DESCRIPTION OF THE CHAIRMAN'S MODIFICATION TO THE "EXPIRING PROVISIONS IMPROVEMENT REFORM AND EFFICIENCY (EXPIRE) ACT"

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INTRODUCTION

The Senate Committee on Finance has scheduled a markup of the "Expiring Provisions Improvement Reform and Efficiency (EXPIRE) Act." This document,[1] prepared by the staff of the Joint Committee on Taxation, provides a description of the Chairman's modification to the "Expiring Provisions Improvement Reform and Efficiency (EXPIRE) Act."

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[1] This document may be cited as follows: Joint Committee on Taxation, *Description of the Chairman's Modification to the "Expiring Provisions Improvement Reform and Efficiency (Expire) Act"* (JCX-31-14), April 3, 2014. This document may also be found on our website at www.jct.gov.

A. Modifications to the Chairman's Mark

1. Modification of extension of temporary minimum low-income housing tax credit rate for non-Federally subsidized new buildings (sec. 42 of the Code)

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. The 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, 2016.

2. Modification to employer wage credit for employees who are active duty members of the uniformed services (sec. 45P of the Code)

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

3. Modification of work opportunity tax credit (sec. 51 of the Code)

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.

The Chairman's modification provides that for purposes of the work opportunity tax credit, the term "empowerment zone" as used in that section shall refer to empowerment zones designated as such under section 1391 of the Code as of December 31, 2013.

4. Qualified zone academy bonds (secs. 54E and 6431 of the Code)

The Chairman's modification makes three changes with respect to qualified zone academy bonds. First, the Chairman's modification makes a technical correction to conform the Code to Congressional intent that qualified zone academy bonds cannot be issued as direct-pay bonds using national limitation allocations or carryforwards from years after 2010. The technical correction is effective as if included in section 310 of American Taxpayer Relief Act of 2012.

Second, the Chairman's modification provides that for purposes of the qualified zone academy bonds, the term "empowerment zone" as used in that section shall refer to empowerment zones designated as such under section 1391 of the Code as of December 31, 2013. Third, the Chairman's modification reduces the private business contribution requirement from 10 percent to five percent.

B. Additions to the Chairman's Mark

1. Credit for nonbusiness energy property (sec. 25C of the Code)

Present Law

Present law provides a 10-percent credit for the purchase of qualified energy efficiency improvements to existing homes.[2] A qualified energy efficiency improvement is any energy efficiency building envelope component (1) that meets or exceeds the prescriptive criteria for such a component established by the 2009 International Energy Conservation Code as such Code (including supplements) is in effect on the date of the enactment of the American Recovery and Reinvestment Tax Act of 2009[3] (or, in the case of windows, skylights and doors, and metal roofs with appropriate pigmented coatings or asphalt roofs with appropriate cooling granules, meets the Energy Star program requirements); (2) that is installed in or on a dwelling located in the United States and owned and used by the taxpayer as the taxpayer's principal residence; (3) the original use of which commences with the taxpayer; and (4) that reasonably can be expected to remain in use for at least five years. The credit is nonrefundable.

Building envelope components are: (1) insulation materials or systems which are specifically and primarily designed to reduce the heat loss or gain for a dwelling and which meet the prescriptive criteria for such material or system established by the 2009 International Energy Conservation Code, as such Code (including supplements) is in effect on the date of the enactment of the American Recovery and Reinvestment Tax Act of 2009;[4] (2) exterior windows (including skylights) and doors; and (3) metal or asphalt roofs with appropriate pigmented coatings or cooling granules that are specifically and primarily designed to reduce the heat gain for a dwelling.

Additionally, present law provides specified credits for the purchase of specific energy efficient property originally placed in service by the taxpayer during the taxable year. The allowable credit for the purchase of certain property is (1) $50 for each advanced main air circulating fan, (2) $150 for each qualified natural gas, propane, or oil furnace or hot water boiler, and (3) $300 for each item of energy efficient building property.

An advanced main air circulating fan is a fan used in a natural gas, propane, or oil furnace and which has an annual electricity use of no more than two percent of the total annual energy use of the furnace (as determined in the standard Department of Energy test procedures).

A qualified natural gas, propane, or oil furnace or hot water boiler is a natural gas, propane, or oil furnace or hot water boiler with an annual fuel utilization efficiency rate of at least 95.

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[2] Sec. 25C.

[3] Pub. L. No. 111-5, February 17, 2009.

[4] *Ibid.*

Energy-efficient building property is: (1) an electric heat pump water heater which yields an energy factor of at least 2.0 in the standard Department of Energy test procedure, (2) an electric heat pump which achieves the highest efficiency tier established by the Consortium for Energy Efficiency, as in effect on January 1, 2009,[5] (3) a central air conditioner which achieves the highest efficiency tier established by the Consortium for Energy Efficiency as in effect on January 1, 2009,[6] (4) a natural gas, propane, or oil water heater which has an energy factor of at least 0.82 or thermal efficiency of at least 90 percent, and (5) biomass fuel property.

