

**DESCRIPTION OF THE CHAIRMAN'S MODIFICATION TO THE
CHAIRMAN'S MARK OF A BILL TO EXTEND CERTAIN
EXPIRED TAX PROVISIONS**

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INTRODUCTION

The Senate Committee on Finance has scheduled a markup on July 21, 2015 of the extension of certain expired tax provisions. This document,¹ prepared by the staff of the Joint Committee on Taxation, provides a description of the Chairman's modification to the Chairman's mark of a bill to extend certain expired tax provisions.

¹ This document may be cited as follows: Joint Committee on Taxation, *Description of the Chairman's Modification to the Chairman's Mark of a Bill to Extend Certain Expired Tax Provisions* (JCX-103-15), July 21, 2015. This document can also be found on the Joint Committee on Taxation website at www.jct.gov.

A. Modifications to the Chairman's Mark

1. Modification of teacher expense deduction

The Chairman's modification indexes the \$250 maximum deduction amount for inflation, and provides that teachers' professional development expenses also qualify as a deductible expense.

2. Modification to parity for employer-provided mass transit and parking benefits

The Chairman's modification expands the present-law exclusion for qualified bicycle commuting reimbursements. Under present law, the exclusion applies to employer reimbursements of expenses incurred for the purchase of a bicycle and bicycle improvements, repairs and storage, by an employee who regularly uses the bicycle for commuting. The Chairman's modification extends the exclusion to employer reimbursements of expenses incurred for a bicycle-share program by an employee who regularly uses the program for commuting. The Chairman's modification applies to employer reimbursements for taxable years beginning after December 31, 2014, and before January 1, 2017.

3. Modification of research credit

The Chairman's modification modifies the research credit by allowing a qualified small business to elect for any taxable year to claim a certain amount of its research credit as a payroll tax credit against its employer Social Security or old age, survivors, and disability insurance ("OASDI") liability,² rather than against its income tax liability.³ A qualified small business is defined, with respect to any taxable year, as a corporation (including an S corporation) or partnership (1) with gross receipts of less than \$5 million for the taxable year,⁴ and (2) that did not have gross receipts for any taxable year before the five taxable year period ending with the taxable year. An individual carrying on one or more trades or businesses also may be considered a qualified small business if the individual meets the conditions set forth in (1) and (2), taking into account its aggregate gross receipts received with respect to all trades or businesses. A qualified small business does not include an organization exempt from income tax under section 501.

The payroll tax credit portion is the least of (1) an amount specified by the taxpayer that does not exceed \$250,000, (2) the research credit determined for the taxable year, or (3) in the case of a qualified small business other than a partnership or S corporation, the amount of the

² See sec. 3111(a).

³ The credit does not apply against its employer Medicare or hospital insurance ("HI") liability or against the employee's Federal Insurance Contributions Act ("FICA") taxes the employer is required to withhold and remit to the government. See sections 3101 through 3128 for the rules governing payroll taxes.

⁴ For this purpose, gross receipts are determined under the rules of section 448(c)(3), without regard to subparagraph (A) thereof.

business credit carryforward under section 39 from the taxable year (determined before the application of this proposal to the taxable year).

Under the Chairman's modification, all members of the same controlled group or group under common control are treated as a single taxpayer.⁵ The \$250,000 amount is allocated among the members in proportion to each member's expenses on which the research credit is based. Each member may separately elect the payroll tax credit, but not in excess of its allocated dollar amount.

A taxpayer may make an annual election under this modification, specifying the amount of its research credit not to exceed \$250,000 that may be used as a payroll tax credit, on or before the due date (including extensions) of its originally filed return.⁶ A taxpayer may not make an election for a taxable year if it has made such an election for five or more preceding taxable years. An election to apply the research credit against OASDI liability may not be revoked without the consent of the Secretary of the Treasury ("Secretary"). In the case of a partnership or S corporation, an election to apply the credit against its OASDI liability is made at the entity level.

The payroll tax portion of the research credit is allowed as a credit against the qualified small business's OASDI tax liability for the first calendar quarter beginning after the date on which the qualified small business files its income tax or information return for the taxable year. The credit may not exceed the OASDI tax liability for a calendar quarter on the wages paid with respect to all employees of the qualified small business.

If the payroll tax portion of the credit exceeds the qualified small business's OASDI tax liability for a calendar quarter, the excess is allowed as a credit against the OASDI liability for the following calendar quarter.

