * * *

(f) DEFINITIONS.—For purposes of this section—

(1) * * *

* * * * * * *

(6) QUALIFIED SUBSTITUTE.—The term "qualified substitute" means, with respect to a disposition of a United States real property interest—

(A) the person (including any attorney or title company) responsible for closing the transaction, other than the transferor's agent, and

(B) the transferee's agent.

* * * * * * *

Subtitle B—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 III—INFORMATION RETURNS

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Subpart B—Information Concerning Transactions with Other Persons

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SEC. 6045. RETURNS OF BROKERS.

(a) * * *

(b) STATEMENTS TO BE FURNISHED TO CUSTOMERS.—Every person required to make a return under subsection (a) shall furnish to each customer 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) the information required to be shown on such return with respect to such customer.

The written statement required under the preceding sentence shall be furnished to the customer on or before [January 31] *February 15* of the year following the calendar year for which the return under subsection (a) was required to be made. *In the case of a consolidated reporting statement (as defined in regulations) with respect to any account, any statement which would otherwise be required to be furnished on or before January 31 of a calendar year with respect to any item reportable to the taxpayer shall instead be required to be furnished on or before February 15 of such calendar year if furnished with such consolidated reporting statement.*

* * * * * * *

(d) STATEMENTS REQUIRED IN CASE OF CERTAIN SUBSTITUTE PAYMENTS.—If any broker—

(1) transfers securities of a customer for use in a short sale or similar transaction, and

(2) receives (on behalf of the customer) a payment in lieu of—

(A) a dividend,

(B) tax-exempt interest, or

(C) such other items as the Secretary may prescribe by regulations,

during the period such short sale or similar transaction is open, the broker shall furnish such customer a written statement ([at such time and]) in the manner as the Secretary shall prescribe by regulations) identifying such payment as being in lieu of the dividend, tax-exempt interest, or such other item. *The written statement required under the preceding sentence shall be furnished on or before February 15 of the year following the calendar year in which the payment was made.* The Secretary may prescribe regulations which require the broker to make a return which includes the information contained in such written statement.

* * * * * * *

(g) ADDITIONAL INFORMATION REQUIRED IN THE CASE OF SECURITIES TRANSACTIONS, ETC.—

(1) IN GENERAL.—If a broker is otherwise required to make a return under subsection (a) with respect to the gross proceeds of the sale of a covered security, the broker shall include in such return the information described in paragraph (2).

(2) ADDITIONAL INFORMATION REQUIRED.—

(A) IN GENERAL.—The information required under paragraph (1) to be shown on a return with respect to a covered security of a customer shall include the customer's adjusted basis in such security and whether any gain or loss with respect to such security is long-term or short-term (within the meaning of section 1222).

(B) DETERMINATION OF ADJUSTED BASIS.—For purposes of subparagraph (A)—

(i) IN GENERAL.—The customer's adjusted basis shall be determined—

(I) in the case of any security (other than any stock for which an average basis method is permissible under section 1012), in accordance with the first-in first-out method unless the customer notifies the broker by means of making an adequate identification of the stock sold or transferred, and

(II) in the case of any stock for which an average basis method is permissible under section 1012, in accordance with the broker's default method unless the customer notifies the broker that he elects another acceptable method under section 1012 with respect to the account in which such stock is held.

(ii) EXCEPTION FOR WASH SALES.—Except as otherwise provided by the Secretary, the customer's adjusted basis shall be determined without regard to section 1091 (relating to loss from wash sales of stock or securities) unless the transactions occur in the same account with respect to identical securities.

(3) COVERED SECURITY.—For purposes of this subsection—

(A) IN GENERAL.—The term "covered security" means any specified security acquired on or after the applicable date if such security—

(i) was acquired through a transaction in the account in which such security is held, or

(ii) was transferred to such account from an account in which such security was a covered security, but only if the broker received a statement under section 6045A with respect to the transfer.

(B) SPECIFIED SECURITY.—The term "specified security" means—

(i) any share of stock in a corporation,

(ii) any note, bond, debenture, or other evidence of indebtedness,

(iii) any commodity, or contract or derivative with respect to such commodity, if the Secretary determines that adjusted basis reporting is appropriate for purposes of this subsection, and

(iv) any other financial instrument with respect to which the Secretary determines that adjusted basis reporting is appropriate for purposes of this subsection.

(C) APPLICABLE DATE.—The term "applicable date" means—

(i) January 1, 2010, in the case of any specified security which is stock in a corporation (other than any stock described in clause (ii)),

(ii) January 1, 2011, in the case of any stock for which an average basis method is permissible under section 1012, and

(iii) January 1, 2012, or such later date determined by the Secretary in the case of any other specified security.

(4) TREATMENT OF S CORPORATIONS.—In the case of the sale of a covered security acquired by an S corporation (other than a financial institution) after December 31, 2011, such S corporation shall be treated in the same manner as a partnership for purposes of this section.

(5) SPECIAL RULES FOR SHORT SALES.—In the case of a short sale, reporting under this section shall be made for the year in which such sale is closed.