Biomass fuel property is a stove that burns biomass fuel to heat a dwelling unit located in the United States and used as a principal residence by the taxpayer, or to heat water for such dwelling unit, and that has a thermal efficiency rating of at least 75 percent. Biomass fuel is any plant-derived fuel available on a renewable or recurring basis, including agricultural crops and trees, wood and wood waste and residues (including wood pellets), plants (including aquatic plants), grasses, residues, and fibers.

The credit is available for property placed in service prior to January 1, 2014. The maximum credit for a taxpayer for all taxable years is $500, and no more than $200 of such credit may be attributable to expenditures on windows.

The taxpayer's basis in the property is reduced by the amount of the credit. Special proration rules apply in the case of jointly owned property, condominiums, and tenant-stockholders in cooperative housing corporations. If less than 80 percent of the property is used for nonbusiness purposes, only that portion of expenditures that is used for nonbusiness purposes is taken into account.

For purposes of determining the amount of expenditures made by any individual with respect to any dwelling unit, expenditures which are made from subsidized energy financing are not taken into account. The term "subsidized energy financing" means financing provided under a Federal, State, or local program a principal purpose of which is to provide subsidized financing for projects designed to conserve or produce energy.

Description of Proposal

The proposal extends the credit for two years, through December 31, 2015.

The proposal expands qualifying property to include all roof and roof products that meet Energy Star program guidelines. The proposal modifies certain efficiency standards for qualifying property, as follows:

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[5] These standards are a seasonal energy efficiency ratio ("SEER") greater than or equal to 15, an energy efficiency ratio ("EER") greater than or equal to 12.5, and heating seasonal performance factor ("HSPF") greater than or equal to 8.5 for split heat pumps, and SEER greater than or equal to 14, EER greater than or equal to 12, and HSPF greater than or equal to 8.0 for packaged heat pumps.

[6] These standards are a SEER greater than or equal to 16 and EER greater than or equal to 13 for split systems, and SEER greater than or equal to 14 and EER greater than or equal to 12 for packaged systems.

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.

Effective Date

The proposal is effective for property placed in service after December 31, 2013.

2. Credits with respect to facilities producing energy from certain renewable resources (secs. 45 and 48 of the Code)

Present Law

Renewable electricity production credit

An income tax credit is allowed for the production of electricity from qualified energy resources at qualified facilities (the "renewable electricity production credit").[7] Qualified energy resources comprise wind, closed-loop biomass, open-loop biomass, geothermal energy, solar energy, small irrigation power, municipal solid waste, qualified hydropower production, and marine and hydrokinetic renewable energy. Qualified facilities are, generally, facilities that generate electricity using qualified energy resources. To be eligible for the credit, electricity produced from qualified energy resources at qualified facilities must be sold by the taxpayer to an unrelated person.

[7] Sec. 45. In addition to the renewable electricity production credit, section 45 also provides income tax credits for the production of Indian coal and refined coal at qualified facilities.

Summary of Credit for Electricity Produced from Certain Renewable Resources		
Eligible electricity production activity (sec. 45)	**Credit amount for 2013[1] (cents per kilowatt-hour)**	**Expiration[2]**
Wind	2.3	December 31, 2013
Closed-loop biomass	2.3	December 31, 2013
Open-loop biomass (including agricultural livestock waste nutrient facilities)	1.1	December 31, 2013
Geothermal	2.3	December 31, 2013
Solar (pre-2006 facilities only)	2.3	December 31, 2005
Small irrigation power	1.1	December 31, 2013
Municipal solid waste (including landfill gas facilities and trash combustion facilities)	1.1	December 31, 2013
Qualified hydropower	1.1	December 31, 2013
Marine and hydrokinetic	1.1	December 31, 2013

[1] In general, the credit is available for electricity produced during the first 10 years after a facility has been placed in service.

[2] Expires for property the construction of which begins after this date.

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

A taxpayer may make an irrevocable election to have certain property which is part of a qualified renewable electricity production facility be treated as energy property eligible for a 30 percent investment credit under section 48. For this purpose, qualified facilities are facilities otherwise eligible for the renewable electricity production credit with respect to which no credit under section 45 has been allowed. A taxpayer electing to treat a facility as energy property may not claim the renewable electricity production credit. The eligible basis for the investment credit for taxpayers making this election is the basis of the depreciable (or amortizable) property that is part of a facility capable of generating electricity eligible for the renewable electricity production credit.

Description of Proposal

The proposal extends the renewable electricity production credit and the election to claim the energy credit in lieu of the electricity production credit for two years, through December 31, 2015.

Effective Date

The proposal is effective on January 1, 2014.

3. Seven-year recovery period for motorsports entertainment complexes (sec. 168 of the Code)

Present Law

A taxpayer generally must capitalize the cost of property used in a trade or business and recover such cost over time through annual deductions for depreciation or amortization.[8] Tangible property generally is depreciated under the modified accelerated cost recovery system ("MACRS"), which determines depreciation by applying specific recovery periods,[9] placed-in-service conventions, and depreciation methods to the cost of various types of depreciable property.[10] The cost of nonresidential real property is recovered using the straight-line method of depreciation and a recovery period of 39 years.[11] Nonresidential real property is subject to the mid-month convention, which treats all property placed in service during any month (or disposed of during any month) as placed in service (or disposed of) on the mid-point of such month.[12] All other property generally is subject to the half-year convention, which treats all property placed in service during any taxable year (or disposed of during any taxable year) as placed in service (or disposed of) on the mid-point of such taxable year.[13] Land improvements (such as roads and

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[8] See secs. 263(a) and 167.