The Secretary is directed to prescribe such regulations as are necessary to carry out the purposes of the proposal, including (1) to prevent the avoidance of the purposes of the limitations and aggregation rules through the use of successor companies or other means, (2) to minimize compliance and record-keeping burdens, and (3) for recapture of the credit amount applied against OASDI taxes in the case of an adjustment to the payroll tax portion of the research credit, including requiring amended returns in such a case.

The Chairman's modification also modifies the research credit to provide that, in the case of an eligible small business (as defined in section 38(c)(5)(C)⁷), the research credit determined

⁵ For this purpose, all persons or entities treated as a single taxpayer under section 41(f)(1) are treated as a single person.

⁶ In the case of a qualified small business that is a partnership, the return required to be filed under section 6031. In the case of a qualified small business that is an S corporation, the return required to be filed under section 6037. In the case of any other qualified small business, the return of tax for the taxable year.

⁷ Thus, for this purpose, an eligible small business is, with respect to any taxable year, a corporation, the stock of which is not publicly traded, a partnership, or a sole proprietor, if the average annual gross receipts for the

under section 41 for taxable years beginning after December 31, 2014 is a specified credit. Thus, these research credits of an eligible small business may offset both regular tax and AMT liabilities.⁸

The Chairman's modification to allow the research credit against FICA taxes is effective for credits determined for taxable years beginning after December 31, 2014. The Chairman's modification to allow the research credit against AMT is effective for research credits of eligible small businesses determined for taxable years beginning after December 31, 2014, and to carrybacks of such credits.

4. Modification of extension of temporary minimum low-income housing tax credit rate for non-Federally subsidized buildings

The Chairman's modification establishes a 4-percent minimum credit rate for acquisition of existing housing that is not Federally subsidized. Any existing housing that is also financed with tax-exempt bonds is considered Federally subsidized for this purpose and therefore is not eligible for the 4-percent minimum credit rate. This minimum credit rate only applies to the acquisition of existing buildings that receive housing credit dollar allocations which are subject to caps from State housing credit agencies. The 4-percent minimum credit rate applies to buildings placed in service after the date of enactment with respect to which credit allocations are made before January 1, 2017.

5. Modification of new markets tax credit

The Chairman's modification would adjust the total new markets tax credit allocation amount from \$3.5 billion in calendar years 2015 and 2016 to \$3.94 billion in calendar years 2015 and 2016.

preceding three taxable years does not exceed \$50 million (determined under rules similar to the rules of section 448(c)(2) and (3)).

⁸ For example, under present law, assume a taxpayer has a regular tax of \$80,000, a tentative minimum tax of \$100,000, and a research credit determined under section 41 of \$90,000 for a taxable year (and no other credits). Under present law, the taxpayer's research credit is limited to the excess of \$100,000 over the greater of (1) \$100,000 or (2) \$13,750 (25% of the excess of \$80,000 over \$25,000). Accordingly, no research credit may be claimed ($\$100,000 - \$100,000 = \$0$) for the taxable year and the taxpayer's net tax liability is \$100,000. The \$90,000 research credit may be carried back or forward under the rules applicable to the general business credit. Under the Chairman's modification, the limitation would be the excess of \$80,000 over the greater of (1) \$0 or (2) \$13,750. Since \$13,750 is greater than \$0, the \$80,000 would be reduced by \$13,750 such that the research credit limitation would be \$66,250. Hence, the taxpayer would be able to claim a research credit of \$66,250 against its net income tax liability, as well as its AMT liability, which would result in \$33,250 of total tax owed ($\$100,000 - \$66,250$). The remaining \$23,750 of its research credit ($\$90,000 - \$66,250$) may be carried back or forward, as applicable.

6. Modification of railroad track maintenance credit

The Chairman's modification provides that qualified railroad track maintenance expenditures are defined as gross expenditures (whether or not otherwise chargeable to capital account) for maintaining railroad track (including roadbed, bridges, and related track structures) owned or leased as of January 1, 2015, by a Class II or Class III railroad (determined without regard to any consideration for such expenditure given by the Class II or Class III railroad which made the assignment of such track). The modification is effective for taxable years beginning after December 31, 2014.

