General Explanations of the Administration's Fiscal Year 2022 Revenue Proposals

Department of the Treasury
May 2021

This document is available online at:
https://home.treasury.gov/policy-issues/tax-policy/revenue-proposals

TABLE OF CONTENTS

NOTES

The Administration's proposals are not intended to create any inferences regarding current law.

Within the *General Explanations of the Administration's Fiscal Year 2022 Revenue Proposals*, unless otherwise stated:

- "AGI" refers to Adjusted Gross Income
- "Budget" refers to the *Fiscal Year 2022 Budget of the U.S. Government*
- "Code" refers to the Internal Revenue Code
- "C-CPI-U" refers to the Chained Consumer Price Index for Urban Consumers
- "IRA" refers to Individual Retirement Account or Annuity
- "IRS" refers to the Internal Revenue Service
- "Section" refers to the respective section of the Internal Revenue Code
- "Secretary" refers to the Secretary of the Treasury
- "Treasury" refers to the Department of the Treasury
- "TIN" refers to Taxpayer Identification Number

REVENUE PROPOSALS

In the Fiscal Year 2022 Budget, the President proposes a number of reforms to the Internal Revenue Code (Code) that would modernize our tax system to respond to today's challenges. These changes would raise revenue, improve tax administration, and make the tax system more equitable and efficient.

The American Jobs Plan includes revenue proposals that reform corporate taxation, support housing and infrastructure, and prioritize clean energy. Reforms to the corporate income tax aim to collect sufficient revenue, build a fairer tax system, and reduce tax incentives that encourage profit shifting and offshoring. Housing and infrastructure tax credits would support low-income housing, economic development, and public school and transportation infrastructure. The American Jobs Plan would eliminate all fossil fuel subsidies that linger in the Code, while substantially expanding tax incentives that encourage clean energy sources, energy efficiency, carbon sequestration, and electric vehicle adoption.

The American Families Plan includes revenue proposals that strengthen the taxation of high-income taxpayers, expand tax credits for low- and middle-income workers and families, and invest in improved taxpayer compliance and service. Income tax rates for those with the highest incomes would increase, and loopholes, such as the carried interest preference and the like-kind real estate preference, would be eliminated for those with the highest incomes. Reformed taxation of capital income would even the tax treatment of labor and capital income and eliminate a loophole that lets substantial capital gains income escape taxation forever. The economic security of families and workers would be supported through more generous child tax credits, an expanded earned income tax credit, expanded child and dependent care tax credits, and more generous premium tax credits. Finally, transformative investments in taxpayer compliance would provide the Internal Revenue Service with the resources and information that it needs to build a fairer and more efficient tax administration system.

American Jobs Plan

REFORM CORPORATE TAXATION

RAISE THE CORPORATE INCOME TAX RATE TO 28 PERCENT

Current Law

Income of a business entity can be subject to federal income tax in a manner that varies depending upon the classification of the entity for federal income tax purposes. Most small businesses are owned by individuals and taxed as “pass-through” entities, meaning that their income is passed through to their owners who are taxed under the individual income tax system. Most large businesses, including substantially all publicly traded businesses, are classified as “C corporations” because these corporations are subject to the rules of subchapter C of chapter 1 of the Internal Revenue Code (Code) and pay an entity-level income tax. Additionally, taxable shareholders of such corporations generally pay federal income tax on most distributions attributable to their ownership in the corporation. Some mid-sized businesses choose a pass-through form of entity classification (under subchapter K or subchapter S of chapter 1 of the Code) while others choose the C corporation form of entity classification.

C corporations determine their taxable income, credits, and tax liability according to the Code and regulations promulgated thereunder. The Tax Cuts and Jobs Act of 2017 replaced a graduated tax schedule (with most corporate income taxed at a marginal and average rate of 35 percent) with a flat tax of 21 percent applied to all C corporations.

Reasons for Change

Raising the corporate income tax rate is an administratively simple way to raise revenue in order to pay for the Administration’s infrastructure proposals and other long-run drivers of spending growth. Furthermore, a corporate tax rate increase can increase the progressivity of the tax system and help reduce income inequality. Additionally, a significant share of the effects of the corporate tax increase would be borne by foreign investors. Therefore, some of the revenue raised by this proposal would result in no additional federal income tax burden to U.S. persons. Also, the majority of U.S. equity income is untaxed by the U.S. government at the individual level, so the corporate tax is a primary mechanism for taxing such capital income.

Proposal

The proposal would increase the income tax rate for C corporations from 21 percent to 28 percent.

The proposal would be effective for taxable years beginning after December 31, 2021. For taxable years beginning after January 1, 2021 and before January 1, 2022, the tax rate would be equal to 21 percent plus 7 percent times the portion of the taxable year that occurs in 2022.