[9] The applicable recovery period for an asset is determined in part by statute and in part by historic Treasury guidance. Exercising authority granted by Congress, the Secretary issued Revenue Procedure 87-56 (1987-2 C.B. 674), laying out the framework of recovery periods for enumerated classes of assets. The Secretary clarified and modified the list of asset classes in Revenue Procedure 88-22 (1988-1 C.B. 785). In November 1988, Congress revoked the Secretary's authority to modify the class lives of depreciable property. Revenue Procedure 87-56, as modified, remains in effect except to the extent that the Congress has, since 1988, statutorily modified the recovery period for certain depreciable assets, effectively superseding any administrative guidance with regard to such property.

[10] Sec. 168.

[11] Secs. 168(b)(3)(A) and 168(c).

[12] Secs. 168(d)(2)(A) and (d)(4)(B).

[13] Secs. 168(d)(1) and (d)(4)(A). However, if substantial property is placed in service during the last three months of a taxable year, a special rule requires use of the mid-quarter convention, which treats all property placed in service (or disposed of) during any quarter as placed in service (or disposed of) on the mid-point of such quarter. Secs. 168(d)(3) and (d)(4)(C).

fences) are recovered using the 150-percent declining balance method and a recovery period of 15 years.[14] An exception exists for the theme and amusement park industry, whose assets are assigned a recovery period of seven years.[15] Additionally, a motorsports entertainment complex placed in service on or before December 31, 2013 is assigned a recovery period of seven years.[16] For these purposes, a motorsports entertainment complex means a racing track facility which is permanently situated on land and which during the 36-month period following its placed-in-service date hosts a racing event.[17] The term motorsports entertainment complex also includes ancillary facilities, land improvements (*e.g.*, parking lots, sidewalks, fences), support facilities (*e.g.*, food and beverage retailing, souvenir vending), and appurtenances associated with such facilities (*e.g.*, ticket booths, grandstands).

Description of Proposal

The proposal extends the present-law seven-year recovery period for motorsports entertainment complexes for two years to apply to property placed in service on or before December 31, 2015.

Effective Date

The proposal is effective for property placed in service after December 31, 2013.

4. Contributions of capital gain real property made for conservation purposes (sec. 170(b) of the Code)

Present Law

Charitable contributions generally

In general, a deduction is permitted for charitable contributions, subject to certain limitations that depend on the type of taxpayer, the property contributed, and the donee organization. The amount of deduction generally equals the fair market value of the contributed property on the date of the contribution. Charitable deductions are provided for income, estate, and gift tax purposes.[18]

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[14] Sec. 168(b)(2)(A) and asset class 00.3 of Rev. Proc. 87-56, 1987-2 C.B. 674, 1987. Under the 150-percent declining balance method, the depreciation rate is determined by dividing 150 percent by the appropriate recovery period, switching to the straight-line method for the first taxable year where using the straight-line method with respect to the adjusted basis as of the beginning of that year will yield a larger depreciation allowance. Secs. 168(b)(2) and (b)(1)(B).

[15] Asset class 80.0 of Rev. Proc. 87-56, 1987-2 C.B. 674, 1987.

[16] Sec. 168(e)(3)(C)(ii).

[17] Sec. 168(i)(15).

[18] Secs. 170, 2055, and 2522, respectively.

In general, in any taxable year, charitable contributions by a corporation are not deductible to the extent the aggregate contributions exceed 10 percent of the corporation's taxable income computed without regard to net operating or capital loss carrybacks. Total deductible contributions of an individual taxpayer to public charities, private operating foundations, and certain types of private nonoperating foundations generally may not exceed 50 percent of the taxpayer's contribution base, which is the taxpayer's adjusted gross income for a taxable year (disregarding any net operating loss carryback). To the extent a taxpayer has not exceeded the 50-percent limitation, (1) contributions of capital gain property to public charities generally may be deducted up to 30 percent of the taxpayer's contribution base, (2) contributions of cash to most private nonoperating foundations and certain other charitable organizations generally may be deducted up to 30 percent of the taxpayer's contribution base, and (3) contributions of capital gain property to private foundations and certain other charitable organizations generally may be deducted up to 20 percent of the taxpayer's contribution base.

Contributions in excess of the applicable percentage limits generally may be carried over and deducted over the next five taxable years, subject to the relevant percentage limitations on the deduction in each of those years.

Capital gain property

Capital gain property means any capital asset or property used in the taxpayer's trade or business the sale of which at its fair market value, at the time of contribution, would have resulted in gain that would have been long-term capital gain. Contributions of capital gain property to a qualified charity are deductible at fair market value within certain limitations. Contributions of capital gain property to charitable organizations described in section 170(b)(1)(A) (e.g., public charities, private foundations other than private non-operating foundations, and certain governmental units) generally are deductible up to 30 percent of the taxpayer's contribution base. An individual may elect, however, to bring all these contributions of capital gain property for a taxable year within the 50-percent limitation category by reducing the amount of the contribution deduction by the amount of the appreciation in the capital gain property. Contributions of capital gain property to charitable organizations described in section 170(b)(1)(B) (e.g., private non-operating foundations) are deductible up to 20 percent of the taxpayer's contribution base.