7. Modification to employer wage credit for employees who are active duty members of the uniformed services

The Chairman's modification makes the credit available to an employer of any size, rather than only to eligible small business employers, and increases the credit rate to 100 percent of eligible differential wage payments (that is, differential wage payments up to \$20,000).

8. Modification of work opportunity tax credit

The Chairman's modification extends the work opportunity tax credit to employers who hire individuals who have exhausted regular compensation benefits under State and Federal unemployment compensation laws. With respect to wages paid to such individuals, employers would be eligible for a 40 percent credit on the first \$6,000 of wages paid to such individual, for a maximum credit of \$2,400 per eligible employee.

9. Modification of qualified zone academy bonds

The Chairman's modification reduces the private business contribution requirement from 10 percent to five percent.

10. Modification of accelerated depreciation for business property on an Indian reservation

The Chairman's modification provides that a taxpayer may annually elect out of section 168(j) on a class-by-class basis for qualified Indian reservation property placed in service after December 31, 2014 and before January 1, 2017.

11. Modification of increased expensing limitations

The Chairman's modification indexes for inflation the \$500,000 expensing limitation and \$2,000,000 phaseout limitation under section 179 for taxable years beginning after 2014.

12. Modification of special expensing rules for certain film and television productions; special expensing for live theatrical productions

The Chairman's modification expands section 181 to include any qualified live theatrical production. A qualified live theatrical production is defined as a live staged production of a play (with or without music) which is derived from a written book or script and is produced or presented by a commercial entity in any venue which has an audience capacity of not more than

3,000, or a series of venues the majority of which have an audience capacity of not more than 3,000. In addition, qualified live theatrical productions include any live staged production which is produced or presented by a taxable entity no more than 10 weeks annually in any venue which has an audience capacity of not more than 6,500. In general, in the case of multiple live-staged productions, each such live-staged production is treated as a separate production. Similar to the exclusion for sexually explicit productions from the present-law definition of qualified productions, qualified live theatrical productions do not include stage performances that would be excluded by section 2257(h)(1) of title 18 of the U.S. Code, if such provision were extended to live stage performances. The modification applies to productions commencing after December 31, 2014. For purposes of this modification, the date on which a qualified live theatrical production commences is the date of the first public performance of such production for a paying audience.

13. Modification of empowerment zone tax incentives

The Chairman's modification amends the requirements for tax-exempt enterprise zone facility bonds to treat an employee as a resident of an empowerment zone for purposes of the 35 percent in-zone employment requirement if they are a resident of an empowerment zone, an enterprise community, or a qualified low-income community within an applicable nominating jurisdiction. The modification applies to bonds issued before, on, or after the date of enactment and not redeemed before the date of enactment.

14. Modification to credit for nonbusiness energy property

The Chairman's modification expands qualifying property to include all roof and roof products that meet Energy Star program guidelines. The Chairman's modification allows installation costs to be included as an eligible expense with respect to qualifying energy efficiency improvements. The Chairman's modification also modifies certain efficiency standards for qualifying property, as follows:

1. Windows, skylights, and doors must meet Energy Star version 6.0 standards.
2. Natural gas, propane, or oil tankless water heaters must have an energy factor of at least 0.9 or a thermal efficiency of at least 90 percent. Natural gas, propane, or oil storage water heaters must have an energy factor of at least 0.8 or a thermal efficiency of at least 90 percent. Storage water heaters must have storage capacity of greater than 20 gallons but less than or equal to 55 gallons to claim the credit.
3. Biomass fuel stoves must have thermal efficiency of 75 percent evaluated at the higher heating value and tested in accordance with Canadian Standards Association Standard B415.1.
4. Oil hot water boilers must have an annual fuel utilization efficiency not less than 90.

15. Modification to energy efficient commercial buildings deduction

The Chairman's modification permits tribal governments and non-profits (as defined in section 501(c)(3)) to allocate the deduction to the person primarily responsible for designing the

property, in the same manner as is allowed for public property. Additionally, the modification increases the efficiency standards such that by 2016 qualifying buildings are determined relative to the ASHRAE/IESNA 90.1-2007 standards.

B. Revenue Raising Additions to the Chairman's Mark

1. Exclusion from gross income of certain clean coal power grants

Present Law

Section 402 of the Energy Policy Act of 2005 provides criteria for Federal financial assistance under the Clean Coal Power Initiative. To the extent this financial assistance comes in the form of a grant, award, or allowance, it must generally be included in income under section 61 of the Internal Revenue Code (the "Code").