REVISE THE GLOBAL MINIMUM TAX REGIME, DISALLOW DEDUCTIONS ATTRIBUTABLE TO EXEMPT INCOME, AND LIMIT INVERSIONS

Current Law

Global minimum tax regime with respect to controlled foreign corporation earnings

Any U.S. shareholder of a controlled foreign corporation (CFC) is taxed annually in the United States under the global minimum tax in section 951A of the Internal Revenue Code with respect to all of its CFCs. A U.S. shareholder's global minimum tax inclusion is determined by combining its pro rata share of the tested income (or tested loss) of all its CFCs. A CFC's tested income is the excess of certain gross income of the CFC over the deductions of the CFC that are properly allocable to the CFC gross tested income. A CFC's tested loss is the excess of the CFC's properly allocable deductions over the CFC's gross tested income. The U.S. shareholder's actual global minimum tax inclusion reflects a reduction for a 10 percent return on certain foreign tangible property (referred to as qualified business asset income, or QBAI). QBAI is generally tangible property eligible for depreciation, such as buildings or machinery, but does not include assets that are not depreciable (such as land) nor intangible assets.

Under section 250, subject to a taxable income limitation, a corporate U.S. shareholder is generally allowed 50-percent deduction against its global minimum tax inclusion. The section 250 deduction generally results in a 10.5-percent U.S. effective tax rate on a corporate U.S. shareholder's global minimum tax inclusion under the current U.S. corporate tax rate of 21 percent. The 50-percent deduction is scheduled to be reduced to 37.5 percent starting in 2026.

Certain foreign income taxes paid by a CFC can be credited against a corporate U.S. shareholder's U.S. tax liability attributable to its global minimum tax inclusion. The allowable credit is limited to 80 percent of the amount of the foreign income taxes properly allocable to a CFC's tested income taken into account as part of the global minimum tax inclusion. Under final Treasury regulations promulgated in 2020, if the foreign effective tax rate on the gross income of a CFC that would otherwise be part of a global minimum tax inclusion exceeds 90 percent of the U.S. corporate income tax rate, the U.S. shareholder of the CFC is generally permitted to exclude that gross income (and the associated deductions and foreign income taxes) from its global minimum tax inclusion. A similar statutory rule applies for purposes of certain subpart F income. Subpart F taxes certain foreign income earned indirectly by U.S. persons at full U.S. tax rates.

A single foreign tax credit limitation generally applies to a corporate U.S. shareholder's global minimum tax inclusion. Therefore, foreign income taxes paid to a high-tax foreign jurisdiction can be used to reduce the U.S. tax liability with respect to global minimum tax income earned in lower-tax jurisdictions. Thus, generally, a U.S. shareholder's aggregate U.S. tax (after accounting for the allocation of U.S. shareholder deductions) on its global minimum tax inclusion is reduced by reference to the average foreign effective tax rate on its aggregate global minimum tax income rather than the effective tax rates in each individual foreign jurisdiction where income is actually earned.

Treatment of deductions properly allocable to exempt income

Certain dividends received by a domestic corporation from foreign corporations are effectively exempt from U.S. tax by reason of the 100-percent deduction allowed with respect to such dividends under section 245A. Specifically, section 245A provides a domestic corporation a deduction equal to the foreign-source portion of a dividend received from a specified 10-percent owned foreign corporation, but only if the domestic corporation is a U.S. shareholder of the foreign corporation.

Section 265(a)(1) generally disallows a deduction for any amount that is allocable to certain classes of income that is wholly exempt from U.S. tax. For purposes of determining a taxpayer's foreign tax credit limitation, tax exempt assets and their associated income are disregarded under section 864(e)(3). Section 904(b)(4) applies to disregard (solely for purposes of the foreign tax credit limitation) deductions allocable to income from foreign stock other than global minimum tax or subpart F income inclusions, for determining a taxpayer's foreign tax credit limitation.

Limitations on the ability of domestic corporations to expatriate

Section 7874 applies to certain transactions (known as "inversion transactions") in which a U.S. corporation is acquired by a foreign corporation ("foreign acquiring corporation") in a transaction where (1) substantially all of the assets held directly or indirectly by the domestic corporation are acquired directly or indirectly by the foreign acquiring corporation; (2) the former shareholders of the domestic corporation hold at least a 60-percent ownership interest in the foreign acquiring corporation by reason of the acquisition; and (3) the foreign acquiring corporation, together with its expanded affiliated group, does not conduct substantial business activities in the country in which the foreign acquiring corporation is created or organized. Similar provisions apply to acquisitions of domestic partnerships.

The tax consequences of an inversion transaction depend on the level of continuing former shareholder ownership. If the continuing former shareholder ownership of the foreign acquiring corporation is at least 80 percent (by vote or value), the foreign acquiring corporation is treated as a domestic corporation for all U.S. tax purposes (the "80-percent test"). If the continuing former shareholder ownership is at least 60 percent but less than 80 percent (by vote or value), the foreign acquiring corporation is respected as foreign but full U.S. tax must generally be paid with respect to certain income or gain recognized by the expatriated U.S. entity and its affiliates in connection with the inversion or within the ten year period ending after the completion of the inversion (the "60-percent test"). Furthermore, the Tax Cuts and Jobs Act of 2017 (TCJA) adopted several anti-abuse provisions that apply to inversion transactions that satisfy the 60-percent test.