(h) APPLICATION TO OPTIONS ON SECURITIES.—

(1) EXERCISE OF OPTION.—For purposes of this section, if a covered security is acquired or disposed of pursuant to the exercise of an option that was granted or acquired in the same account as the covered security, the amount received with respect to the grant or paid with respect to the acquisition of such option shall be treated as an adjustment to gross proceeds or as an adjustment to basis, as the case may be.

(2) LAPSE OR CLOSING TRANSACTION.—In the case of the lapse (or closing transaction (as defined in section 1234(b)(2)(A))) of an option on a specified security or the exercise of a cash-settled option on a specified security, reporting under subsections (a) and (g) with respect to such option shall be made for the calendar year which includes the date of such lapse, closing transaction, or exercise.

(3) PROSPECTIVE APPLICATION.—Paragraphs (1) and (2) shall not apply to any option which is granted or acquired before January 1, 2012.

(4) DEFINITIONS.—For purposes of this subsection, the terms "covered security" and "specified security" shall have the meanings given such terms in subsection (g)(3).

SEC. 6045A. INFORMATION REQUIRED IN CONNECTION WITH TRANSFERS OF COVERED SECURITIES TO BROKERS.

(a) FURNISHING OF INFORMATION.—Every applicable person which transfers to a broker (as defined in section 6045(c)(1)) a security which is a covered security (as defined in section 6045(g)(3)) in the hands of such applicable person shall furnish to such broker a written statement in such manner and setting forth such information as the Secretary may by regulations prescribe for purposes of enabling such broker to meet the requirements of section 6045(g).

(b) APPLICABLE PERSON.—For purposes of subsection (a), the term "applicable person" means—

(1) any broker (as defined in section 6045(c)(1)), and

(2) any other person as provided by the Secretary in regulations.

(c) TIME FOR FURNISHING STATEMENT.—Except as otherwise provided by the Secretary, any statement required by subsection (a) shall be furnished not later than 15 days after the date of the transfer described in such subsection.

SEC. 6045B. RETURNS RELATING TO ACTIONS AFFECTING BASIS OF SPECIFIED SECURITIES.

(a) IN GENERAL.—According to the forms or regulations prescribed by the Secretary, any issuer of a specified security shall make a return setting forth—

(1) a description of any organizational action which affects the basis of such specified security of such issuer,

(2) the quantitative effect on the basis of such specified security resulting from such action, and

(3) such other information as the Secretary may prescribe.

(b) TIME FOR FILING RETURN.—Any return required by subsection (a) shall be filed not later than the earlier of—

(1) 45 days after the date of the action described in subsection (a), or

(2) January 15 of the year following the calendar year during which such action occurred.

(c) STATEMENTS TO BE FURNISHED TO HOLDERS OF SPECIFIED SECURITIES OR THEIR NOMINEES.—According to the forms or regulations prescribed by the Secretary, every person required to make a return under subsection (a) with respect to a specified security shall furnish to the nominee with respect to the specified security (or certificate holder if there is no nominee) a written statement showing—

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

(2) the information required to be shown on such return with respect to such security, and

(3) such other information as the Secretary may prescribe.

The written statement required under the preceding sentence shall be furnished to the holder on or before January 15 of the year following the calendar year during which the action described in subsection (a) occurred.

(d) SPECIFIED SECURITY.—For purposes of this section, the term "specified security" has the meaning given such term by section

6045(g)(3)(B). No return shall be required under this section with respect to actions described in subsection (a) with respect to a specified security which occur before the applicable date (as defined in section 6045(g)(3)(C)) with respect to such security.

(e) PUBLIC REPORTING IN LIEU OF RETURN.—The Secretary may waive the requirements under subsections (a) and (c) with respect to a specified security, if the person required to make the return under subsection (a) makes publicly available, in such form and manner as the Secretary determines necessary to carry out the purposes of this section—

(1) the name, address, phone number, and email address of the information contact of such person, and

(2) the information described in paragraphs (1), (2), and (3) of subsection (a).

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Subtitle F—Procedure and Administration

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CHAPTER 63—ASSESSMENT

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

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SEC. 6211. DEFINITION OF A DEFICIENCY.

(a) * * *

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

(1) * * *

* * * * * * *

(4) FOR PURPOSES OF SUBSECTION (a).—

(A) any excess of the sum of the credits allowable under sections 24(d), 32, **[**34, 53(e), and 6428**]** *34, 35, 36, 53(e), and 6428* over the tax imposed by subtitle A (determined without regard to such credits), and

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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. 6724. WAIVER; DEFINITIONS AND SPECIAL RULES.