For purposes of determining whether a taxpayer's aggregate charitable contributions in a taxable year exceed the applicable percentage limitation, contributions of capital gain property are taken into account after other charitable contributions.

Qualified conservation contributions

Qualified conservation contributions are one exception to the "partial interest" rule, which generally bars deductions for charitable contributions of partial interests in property.[19] A qualified conservation contribution is a contribution of a qualified real property interest to a qualified organization exclusively for conservation purposes. A qualified real property interest is

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[19] Secs. 170(f)(3)(B)(iii) and 170(h).

defined as: (1) the entire interest of the donor other than a qualified mineral interest; (2) a remainder interest; or (3) a restriction (granted in perpetuity) on the use that may be made of the real property. Qualified organizations include certain governmental units, public charities that meet certain public support tests, and certain supporting organizations. Conservation purposes include: (1) the preservation of land areas for outdoor recreation by, or for the education of, the general public; (2) the protection of a relatively natural habitat of fish, wildlife, or plants, or similar ecosystem; (3) the preservation of open space (including farmland and forest land) where such preservation will yield a significant public benefit and is either for the scenic enjoyment of the general public or pursuant to a clearly delineated Federal, State, or local governmental conservation policy; and (4) the preservation of an historically important land area or a certified historic structure.

Qualified conservation contributions of capital gain property are subject to the same limitations and carryover rules as other charitable contributions of capital gain property.

Temporary rules regarding contributions of capital gain real property for conservation purposes

In general

Under a temporary provision[20] the 30-percent contribution base limitation on contributions of capital gain property by individuals does not apply to qualified conservation contributions (as defined under present law). Instead, individuals may deduct the fair market value of any qualified conservation contribution to the extent of the excess of 50 percent of the contribution base over the amount of all other allowable charitable contributions. These contributions are not taken into account in determining the amount of other allowable charitable contributions.

Individuals are allowed to carry over any qualified conservation contributions that exceed the 50-percent limitation for up to 15 years.

For example, assume an individual with a contribution base of $100 makes a qualified conservation contribution of property with a fair market value of $80 and makes other charitable contributions subject to the 50-percent limitation of $60. The individual is allowed a deduction of $50 in the current taxable year for the non-conservation contributions (50 percent of the $100 contribution base) and is allowed to carry over the excess $10 for up to 5 years. No current deduction is allowed for the qualified conservation contribution, but the entire $80 qualified conservation contribution may be carried forward for up to 15 years.

Farmers and ranchers

In the case of an individual who is a qualified farmer or rancher for the taxable year in which the contribution is made, a qualified conservation contribution is allowable up to 100

[20] Sec. 170(b)(1)(E).

percent of the excess of the taxpayer's contribution base over the amount of all other allowable charitable contributions.

In the above example, if the individual is a qualified farmer or rancher, in addition to the $50 deduction for non-conservation contributions, an additional $50 for the qualified conservation contribution is allowed and $30 may be carried forward for up to 15 years as a contribution subject to the 100-percent limitation.

In the case of a corporation (other than a publicly traded corporation) that is a qualified farmer or rancher for the taxable year in which the contribution is made, any qualified conservation contribution is allowable up to 100 percent of the excess of the corporation's taxable income (as computed under section 170(b)(2)) over the amount of all other allowable charitable contributions. Any excess may be carried forward for up to 15 years as a contribution subject to the 100-percent limitation.[21]

As an additional condition of eligibility for the 100 percent limitation, with respect to any contribution of property in agriculture or livestock production, or that is available for such production, by a qualified farmer or rancher, the qualified real property interest must include a restriction that the property remain generally available for such production. (There is no requirement as to any specific use in agriculture or farming, or necessarily that the property be used for such purposes, merely that the property remain available for such purposes.)

A qualified farmer or rancher means a taxpayer whose gross income from the trade or business of farming (within the meaning of section 2032A(e)(5)) is greater than 50 percent of the taxpayer's gross income for the taxable year.

Termination

The temporary rules regarding contributions of capital gain real property for conservation purposes do not apply to contributions made in taxable years beginning after December 31, 2013.[22]

Description of Proposal

The proposal extends the increased percentage limits and extended carryforward period for contributions of capital gain real property for conservation purposes for two additional years, *i.e.*, for contributions made in taxable years beginning before January 1, 2016.

Effective Date

The proposal is effective for contributions made in taxable years beginning after December 31, 2103.

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[21] Sec. 170(b)(2)(B).

[22] Secs. 170(b)(1)(E)(vi) and 170(b)(2)(B)(iii).