Reasons for Change

Global minimum tax regime

The reduction to global minimum tax inclusions for a percentage of certain foreign tangible assets incentivizes U.S. multinational companies to invest in tangible assets abroad rather than domestically. The elimination of QBAI would eliminate this perverse investment incentive while simplifying the taxation of CFCs.

The difference between the effective U.S. tax rate on global minimum tax inclusions versus the effective U.S. tax rate on income earned directly by U.S. companies that results from the section 250 deduction incentivizes U.S. companies to locate profits and operations offshore. Reducing the section 250 deduction for these foreign earnings would reduce this perverse incentive.

The determination of a U.S. company's global minimum tax inclusion and residual U.S. tax liability on such inclusions on a global blended basis incentivizes U.S. companies with operations in high-tax jurisdictions to invest in lower-tax jurisdictions, to take advantage of the automatic global averaging under the existing global minimum tax regime. In some cases, U.S. companies may have an incentive to locate operations in jurisdictions with corporate income tax rates higher than the United States, to average these high taxes against low-taxed income earned elsewhere. This automatic blending feature exacerbates the race to the bottom on corporate income tax rates and encourages U.S. companies to report profits (as well as the activities that give rise to those profits) in offshore jurisdictions rather than in the United States, creating a perverse "America last" tax policy. Similar global blending concerns arise with respect to high and low-taxed income earned through foreign branches.

In contrast, determining a taxpayer's global minimum tax inclusion and residual U.S. tax liability on such inclusions on a jurisdiction-by-jurisdiction basis would be a stronger deterrent to profit shifting and offshoring because residual U.S. tax would be due on every dollar earned in a low-tax jurisdiction at the minimum rate, with no ability to reduce that residual U.S. tax for excess foreign taxes paid to higher-tax jurisdictions.

Under the Organisation for Economic Co-operation and Development (OECD)/G20 Inclusive Framework on BEPS project's Pillar Two proposal, the United States and the international community are nearing a comprehensive agreement on jurisdiction-by-jurisdiction global minimum taxation which would help end the race to the bottom on corporate tax rates in a manner that puts the United States and other countries on a more level playing field. Under the "income inclusion rule" (IIR) proposed under Pillar Two, the IIR applies on a "top down" basis. That is, it is applied only by the ultimate parent entity of a multinational group, and generally is not applied by lower-tier holding companies. Therefore, in the case of foreign-controlled domestic corporations that own CFCs, the income inclusion rule proposed under Pillar Two is expected to be applied by the foreign parent with respect to low-taxed CFC income.

<u>Deductions attributable to income exempt from U.S. tax and taxed at preferential rates</u>

To the extent deductions are claimed for expenses allocable to income eligible for a deduction under section 245A or section 250, on the basis that section 265 does not apply because that income is not "wholly exempt" from U.S. tax, the United States is providing a tax subsidy for foreign investment.

Limitations on the ability of domestic corporations to expatriate

In order to reduce their U.S. tax liabilities, certain domestic entities have been combining with smaller foreign entities in transactions that avoid the 80 percent test but that may satisfy the 60 percent test under section 7874. These combination transactions are typically structured so that the domestic entity and the foreign entity become subsidiaries of a newly formed foreign parent company. The domestic entities can often substantially reduce their U.S. income tax liability following these combination transactions with only a minimal change to their operations.

Inversion transactions raise significant policy concerns because they facilitate the erosion of the U.S. tax base through deductible payments by the U.S. members of the multinational group to the non-U.S. members and through aggressive transfer pricing for transactions between such U.S. and non-U.S. members. The inverted group also may reduce its U.S. taxes by reducing or eliminating altogether its direct and indirect U.S. ownership in foreign subsidiaries or assets. The adverse tax consequences under current law of 60-percent inversion transactions have not deterred taxpayers from pursuing these transactions. There is no policy reason to respect an inverted structure when the owners of a domestic entity retain a controlling interest in the group, only minimal operational changes are expected, and there is potential for substantial erosion of the U.S. tax base. Furthermore, an inverted structure should not be respected when the structure results from the combination of a larger U.S. group with a smaller entity or group and, after the transaction, the expanded affiliated group is primarily managed and controlled in the United States and does not have substantial business activities in the relevant foreign country, even if the shareholders of the domestic entity do not maintain control of the resulting multinational group.

Proposal

Reforms to global minimum tax regime

The proposal would make several changes to the existing global minimum tax system. First, the QBAI exemption would be eliminated, so that the U.S. shareholder's entire net CFC tested income is subject to U.S. tax. Second, the section 250 deduction for a global minimum tax inclusion would be reduced to 25 percent, thereby generally increasing the U.S. effective tax rate under the global minimum tax to 21 percent under the proposed U.S. corporate income tax rate of 28 percent. Third, the "global averaging" method for calculating a U.S. shareholder's global minimum tax would be replaced with a "jurisdiction-by-jurisdiction" calculation. Under the new standard, a U.S. shareholder's global minimum tax inclusion and, by extension, residual U.S. tax on such inclusion, would be determined separately for each foreign jurisdiction in which its CFCs have operations. As a result, a separate foreign tax credit limitation would be required for each foreign jurisdiction. A similar jurisdiction-by-jurisdiction approach would also apply with respect to a U.S. taxpayer's foreign branch income. These changes mean that foreign taxes paid to higher-taxed jurisdictions will no longer reduce the residual U.S. tax paid on income earned in lower-taxed foreign jurisdictions.