Corporate taxpayers may be eligible to exclude such financial assistance from gross income as a contribution of capital under section 118 of the Code. The basis of any property acquired by reason of such a contribution of capital must be reduced by the amount of the contribution. This exclusion is not available to non-corporate taxpayers.

Description of Proposal

With respect to eligible non-corporate recipients, the proposal excludes from gross income and alternative minimum taxable income any grant, award, or allowance made pursuant to section 402 of the Energy Policy Act of 2005. The proposal requires that, to the extent the grant, award or allowance is related to depreciable property, the adjusted basis is reduced by the amount excluded from income under the proposal. The proposal requires eligible non-corporate recipients to pay an upfront payment to the Federal government equal to 1.18 percent of the value of the grant, award, or allowance.

Under the proposal, eligible non-corporate recipients are defined as (1) any recipient (other than a corporation) of any grant, award, or allowance made pursuant to Section 402 of the Energy Policy Act of 2005 that (2) makes the upfront 1.18-percent payment, where (3) the grant, award, or allowance would have been excludable from income by reason of Code section 118 if the taxpayer had been a corporation. In the case of a partnership, the eligible non-corporate recipients are the partners.

Effective Date

The proposal is effective for payments received in taxable years beginning after December 31, 2011.

2. Modification of alternative fuels credit and excise tax for liquefied natural gas and liquefied petroleum gas

Present Law

Excise tax

The Code imposes an excise tax on gasoline, diesel fuel, kerosene, and certain alternative fuels at the following rates:⁹

Gasoline	18.3 cents per gallon
Diesel fuel and kerosene	24.3 cents per gallon ¹⁰
Alternative fuels	24.3 and 18.3 cents per gallon ¹¹

The Code imposes tax on gasoline, diesel fuel, and kerosene upon removal from a refinery or on importation, unless the fuel is transferred in bulk by registered pipeline or barge to a registered terminal facility.¹² The imposition of tax on alternative fuels generally occurs at retail when the fuel is sold to an owner, lessee or other operator of a motor vehicle or motorboat for use as a fuel in such motor vehicle or motorboat.

Liquefied natural gas (“LNG”) and liquefied petroleum gas (also known as propane) are classified as alternative fuels. LNG is taxed at the same per gallon rate as diesel, 24.3 cents per gallon. According to the Oak Ridge National Laboratory, diesel fuel has an energy content of 128,700 Btu per gallon (lower heating value) and LNG has an energy content of 74,700 Btu per gallon (lower heating value). Therefore, a gallon of LNG produces approximately 58 percent of the energy produced by a gallon of diesel fuel.

Liquefied petroleum gas is taxed at the same per gallon rate as gasoline, 18.3 cents per gallon. According to the Oak Ridge National Laboratory, gasoline has an energy content of 115,400 Btu per gallon (lower heating value), and liquefied petroleum gas has an energy content of 83,500 Btu per gallon (lower heating value). Therefore, a gallon of liquefied petroleum gas produces approximately 72 percent of the energy produced by a gallon of gasoline.

⁹ These fuels are subject to an additional 0.1-cent-per-gallon excise tax to fund the Leaking Underground Storage Tank (“LUST”) Trust Fund (secs. 4041(d) and 4081(a)(2)(B)). That tax is imposed as an “add-on” to other existing taxes.

¹⁰ Diesel-water emulsions are taxed at 19.7 cents per gallon (sec. 4081(a)(2)(D)).

¹¹ The rate of tax is 24.3 cents per gallon in the case of liquefied natural gas, any liquid fuel (other than ethanol or methanol) derived from coal, and liquid hydrocarbons derived from biomass. Other alternative fuels sold or used as motor fuel are generally taxed at 18.3 cents per gallon. “Alternative fuel” also includes compressed natural gas. The rate for compressed natural gas is 18.3 cents per energy equivalent of a gallon of gasoline. *See* sec. 4041(a)(2) and (3).

¹² Sec. 4081(a)(1).