5. Energy efficient commercial buildings deduction (sec. 179D of the Code)

Present Law

In general

Code section 179D provides an election under which a taxpayer may take an immediate deduction equal to energy-efficient commercial building property expenditures made by the taxpayer. Energy-efficient commercial building property is defined as property (1) which is installed on or in any building located in the United States that is within the scope of Standard 90.1-2001 of the American Society of Heating, Refrigerating, and Air Conditioning Engineers and the Illuminating Engineering Society of North America ("ASHRAE/IESNA"), (2) which is installed as part of (i) the interior lighting systems, (ii) the heating, cooling, ventilation, and hot water systems, or (iii) the building envelope, and (3) which is certified as being installed as part of a plan designed to reduce the total annual energy and power costs with respect to the interior lighting systems, heating, cooling, ventilation, and hot water systems of the building by 50 percent or more in comparison to a reference building which meets the minimum requirements of Standard 90.1-2001 (as in effect on April 2, 2003). The deduction is limited to an amount equal to $1.80 per square foot of the property for which such expenditures are made. The deduction is allowed in the year in which the property is placed in service.

Certain certification requirements must be met in order to qualify for the deduction. The Secretary, in consultation with the Secretary of Energy, will promulgate regulations that describe methods of calculating and verifying energy and power costs using qualified computer software based on the provisions of the 2005 California Nonresidential Alternative Calculation Method Approval Manual or, in the case of residential property, the 2005 California Residential Alternative Calculation Method Approval Manual.

The Secretary is granted authority to prescribe procedures for the inspection and testing for compliance of buildings that are comparable, given the difference between commercial and residential buildings, to the requirements in the Mortgage Industry National Accreditation Procedures for Home Energy Rating Systems.[23] Individuals qualified to determine compliance shall only be those recognized by one or more organizations certified by the Secretary for such purposes.

For energy-efficient commercial building property expenditures made by a public entity, such as public schools, the deduction may be allocated to the person primarily responsible for designing the property in lieu of the public entity.

If a deduction is allowed under this section, the basis of the property is reduced by the amount of the deduction.

The deduction is effective for property placed in service prior to January 1, 2014.

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[23] See IRS Notice 2006-52, 2006-1 C.B. 1175, June 2, 2006; IRS 2008-40, 2008-14 I.R.B. 725 March 11, 2008.

Partial allowance of deduction

System-specific deductions

In the case of a building that does not meet the overall building requirement of 50-percent energy savings, a partial deduction is allowed with respect to each separate building system that comprises energy efficient property and which is certified by a qualified professional as meeting or exceeding the applicable system-specific savings targets established by the Secretary. The applicable system-specific savings targets to be established by the Secretary are those that would result in a total annual energy savings with respect to the whole building of 50 percent, if each of the separate systems met the system specific target. The separate building systems are (1) the interior lighting system, (2) the heating, cooling, ventilation and hot water systems, and (3) the building envelope. The maximum allowable deduction is $0.60 per square foot for each separate system.

Interim rules for lighting systems

In general, in the case of system-specific partial deductions, no deduction is allowed until the Secretary establishes system-specific targets.[24] However, in the case of lighting system retrofits, until such time as the Secretary issues final regulations, the system-specific energy savings target for the lighting system is deemed to be met by a reduction in lighting power density of 40 percent (50 percent in the case of a warehouse) of the minimum requirements in Table 9.3.1.1 or Table 9.3.1.2 of ASHRAE/IESNA Standard 90.1-2001. Also, in the case of a lighting system that reduces lighting power density by 25 percent, a partial deduction of 30 cents per square foot is allowed. A pro-rated partial deduction is allowed in the case of a lighting system that reduces lighting power density between 25 percent and 40 percent. Certain lighting level and lighting control requirements must also be met in order to qualify for the partial lighting deductions under the interim rule.

Description of Proposal

The proposal extends the deduction for two years, through December 31, 2015. Additionally, the proposal 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. Finally, the proposal increases the efficiency standards such that by 2015 qualifying buildings are determined relative to the ASHRAE/IESNA 90.1-2007 standards.

[24] IRS Notice 2008-40, *Supra*, set a target of a 10-percent reduction in total energy and power costs with respect to the building envelope, and 20 percent each with respect to the interior lighting system and the heating, cooling, ventilation and hot water systems. IRS Notice 2012-26 (2012-17 I.R.B. 847 April 23, 2012) established new targets of 10-percent reduction in total energy and power costs with respect to the building envelope, 25 percent with respect to the interior lighting system and 15 percent with respect to the heating, cooling, ventilation and hot water systems, effective beginning March 12, 2012. The targets from Notice 2008-40 may continue to be used until December 31, 2013, but only the new targets of Notice 2012-26 will be available under any extension of section 179D beyond December 31, 2013.

Effective Date

The proposal applies to property placed in service after December 31, 2013.

6. Special expensing rules for certain film, television, and theatrical productions (sec. 181 of the Code)

Present Law

Under section 181, a taxpayer may elect[25] to deduct the cost of any qualifying film and television production, commencing prior to January 1, 2014, in the year the expenditure is incurred in lieu of capitalizing the cost and recovering it through depreciation allowances.[26] A taxpayer may elect to deduct up to $15 million of the aggregate cost of the film or television production under this section.[27] The threshold is increased to $20 million if a significant amount of the production expenditures are incurred in areas eligible for designation as a low-income community or eligible for designation by the Delta Regional Authority as a distressed county or isolated area of distress.[28]

A qualified film or television production means any production of a motion picture (whether released theatrically or directly to video cassette or any other format) or television program if at least 75 percent of the total compensation expended on the production is for services performed in the United States by actors, directors, producers, and other relevant production personnel.[29] The term "compensation" does not include participations and residuals (as defined in section 167(g)(7)(B)).[30] With respect to property which is one or more episodes in a television series, each episode is treated as a separate production and only the first 44 episodes qualify under the provision.[31] Qualified property does not include sexually explicit productions as defined by section 2257 of title 18 of the U.S. Code.[32] It also generally does not include live theatrical productions.