The proposal would also repeal the high tax exemption to subpart F income and repeal the cross-reference to that provision in the global minimum tax rules in section 951A.

A domestic corporation that is a member of a foreign parented controlled group generally owes residual U.S. tax when it has a global minimum tax inclusion. The proposal would take into account any foreign taxes paid by the foreign parent, under an IIR that is consistent with an OECD/Inclusive Framework Pillar Two agreement on global minimum taxation (if such consensus is reached), with respect to the CFC income that would otherwise be part of the domestic corporation's global minimum tax inclusion. The proposal's jurisdiction-by-jurisdiction approach would also apply for this purpose.

The proposal would be effective for taxable years beginning after December 31, 2021.

Deductions attributable to income that is exempt from U.S. tax or taxed at preferential rates

The proposal would expand the application of section 265 to disallow deductions allocable to a class of foreign gross income that is exempt from tax or taxed at a preferential rate through a deduction (e.g., a global minimum tax inclusion with respect to which a section 250 deduction is allowed or dividends eligible for a section 245A deduction).[1] The proposal would provide rules for determining the amount of disallowed deductions when only a partial deduction is allowed under section 245A with respect to a dividend or a partial section 250 deduction with respect to a global minimum tax inclusion. The proposal would also repeal section 904(b)(4).

The proposal would be effective for taxable years beginning after December 31, 2021.

Limit the ability of domestic corporations to expatriate

The proposal would broaden the definition of an inversion transaction by replacing the 80-percent test with a greater than 50-percent test and eliminating the 60-percent test. The proposal would also provide that, regardless of the level of shareholder continuity, an inversion transaction occurs if (1) immediately prior to the acquisition, the fair market value of the domestic entity is greater than the fair market value of the foreign acquiring corporation, (2) after the acquisition the expanded affiliated group is primarily managed and controlled in the United States, and (3) the expanded affiliated group does not conduct substantial business activities in the country in which the foreign acquiring corporation is created or organized. The proposal would also expand the scope of an acquisition for purposes of section 7874 to include a direct or indirect acquisition of substantially all of the assets constituting a trade or business of a domestic corporation, substantially all of the assets of a domestic partnership, or substantially all of the U.S. trade or business assets of a foreign partnership. Furthermore, a distribution of stock of a foreign corporation by a domestic corporation or a partnership that represents either substantially all of the assets or substantially all of the assets constituting a trade or business of the distributing corporation or partnership would be treated as a direct or indirect acquisition of substantially all of the assets or trade or business assets, respectively, of the distributing corporation or partnership.

The proposal would be effective for transactions that are completed after the date of enactment.

[1]As stated in the notes at the beginning of this document, this proposal is not intended to create any inferences regarding current law, including whether section 265 currently applies to this income.

REFORM TAXATION OF FOREIGN FOSSIL FUEL INCOME

Current Law

Under the Global Intangible Low-Taxed Income (GILTI) rules, foreign oil and gas extraction income (FOGEI) is excluded from a controlled foreign corporation's (CFC's) gross tested income under GILTI rules while foreign oil related income (FORI) is included in the CFC's gross tested income under GILTI rules. In addition, FOGEI and FORI earned by a CFC are not part of the CFC's subpart F income. Therefore, FOGEI earned through CFCs may be eligible for a deduction under section 245A when repatriated and thus is generally exempt from U.S. taxation, and FORI may be eligible for a 50 percent section 250 deduction and effectively taxed at a reduced U.S. income tax rate. In contrast, both FOGEI and FORI earned directly through a foreign branch (including a disregarded entity) are subject to full U.S. taxation, subject to allowable foreign tax credits. In both cases, foreign oil and gas income (combined FOGEI and FORI) is taxed preferentially relative to domestic oil and gas income.

Subject to certain limitations, a taxpayer may claim a credit against its U.S. income tax liability for income, war profits, and excess profits taxes paid or accrued during the taxable year to any foreign country or possession of the United States. Under current Treasury regulations, a foreign levy is a tax for this purpose if it requires a compulsory payment under the authority of a foreign government to levy taxes and is not compensation for a specific economic benefit provided by the foreign jurisdiction. Taxpayers that are subject to a foreign levy and that also receive a specific economic benefit, such as a concession for developing the jurisdiction's natural resources, from the levying government (dual capacity taxpayers) may not credit the portion of the foreign levy paid for the specific economic benefit. To ensure dual capacity taxpayers cannot claim foreign tax credits for levies that are not taxes, current Treasury regulations require taxpayers to prove that the levy constitutes an income tax or a tax paid in lieu of income tax and further that no portion of that levy is paid in exchange for the separate economic benefit. Current Treasury regulations provide a safe harbor for determining the creditable portion of the levy based on the generally applicable rate of tax under the jurisdiction's income tax. Taxpayers may, however, elect to use the facts and circumstances method of determining the qualifying portion of the tax rather than the safe harbor.