(a) * * *

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(d) DEFINITIONS.—For purposes of this part—

(1) INFORMATION RETURN.—

(A) * * *

(B) any return required by—

(i) * * *

* * * * * * *

(iv) section 6045B(a) (relating to returns relating to actions affecting basis of specified securities),

[(iv)**]** *(v)* section 6050H(a) or (h)(1) (relating to mortgage interest received in trade or business from individuals),

[(v)**]** *(vi)* section 6050I(a) or (g)(1) (relating to cash received in trade or business, etc.),

[(vi)**]** *(vii)* section 6050J(a) (relating to foreclosures and abandonments of security),

[(vii)**]** *(viii)* section 6050K(a) (relating to exchanges of certain partnership interests),

[(viii)**]** *(ix)* section 6050L(a) (relating to returns relating to certain dispositions of donated property),

[(ix)**]** *(x)* section 6050P (relating to returns relating to the cancellation of indebtedness by certain financial entities),

[(x)**]** *(xi)* section 6050Q (relating to certain long-term care benefits),

[(xi)**]** *(xii)* section 6050S (relating to returns relating to payments for qualified tuition and related expenses),

[(xii)**]** *(xiii)* section 6050T (relating to returns relating to credit for health insurance costs of eligible individuals),

[(xiii)**]** *(xiv)* section 6052(a) (relating to reporting payment of wages in the form of group-life insurance),

[(xiv)**]** *(xv)* section 6050V (relating to returns relating to applicable insurance contracts in which certain exempt organizations hold interests),

[(xv)**]** *(xvi)* section 6053(c)(1) (relating to reporting with respect to certain tips),

[(xvi)**]** *(xvii)* subsection (b) or (e) of section 1060 (relating to reporting requirements of transferors and transferees in certain asset acquisitions),

[(xvii)**]** *(xviii)* section 4101(d) (relating to information reporting with respect to fuels taxes),

[(xviii)**]** *(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),

[(xix)] *(xx)* section 264(f)(5)(A)(iv) (relating to reporting with respect to certain life insurance and annuity contracts), or

[(xx)] *(xxi)* section 6050U (relating to charges or payments for qualified long-term care insurance contracts under combined arrangements), and

[(xxi)] *(xxii)* section 6039(a) (relating to returns required with respect to certain options), and

* * * * * * *

(2) PAYEE STATEMENT.—The term "payee statement" means any statement required to be furnished under—

(A) * * *

* * * * * * *

(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),

[(I)] *(K)* section 6049(c) (relating to returns regarding payments of interest),

[(J)] *(L)* section 6050A(b) (relating to reporting requirements of certain fishing boat operators),

[(K)] *(M)* section 6050H(d) or (h)(2) relating to returns relating to mortgage interest received in trade or business from individuals),

[(L)] *(N)* section 6050I(e) or paragraph (4) or (5) of section 6050I(g) (relating to cash received in trade or business, etc.),

[(M)] *(O)* section 6050J(e) (relating to returns relating to foreclosures and abandonments of security),

[(N)] *(P)* section 6050K(b) (relating to returns relating to exchanges of certain partnership interests),

[(O)] *(Q)* section 6050L(c) (relating to returns relating to certain dispositions of donated property),

[(P)] *(R)* section 6050N(b) (relating to returns regarding payments of royalties),

[(Q)] *(S)* section 6050P(d) (relating to returns relating to the cancellation of indebtedness by certain financial entities),

[(R)] *(T)* section 6050Q (relating to certain long-term care benefits),

[(S)] *(U)* section 6050R(c) (relating to returns relating to certain purchases of fish),

[(T)] *(V)* section 6051 (relating to receipts for employees),

[(U)] *(W)* section 6052(b) (relating to returns regarding payment of wages in the form of group-term life insurance),

[(V)] *(X)* section 6053(b) or (c) (relating to reports of tips),

[(W)] *(Y)* section 6048(b)(1)(B) (relating to foreign trust reporting requirements),

[(X)] *(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,

[(Y)] *(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,

[(Z)] *(BB)* section 6050S(d) (relating to returns relating to qualified tuition and related expenses),

[(AA)] *(CC)* section 264(f)(5)(A)(iv) (relating to reporting with respect to certain life insurance and annuity contracts),

[(BB)] *(DD)* section 6050T (relating to returns relating to credit for health insurance costs of eligible individuals)

[(CC)] *(EE)* section 6050U (relating to charges or payments for qualified long-term care insurance contracts under combined arrangements).

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TITLE 31, UNITED STATES CODE

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SUBTITLE II—THE BUDGET PROCESS

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CHAPTER 13—APPROPRIATIONS

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SUBCHAPTER II—TRUST FUNDS AND REFUNDS

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§ 1324. Refund of internal revenue collections

(a) * * *

(b) Disbursements may be made from the appropriation made by this section only for—

(1) * * *

(2) refunds due from credit provisions of the Internal Revenue Code of 1986 (26 U.S.C. 1 et seq.) enacted before January 1, 1978, or enacted by the Taxpayer Relief Act of 1997, or from section 35*, 36,* or 6428 or 53(e) of such Code.

* * * * * * *

TAX INCREASE PREVENTION AND RECONCILIATION ACT OF 2005

SEC. 401. TIME FOR PAYMENT OF CORPORATE ESTIMATED TAXES.

Notwithstanding section 6655 of the Internal Revenue Code of 1986—

(1) in the case of a corporation with assets of not less than $1,000,000,000 (determined as of the end of the preceding taxable year)—

(A) * * *

(B) the amount of any required installment of corporate estimated tax which is otherwise due in July, August, or September of 2012 shall be [115.75 percent] *100 percent* of such amount,

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