[25] See Treas. Reg. section 1.181-2 for rules on making an election under this section.

[26] For this purpose, a production is treated as commencing on the first date of principal photography.

[27] Sec. 181(a)(2)(A).

[28] Sec. 181(a)(2)(B).

[29] Sec. 181(d)(3)(A).

[30] Sec. 181(d)(3)(B).

[31] Sec. 181(d)(2)(B).

[32] Sec. 181(d)(2)(C).

For purposes of recapture under section 1245, any deduction allowed under section 181 is treated as if it were a deduction allowable for amortization.[33]

Description of Proposal

The proposal extends the special treatment for film and television productions under section 181 for two years to qualified film and television productions commencing prior to January 1, 2016.

The proposal also 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. Similar to the exclusion for sexually explicit productions from the present-law definition of qualified property, qualified live theatrical productions do not include stage performances that would be excluded by section 2257 of title 18 of the U.S. Code, if such provision were extended to live stage performances. In general, in the case of multiple live staged productions, each such live staged production is treated as a separate production.

Effective Date

The proposal applies to productions commencing after December 31, 2013. For purposes of this proposal, 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.

7. Look-thru treatment of payments between related controlled foreign corporations under foreign personal holding company rules (sec. 954(c)(6) of the Code)

Present Law

In general

The rules of subpart F[34] require U.S. shareholders with a 10-percent or greater interest in a controlled foreign corporation ("CFC") to include certain income of the CFC (referred to as "subpart F income") on a current basis for U.S. tax purposes, regardless of whether the income is distributed to the shareholders.

Subpart F income includes foreign base company income. One category of foreign base company income is foreign personal holding company income. For subpart F purposes, foreign personal holding company income generally includes dividends, interest, rents, and royalties, among other types of income. There are several exceptions to these rules. For example, foreign

[33] Sec. 1245(a)(2)(C).

[34] Secs. 951-965.

personal holding company income does not include dividends and interest received by a CFC from a related corporation organized and operating in the same foreign country in which the CFC is organized, or rents and royalties received by a CFC from a related corporation for the use of property within the country in which the CFC is organized. Interest, rent, and royalty payments do not qualify for this exclusion to the extent that such payments reduce the subpart F income of the payor. In addition, subpart F income of a CFC does not include any item of income from sources within the United States that is effectively connected with the conduct by such CFC of a trade or business within the United States ("ECI") unless such item is exempt from taxation (or is subject to a reduced rate of tax) pursuant to a tax treaty.

The "look-thru rule"

Under the "look-thru rule" (sec. 954(c)(6)), dividends, interest (including factoring income that is treated as equivalent to interest under section 954(c)(1)(E)), rents, and royalties received or accrued by one CFC from a related CFC are not treated as foreign personal holding company income to the extent attributable or properly allocable to income of the payor that is neither subpart F income nor treated as ECI. For this purpose, a related CFC is a CFC that controls or is controlled by the other CFC, or a CFC that is controlled by the same person or persons that control the other CFC. Ownership of more than 50 percent of the CFC's stock (by vote or value) constitutes control for these purposes.

The Secretary is authorized to prescribe regulations that are necessary or appropriate to carry out the look-thru rule, including such regulations as are necessary or appropriate to prevent the abuse of the purposes of such rule.

The look-thru rule applies to taxable years of foreign corporations beginning after December 31, 2005 and before January 1, 2014, and to taxable years of U.S. shareholders with or within which such taxable years of foreign corporations end.

Description of Proposal

The proposal extends for two years the application of the look-thru rule, to taxable years of foreign corporations beginning before January 1, 2016, and to taxable years of U.S. shareholders with or within which such taxable years of foreign corporations end.

Effective Date

The proposal is effective for taxable years of foreign corporations beginning after December 31, 2013, and for taxable years of U.S. shareholders with or within which such taxable years of foreign corporations end.

8. Sense of the Committee to express support for comprehensive tax reform

The Chairman's modification expresses the sense of the Committee that comprehensive tax reform should commence next Congress and conclude before the current tax extenders have expired; that Congress should endeavor, as part of tax reform, to eliminate temporary provisions from the tax code, thus making permanent those provisions that merit such treatment and allowing others to expire; that a major focus of tax reform should be fostering economic growth

and lowering tax rates by broadening the tax base; and that the Chairman and Ranking Member of the Finance Committee should consult with the Chairman and Ranking Member of the Budget Committee so as to ensure that the appropriate baseline is used during tax reform.