Reasons for Change

The purpose of the foreign tax credit is to mitigate double taxation of income by the United States and a foreign government. When a payment is made to a foreign government in exchange for a specific economic benefit, there is no double taxation. Current law recognizes the distinction between a payment of creditable taxes and a payment in exchange for a specific economic benefit but may fail to achieve the appropriate split between the two, for example, when a foreign jurisdiction charges no royalties and imposes a levy only on oil and gas income, or imposes a higher levy on oil and gas income as compared to other income. The safe harbor method reflects the view that the higher effective rate of the nominal foreign tax is appropriately characterized as compensating the foreign government in its capacity as the owner of the minerals in place, rather than in its role as tax collector. However, many dual capacity taxpayers subject to alternative tax regimes elect to use an alternative method of determining the qualifying portion of the levy and claim foreign tax credits for a much larger amount than would be creditable under the safe harbor method. Consequently, many oil and gas producers are able to claim a credit against their U.S. income tax liability for high levies imposed by foreign governments that arguably constitute royalty equivalents (instead of income taxes), while other U.S. businesses (not in the oil/gas sector) in those same countries pay a much lower income tax rate (and therefore are only eligible for the correspondingly lower foreign tax credit in the United States).

Finally, foreign hydrocarbon income should not be eligible for preferential tax treatment relative to other industries in light of the negative externalities associated with such income and the Administration's overall goal of promoting clean energy.

Proposal

The proposal would repeal the exemption from GILTI for FOGEI. The definition of FOGEI and FORI would also be amended to include income derived from shale oil and tar sands activity.

In the case of a dual capacity taxpayer, the proposal would limit the amount of a levy that would qualify as a creditable foreign tax to the amount of tax that the dual capacity taxpayer would have paid to the foreign government if it were a non-dual capacity taxpayer, thereby codifying the safe harbor included in the current Treasury regulations for determining the portion of the levy that is paid in exchange for a specific economic benefit, and making safe harbor the sole method for determining the creditable portion of the levy. The aspect of the proposal that would determine the amount of a foreign levy paid by a dual-capacity taxpayer that qualifies as a creditable tax would yield to United States treaty obligations that explicitly allow a credit for taxes paid or accrued on certain oil or gas income.

Unless otherwise specified, the proposal provisions would be effective for taxable years beginning after December 31, 2021.

REPEAL THE DEDUCTION FOR FOREIGN-DERIVED INTANGIBLE INCOME (FDII)

Current Law

Current law provides a deduction to domestic corporations on their foreign-derived intangible income (FDII). The deduction allowed is 37.5 percent of a domestic corporation's FDII for any taxable year beginning after December 31, 2017 and 21.875 percent for any taxable year beginning after December 31, 2025. A domestic corporation's FDII is the portion of its intangible income, determined on a formulaic basis, that is derived from exports. The calculation of income eligible for the FDII deduction is generally determined by taking a domestic corporation's overall income, minus certain exceptions, and reducing it by a deemed tangible income return, which is 10 percent of a domestic corporation's qualified business asset investment, to arrive at a domestic corporation's deemed intangible income. A portion of this amount is treated as FDII based on the percentage of the taxpayer's income that is derived from serving foreign markets.

Reasons for Change

The Administration has determined that FDII is not an effective way to encourage research and development (R&D) in the United States. It provides large tax breaks to companies with excess profits—who are reaping the rewards of prior innovation—rather than incentivizing new domestic investment or R&D. Further, FDII preferences multinational companies relative to domestic producers, offering tax incentives only to those companies with high export sales, rather than those with largely domestic sales.

In addition, FDII perversely creates undesirable incentives to locate certain economic activity abroad. Because the preferential FDII rate applies to income in excess of a given rate of return on a domestic corporation's tangible assets, firms can lower the hurdle necessary to obtain preferential tax treatment by reducing tangible investments in the United States. Coupled with the current global minimum tax regime, there is a strong incentive for companies to offshore plant and equipment, since moving plant and equipment offshore can both increase the tax-free return under the current global minimum tax regime and increase the tax deduction under FDII.

Finally, eliminating FDII will raise significant revenue that can be deployed to incentivize R&D in the United States directly and more effectively.

Proposal

The proposal would repeal the deduction allowed for FDII. The resulting revenue will be used to encourage R&D.

The proposal would be effective for taxable years beginning after December 31, 2021.