Alternative fuel excise tax credits and outlay payments

The Code provides two per-gallon excise tax credits with respect to alternative fuel: the alternative fuel credit, and the alternative fuel mixture credit. For this purpose, the term “alternative fuel” means liquefied petroleum gas, P Series fuels (as defined by the Secretary of Energy under 42 U.S.C. sec. 13211(2)), compressed or liquefied natural gas, liquefied hydrogen, liquid fuel derived from coal through the Fischer-Tropsch process (“coal-to-liquids”), compressed or liquefied gas derived from biomass, or liquid fuel derived from biomass.

The alternative fuel credit is allowed against section 4041 liability, and the alternative fuel mixture credit is allowed against section 4081 liability. Neither credit is allowed unless the taxpayer is registered with the Secretary. The alternative fuel credit is 50 cents per gallon of alternative fuel or gasoline gallon equivalents¹³ of nonliquid alternative fuel sold by the taxpayer for use as a motor fuel in a motor vehicle or motorboat, sold for use in aviation or so used by the taxpayer.

The alternative fuel mixture credit is 50 cents per gallon of alternative fuel used in producing an alternative fuel mixture for sale or use in a trade or business of the taxpayer. An “alternative fuel mixture” is a mixture of alternative fuel and taxable fuel (gasoline, diesel fuel or kerosene) that contains at least 1/10 of one percent taxable fuel. The mixture must be sold by the taxpayer producing such mixture to any person for use as a fuel, or used by the taxpayer producing the mixture as a fuel.

A person may file a claim for payment equal to the amount of the alternative fuel credit (but not the alternative fuel mixture credit). The alternative fuel credit must first be applied to the applicable excise tax liability under section 4041 or 4081, and any excess credit may be taken as a payment.

Description of Proposal

Excise tax

The proposal changes the tax rate of LNG to a rate based on its energy equivalent of a gallon of diesel (approximately 14.1 cents per gallon) and changes the tax rate of liquefied petroleum gas to a rate based on its energy equivalent of a gallon of gasoline (approximately 13.2 cents per gallon).

Specifically, the proposal provides that liquefied petroleum gas is taxed at 18.3 cents per energy equivalent of a gallon of gasoline. For this purpose, “energy equivalent of a gallon of gasoline” means, with respect to liquefied petroleum gas, the amount of such fuel having a Btu content of 115,400 (lower heating value). LNG is taxed at 24.3 cents per energy equivalent of a gallon of diesel fuel. For this purpose, “energy equivalent of a gallon of diesel” means, with

¹³ “Gasoline gallon equivalent” means, with respect to any nonliquid alternative fuel (for example, compressed natural gas), the amount of such fuel having a Btu (British thermal unit) content of 124,800 (higher heating value).

respect to a liquefied natural gas fuel, the amount of such fuel having a Btu content of 128,700 (lower heating value).

Alternative fuel excise tax credit and outlay payments

The alternative fuel excise tax credits and outlay payment provisions related to liquefied natural gas and liquefied petroleum gas also are converted to the same energy equivalent basis used for the purpose of the tax. For LNG, the credit is 50 cents per energy equivalent of diesel fuel (approximately 29 cents per gallon of LNG) and for liquefied petroleum gas the credit is 50 cents per energy equivalent of gasoline (approximately 36 cents per gallon).

Effective Date

The proposal is effective for fuel sold or used after December 31, 2014.

3. Improve mortgage interest deduction reporting

Present Law

Any person who, in the course of a trade or business during a calendar year, received from an individual \$600 or more of interest during a calendar year on an obligation secured by real property (such as mortgage interest) must file an information return with the IRS and must furnish a copy of that return to the payor.¹⁴ The information return generally must include the name, address, and taxpayer identification number of the individual from whom the interest was received, and the amount of the interest and points received for the calendar year.

Description of Proposal

Under the proposal, the following additional information is required to be included in information returns filed with the IRS and statements furnished to the payor with respect to a debt secured by real property: (i) the amount of outstanding principal on the mortgage as of the beginning of the calendar year, (ii) the address of the property securing the mortgage, and (iii) the loan origination date.

Effective Date

The proposal is effective for returns and statements due (determined without regard to extensions) after December 31, 2016.

¹⁴ Sec. 6050H.

C. Sense of the Senate to Express Support for Comprehensive Tax Reform

The Chairman's modification expresses the sense of the Senate that Congress should pursue comprehensive tax reform that eliminates temporary provisions from the tax code, thus making permanent those provisions that merit such treatment and allowing others to expire, and that a major focus of tax reform should be fostering economic growth and lowering tax rates by broadening the tax base.