C. Revenue Raising Additions to the Chairman's Mark

1. Extend paid preparer EIC due diligence requirements to the child tax credit (sec. 6695 of the Code)

<u>Present Law</u>

<u>Eligibility requirements for certain refundable credits</u>

Two refundable credits available to individuals use both income level and the presence and number of qualifying children as factors in determining eligibility for the credit: the child tax credit[35] and the earned income credit ("EIC").[36] Eligibility for the EIC is based on earned income, adjusted gross income, investment income, filing status, number of children, and immigration and work status in the United States. The EIC generally equals a specified percentage of earned income up to a maximum dollar amount. The maximum amount applies over a certain income range and then diminishes to zero over a specified phaseout range. For taxpayers with earned income (or adjusted gross income ("AGI"), if greater) in excess of the beginning of the phaseout range, the maximum EIC amount is reduced by the phaseout rate multiplied by the amount of earned income (or AGI, if greater) in excess of the beginning of the phaseout range. For taxpayers with earned income (or AGI, if greater) in excess of the end of the phaseout range, no credit is allowed.

An individual is not eligible for the EIC if the aggregate amount of disqualified income of the taxpayer for the taxable year exceeds $3,350 (for 2014). This threshold is indexed for inflation. Disqualified income is the sum of: (1) interest (both taxable and tax exempt); (2) dividends; (3) net rent and royalty income (if greater than zero); (4) capital gains net income; and (5) net passive income that is not self-employment income (if greater than zero).

An individual may claim a child tax credit of $1,000 for each qualifying child under the age of 17,[37] provided that the child is a citizen, national, or resident of the United States.[38] The aggregate amount of child credits that may be claimed is phased out for individuals with income over certain threshold amounts. Specifically, the otherwise allowable child tax credit is reduced by $50 for each $1,000 (or fraction thereof) of modified adjusted gross income over $75,000 for single individuals or heads of households, $110,000 for married individuals filing joint returns, and $55,000 for married individuals filing separate returns. For purposes of this limitation, modified adjusted gross income includes certain otherwise excludable income earned by U.S. citizens or residents living abroad or in certain U.S. territories.[39] If the resulting child credit

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[35] Sec. 24.

[36] Sec. 32.

[37] Sec. 24(a).

[38] Sec. 24(c).

[39] Sec. 24(b).

exceeds the tax liability of the taxpayer, the taxpayer is eligible for a refundable credit (known as the additional child tax credit)[40] equal to 15 percent of earned income in excess of a threshold dollar amount (the "earned income" formula). Prior to 2009, the threshold dollar amount was $10,000 and was indexed for inflation. For taxable years beginning after 2009 and before January 1, 2018, the threshold amount is $3,000, and is not indexed for inflation. The $3,000 threshold is currently scheduled to expire for taxable years beginning after December 31, 2017, after which the threshold reverts to the indexed $10,000 amount.

Families with three or more children may determine the additional child tax credit using the "alternative formula," if this results in a larger credit than determined under the earned income formula. Under the alternative formula, the additional child tax credit equals the amount by which the taxpayer's social security taxes exceed the taxpayer's EIC.

Diligence required by preparers returns for EIC claimants

Under Section 6695(g) of the Code, a penalty of $500 may be imposed on a person who, as a tax return preparer,[41] prepares a tax return for a taxpayer claiming the EIC, unless the tax return preparer exercises due diligence with respect to that claim. The due diligence requirements extend to both the determination of eligibility for the credit and the amount of the credit, as prescribed by regulations, which also detail how to document one's compliance with those requirements.[42] The position taken with respect to the EIC must be based on current and reasonable information that the paid preparer develops, either directly from the taxpayer or by other reasonable means. The preparer may not ignore implications of information provided by taxpayers, and is expected to make reasonable inquiries about incorrect, inconsistent or incomplete information.

The conclusions about eligibility and computation, as well as the steps taken to develop those conclusions, must be documented, using Form 8867, "Paid Preparer's Earned Income Credit Checklist," which is filed with the return.[43] The basis for the computation of the credit must also be documented, either on a Computation Worksheet, or in an alternative record containing the requisite information. The preparer is required to maintain that documentation for three years.

The penalty may be waived with respect to a particular return or claim for refund on the basis of all facts and circumstances. The preparer must establish that he routinely follows reasonable office procedures to ensure compliance. The failure to comply with the requirements

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[40] Sec. 24(d).

[41] Sec. 7701(a)(36) provides a general definition of tax return preparer to include persons who are compensated to prepare all or a substantial portion of a return or claim for refund, with certain exceptions.

[42] Treas. Reg. sec. 1.6695-2(b).

[43] If the return preparer electronically files the return or claim for the taxpayer, the Form 8867 is filed electronically with the return. If the prepared return or claim is given to the taxpayer to file, the Form 8867 is provided to the taxpayer at the same time, to submit with the return or claim for refund.

must be isolated and inadvertent.[44] The enhanced duties of due diligence required with respect to the EIC do not extend to other refundable credits.

Description of Proposal

The proposal requires paid tax return preparers who prepare federal income tax returns on which a child (or additional child) tax credit is claimed to meet due diligence requirements similar to those applicable to returns claiming an earned income tax credit. The proposal anticipates that the checklist presently required by regulations will be adapted by the IRS to address both the child tax credit and the EIC and to highlight differences between the two credits. In adapting the checklist, the IRS is to ensure that it imposes minimal additional burden on taxpayers and paid preparers.