REPLACE THE BASE EROSION ANTI-ABUSE TAX (BEAT) WITH THE STOPPING HARMFUL INVERSIONS AND ENDING LOW-TAX DEVELOPMENTS (SHIELD) RULE

Current Law

Section 59A of the Internal Revenue Code (Code) imposes a tax on certain corporate taxpayers in addition to their regular tax liability (BEAT liability). Liability for BEAT is generally limited to corporate taxpayers with substantial gross receipts that also make deductible payments to foreign related parties above a specified threshold (referred to as a "base erosion payment"). Taxpayers potentially liable for this additional tax have three-year average gross receipts in excess of $500 million and a ‘‘base erosion percentage’’ exceeding a specified threshold. The base erosion percentage is generally determined by dividing the taxpayer's ‘‘base erosion tax benefits’’ by the amount of all deductions allowed to the taxpayer for the taxable year.[1]

A taxpayer's BEAT liability is computed by reference to the taxpayer's "modified taxable income" and comparing the resulting amount to the taxpayer's regular tax liability (as reduced by certain credits against such tax). For taxable years beginning after December 31, 2025, the regular tax liability is reduced by all credits for this purpose. A taxpayer's modified taxable income is equal to its regular taxable income increased by base erosion tax benefits with respect to base erosion payments and an adjustment for the taxpayer's net operating loss (NOL) deduction, if any. The taxpayer's BEAT liability generally equals the difference, if any, between 10 percent of the taxpayer's modified taxable income and the taxpayer's regular tax liability (as reduced by certain credits against such tax). For taxable years beginning after December 31, 2025, the relevant share of modified taxable income for calculating BEAT liability increases from 10 percent to 12.5 percent.[2] Under current Treasury regulations, certain deductible payments made to foreign related parties are not treated as base erosion payments (e.g., interest on total loss-absorbing capacity (or TLAC) securities that are required to be issued by Globally Systemically Important Banking Organizations under Federal Reserve Board regulations).

Reasons for Change

The Administration has determined that the BEAT does not adequately address the concern of erosion of the U.S. corporate base, while inefficiently favoring certain types of activities over others. For example, firms with lower profit margins are more likely to have a BEAT liability than similarly situated firms with higher profit margins because the BEAT has embedded a form of alternative minimum tax. Further, the BEAT does not distinguish between a payment to a foreign related party subject to a low effective tax rate and a payment to a foreign related party subject to a high effective tax rate.

In addition, the Administration has determined that the BEAT's approach of targeting the existence of amounts deducted in the United States and paid to a foreign person does not

[1] Under current Treasury regulations, taxpayers can avoid a BEAT liability by electing to "waive" deductions for payments made to related foreign persons sufficient to remain below the base erosion percentage threshold.
[2] For all periods, the relevant BEAT rate is one percentage point higher for certain banks and registered securities dealers.

adequately address the incentives that lead to the erosion of the U.S. tax base and the loss of U.S. jobs and activities. These incentives are not limited to separating activities from profits or the shifting of profits from one jurisdiction to another (which were the core focus of the OECD/G20's Base Erosion and Profit Shifting project). In addition, a fundamental problem is the existence of a race to the bottom by jurisdictions on corporate tax rates that incentivizes multinational companies to report income (including, in some cases, the activities that give rise to that income) in low-tax jurisdictions. This race to the bottom hampers the United States from maintaining a competitive corporate income tax rate that meets its revenue needs. It also incentivizes U.S.-based multinational companies to relocate their headquarters to low-tax jurisdictions that do not tax foreign earnings. The resulting shifting of profits and activities to low-tax jurisdictions erodes the U.S. tax base and results in a loss of U.S. jobs and investment.

This race to the bottom on tax rates can be stopped by ensuring that income earned by any multinational, whether based in the United States or elsewhere, and whether that income is earned in the United States or elsewhere, is subject to a minimum rate of taxation. The Administration has included a separate proposal to reform the GILTI regime to ensure a minimum per-jurisdiction rate of tax is paid by U.S.-based companies on income earned through controlled foreign corporations (CFCs). A comparable rule that applies to entities that are not CFCs is necessary to ensure that companies cannot avoid a minimum rate of taxation by, for example, inverting to a foreign jurisdiction.

In addition, under the auspices of the OECD/G20 Inclusive Framework on BEPS project under Pillar Two, the United States and the international community are negotiating a comprehensive agreement on minimum taxation which would help end the race to the bottom on tax rates in a manner that puts the United States and other jurisdictions on a more level playing field. This agreement would include adoption of an "income inclusion rule" imposed on a jurisdiction-by-jurisdiction basis similar to the minimum tax proposal contained in this document under *Revise the Global Minimum Tax Regime, Disallow Deductions Attributable to Exempt Income, and Limit Inversions*. The Administration has determined that strong measures are needed to ensure that, if a Pillar Two agreement is reached, jurisdictions have an incentive to adopt the income inclusion rule.

Proposal

The proposal would repeal the BEAT, replacing it with a new rule disallowing deductions to domestic corporations or branches by reference to low-taxed income of entities that are members of the same financial reporting group (including a member that is the common foreign parent, in the case of a foreign-parented controlled group). Specifically, under the Stopping Harmful Inversions and Ending Low-Tax Developments (SHIELD) rule, a deduction (whether related or unrelated party deductions) would be disallowed to a domestic corporation or branch, in whole or in part, by reference to all gross payments that are made (or deemed made) to "low-taxed members," which is any financial reporting group member whose income is subject to (or deemed subject to) an effective tax rate that is below a designated minimum tax rate.[3] The

[3] Corresponding provisions would take into account reductions in the gross amount of premiums and other consideration on insurance and annuity contracts arising out of indemnity insurance; deductions from the amount of gross premiums written on insurance contracts during the taxable year for premiums paid for reinsurance; and

"designated minimum tax rate" will be determined by reference to the rate agreed to under Pillar Two. If SHIELD is in effect before a Pillar Two agreement has been reached, the designated minimum tax rate trigger will be the U.S. global minimum tax rate (which is 21 percent under the proposal to *Revise the Global Minimum Tax Regime, Disallow Deductions Attributable to Exempt Income, and Limit Inversions*).

A financial reporting group is any group of business entities that prepares consolidated financial statements and that includes at least one domestic corporation, domestic partnership, or foreign entity with a U.S. trade or business. Consolidated financial statements means those determined in accordance with U.S. Generally Accepted Accounting Principles (GAAP), International Financial Reporting Standards (IFRS), or other method authorized by the Secretary under regulations. A financial reporting group member's effective tax rate is determined based on the income earned (in the aggregate, taking into account both related and unrelated party income) and taxes paid or accrued with respect to the income earned in that jurisdiction by financial reporting group members, as determined based on the members' separate financial statements or the financial reporting group's consolidated financial statements, as disaggregated on a jurisdiction by jurisdiction basis. The proposal will include authority for the Secretary to provide special rules to address differences (both permanent and temporary) between the relevant income tax base and the base as determined under financial accounting, and to provide rules to account for net operating losses in a jurisdiction.

Payments made by a domestic corporation or branch directly to low-tax members would be subject to the SHIELD rule in their entirety. In particular, payments that are otherwise deductible costs would be disallowed in their entirety, while in the case of payments for other types of costs (such as cost of goods sold), other deductions (including unrelated party deductions) would be disallowed up to the amount of the payment. In addition, payments made to financial reporting group members that are not low-tax members would be partially subject to the SHIELD rule to the extent that other financial reporting group members were subject to an effective tax rate of less than the designated minimum tax rate in any jurisdiction. In such cases, the domestic corporation or branch would effectively be treated as having paid a portion of its related party amounts to the low-taxed members, if any, of the financial reporting group based on the aggregate ratio of the financial reporting group's low-taxed profits to its total profits, as reflected on the financial reporting group's consolidated financial statements.

The proposal provides authority for the Secretary to exempt from SHIELD payments in respect of financial reporting groups that meet, on a jurisdiction-by-jurisdiction basis, a minimum effective level of taxation as determined to the satisfaction of the Secretary. Finally, the proposal provides authority for the Secretary to exempt payments to domestic and foreign members that are investment funds, pension funds, international organizations, or non-profit entities, and to take into account payments by partnerships.

The rule would apply to financial reporting groups with greater than $500 million in global annual revenues (as determined based on the group's consolidated financial statement).

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insurance policy claims and benefits accrued and losses paid during a taxable year (which would be deductible payments that are within scope of the SHIELD).

The proposal to repeal BEAT and replace with SHIELD would be effective for taxable years beginning after December 31, 2022.

LIMIT FOREIGN TAX CREDITS FROM SALES OF HYBRID ENTITIES

Current Law

A corporation that makes a qualified stock purchase of a target corporation is permitted to elect under section 338 of the Internal Revenue Code (section 338 election) to treat the stock acquisition as an asset acquisition for U.S. tax purposes, thereby generally adjusting the post-acquisition tax basis of the target corporation's assets to fair market value. For this purpose, a qualified stock purchase is any transaction or series of transactions in which the purchasing corporation acquires at least 80 percent of the stock of the target corporation. Section 338(h)(16) provides that (subject to certain exceptions) the deemed asset sale resulting from a section 338 election is generally ignored in determining the source or character of any item for purposes of applying the foreign tax credit rules to the seller. Instead, for these purposes, any gain recognized by the seller is treated as gain from the sale of the stock of the target corporation. Thus, in the case of a foreign target corporation, section 338(h)(16) prevents the earnings and profits generated from the deemed asset sale from changing the character of the gain from capital to ordinary and thereby permitting the use of foreign tax credits to reduce or eliminate residual U.S. tax on the stock gain. Similar to a section 338 election, Treasury regulations under section 336(e) allow a corporation to elect to treat certain dispositions of stock of a domestic corporation (but not a foreign corporation) instead as a disposition of the assets of the domestic corporation. These regulations apply section 338(h)(16) to a deemed sale of foreign assets of the domestic corporation.

Reasons for Change

Section 338(h)(16) applies to a qualified stock purchase for which a section 338 election is made, but it does not apply to transactions that produce similar results -- sales of an interest in an entity that is treated as a corporation for foreign tax purposes but as a partnership or a disregarded entity for U.S. tax purposes (specified hybrid entity), or taxable changes in the classification of an entity for U.S. tax purposes that are not recognized for foreign tax purposes. These transactions present the same foreign tax credit concerns as those addressed by section 338(h)(16) in the case of a qualified stock purchase for which a section 338 election is made and therefore should be subject to similar limitations.