Effective Date

The proposal is effective for taxable years beginning after December 31, 2014.

2. 100 percent continuous levy authority on payments to Medicare providers and suppliers (sec. 6331 of the Code)

Present Law

In general

Levy is the administrative authority of the IRS to seize a taxpayer's property, or rights to property, to pay the taxpayer's tax liability.[45] Generally, the IRS is entitled to seize a taxpayer's property by levy if a Federal tax lien has attached to such property,[46] the property is not exempt from levy,[47] and the IRS has provided both notice of intention to levy[48] and notice of the right to an administrative hearing (the notice is referred to as a "collections due process notice" or "CDP notice" and the hearing is referred to as the "CDP hearing")[49] at least 30 days before the levy is made. A levy on salary or wages generally is continuously in effect until released.[50] A Federal tax lien arises automatically when: (1) a tax assessment has been made; (2) the taxpayer has

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[44] Treas. Reg. sec. 1.6695-2(d).

[45] Sec. 6331(a). Levy specifically refers to the legal process by which the IRS orders a third party to turn over property in its possession that belongs to the delinquent taxpayer named in a notice of levy.

[46] *Ibid.*

[47] Sec. 6334.

[48] Sec. 6331(d).

[49] Sec. 6330. The notice and the hearing are referred to collectively as the CDP requirements.

[50] Secs. 6331(e) and 6343.

been given notice of the assessment stating the amount and demanding payment; and (3) the taxpayer has failed to pay the amount assessed within 10 days after the notice and demand.[51]

The notice of intent to levy is not required if the Secretary finds that collection would be jeopardized by delay. The standard for determining whether jeopardy exists is similar to the standard applicable when determining whether assessment of tax without following the normal deficiency procedures is permitted.[52]

The CDP notice (and pre-levy CDP hearing) is not required if: (1) the Secretary finds that collection would be jeopardized by delay; (2) the Secretary has served a levy on a State to collect a Federal tax liability from a State tax refund; (3) the taxpayer subject to the levy requested a CDP hearing with respect to unpaid employment taxes arising in the two-year period before the beginning of the taxable period with respect to which the employment tax levy is served; or (4) the Secretary has served a Federal contractor levy. In each of these four cases, however, the taxpayer is provided an opportunity for a hearing within a reasonable period of time after the levy.[53]

Federal payment levy program

To help the IRS collect taxes more effectively, the Taxpayer Relief Act of 1997[54] authorized the establishment of the Federal Payment Levy Program ("FPLP"), which allows the IRS to continuously levy up to 15 percent of certain "specified payments" by the Federal government if the payees are delinquent on their tax obligations. With respect to payments to vendors of goods, services, or property sold or leased to the Federal government, the continuous levy may be up to 100 percent of each payment.[55] The levy (either up to 15 percent or up to 100 percent) generally continues in effect until the liability is paid or the IRS releases the levy.

Under FPLP, the IRS matches its accounts receivable records with Federal payment records maintained by the Department of the Treasury's Financial Management Service ("FMS"), such as certain Social Security benefit and Federal wage records. When these records match, the delinquent taxpayer is provided both the notice of intention to levy and the CDP notice. If the taxpayer does not respond after 30 days, the IRS can instruct FMS to levy the taxpayer's Federal payments. Subsequent payments are continuously levied until such time that the tax debt is paid or the IRS releases the levy.

[51] Sec. 6321.

[52] Secs. 6331(d)(3), 6861.

[53] Sec. 6330(f).

[54] Pub. L. No. 105-34.

[55] Sec. 6331(h)(3). The word "property" was added to "goods or services" in section 301 of the "3% Withholding Repeal and Job Creation Act," Pub. L. No. 112-56.

Payments to Medicare Providers

In 2008, the Government Accountability Office ("GAO") found that over 27,000 Medicare providers (*i.e.*, about six percent of all such providers) owed more than $2 billion of tax debt, consisting largely of individual income and payroll taxes.[56] As of 2008, the Centers for Medicare & Medicaid Services ("CMS") had not incorporated most of its Medicare payments into the continuous levy program, despite the IRS authority to continuously levy up to 15 percent of these payments. The GAO noted that CMS officials promised to incorporate about 60 percent of all Medicare fee-for-service payments into the levy program by October 2008 and the remaining 40 percent in the next several years. Following the GAO study, Congress directed CMS to participate in the FPLP and ensure that all Medicare provider and supplier payments are processed through it, in specified graduated percentages, by the end of fiscal year 2011.[57] CMS has since incorporated its payments into the continuous levy program to ensure that it collects delinquent tax debts from Medicare providers as authorized.

Description of Proposal

The proposal allows the Secretary to levy up to 100 percent of a payment to a Medicare provider to collect unpaid taxes.

Effective Date

The proposal is effective for payments made six months after the date of enactment.

3. 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

[56] Government Accountability Office, *Medicare: Thousands of Medicare Providers Abuse the Federal Tax System* (GAO-08-618), June 13, 2008.

[57] Medicare Improvement for Patients and Providers Act of 2008, Pub. L. No. 110-275, sec. 189.

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.