Proposal

The proposal would apply the principles of section 338(h)(16) to determine the source and character of any item recognized in connection with a direct or indirect disposition of an interest in a specified hybrid entity and to a change in the classification of an entity that is not recognized for foreign tax purposes (for example, due to an election under the entity classification regulations). Thus, for purposes of applying the foreign tax credit rules, the source and character of any item resulting from the disposition of the interest in the specified hybrid entity, or change in entity classification, would be determined based on the source and character of an item of gain or loss the seller would have taken into account upon the sale or exchange of stock (determined without regard to section 1248). In addition, because the proposal is limited to determining the source and character of such an item of gain or loss for purposes of applying the foreign tax credit rules, the proposal does not affect the amount of gain or loss recognized as a result of the disposition or the change in entity classification. The Secretary would be granted authority to issue any regulations necessary or appropriate to carry out the purposes of the proposal, including those applying the proposal to other transactions that have a similar effect and exempting certain transactions among related parties from application of the proposal.

The proposal would be effective for transactions occurring after the date of enactment.

RESTRICT DEDUCTIONS OF EXCESSIVE INTEREST OF MEMBERS OF FINANCIAL REPORTING GROUPS FOR DISPROPORTIONATE BORROWING IN THE UNITED STATES

Current Law

Business interest expense generally is deductible from regular taxable income. An exception to this general rule is section 163(j) of the Internal Revenue Code, which generally limits U.S. tax deductions for business interest expense to the sum of (1) business interest income, (2) 30 percent of adjusted taxable income (not less than zero), and (3) floor plan financing interest. Business interest expense for which a deduction is disallowed under section 163(j) may be carried forward indefinitely for deduction in a subsequent year.

Certain interest paid to a foreign related party is also treated as a base erosion payment for purposes of the base erosion and anti-abuse tax (BEAT), in which case the deduction is added back to the BEAT modified taxable income base. See *Replace the Base Erosion Anti-Abuse Tax with the Stopping Harmful Inversions and Ending Low-Tax Developments Rule*. In addition, certain interest paid to a foreign related party may not be deductible by reason of the anti-hybrid rules of section 267A.

Certain rules affect the timing of a deduction for interest, for example section 267(a). In addition, both case law and regulations issued under section 385 can determine whether an instrument issued by an entity is treated as indebtedness that gives rise to interest expense for federal income tax purposes, or as stock. Specifically, regulations under section 385 treat as stock certain debt instruments issued by a corporation to a controlling shareholder in a distribution or in certain other related-party transactions that achieve an economically similar result.

Reasons for Change

The fungibility of money makes it easy for multinational groups to substitute debt for equity in a controlled entity in order to shift profits to lower-tax jurisdictions. Although section 163(j) limits the amount of interest expense a corporation can deduct relative to its U.S. earnings, section 163(j) does not consider the leverage of a multinational group's U.S. operations relative to the leverage of the group's worldwide operations. Therefore, under current law, multinational groups are able to reduce their U.S. tax on income earned from U.S. operations by over-leveraging their U.S. operations relative to those located in lower-tax jurisdictions. In addition, while certain interest paid to a foreign related party is added to the modified taxable income base for determining a taxpayer's BEAT liability, many taxpayers are able to avoid a BEAT liability because of the various exceptions for certain deductible payments. In addition, the BEAT rate is less than half of the regular corporate income tax rate. See *Replace the Base Erosion Anti-Abuse Tax with the Stopping Harmful Inversions and Ending Low-Tax Developments Rule (*referred to below as the "SHIELD").

Proposal

The proposal generally would apply to an entity that is a member of a multinational group that prepares consolidated financial statements ("financial reporting group") in accordance with U.S. Generally Accepted Accounting Principles (GAAP), International Financial Reporting Standards (IFRS), or other method identified by the Secretary under regulations. Under the proposal, a financial reporting group member's deduction for interest expense generally would be limited if the member has net interest expense for U.S. tax purposes and the member's net interest expense for financial reporting purposes (computed on a separate company basis) exceeds the member's proportionate share of the financial reporting group's net interest expense reported on the group's consolidated financial statements (excess financial statement net interest expense). A member's proportionate share of the financial reporting group's net interest expense would be determined based on the member's proportionate share of the group's earnings (computed by adding back net interest expense, tax expense, depreciation, depletion, and amortization) reflected in the financial reporting group's consolidated financial statements.

When a financial reporting group member has excess financial statement net interest expense, a deduction will be disallowed for the member's excess net interest expense for U.S. tax purposes. For this purpose, the member's excess net interest expense equals the member's net interest expense for U.S. tax purposes multiplied by the ratio of the member's excess financial statement net interest expense to the member's net interest expense for financial reporting purposes. Conversely, if a member's net interest expense for financial reporting purposes is less than the member's proportionate share of the net interest expense reported on the group's consolidated financial statements, such excess limitation would be converted into a proportionate amount of excess limitation for U.S. tax purposes and carried forward as set forth below.

Alternatively, if a financial reporting group member fails to substantiate its proportionate share of the group's net interest expense for financial reporting purposes, or a member so elects, the member's interest deduction would be limited to the member's interest income plus ten-percent of the member's adjusted taxable income (as defined under section 163(j)). Regardless of whether a taxpayer computes the interest limitation under the proportionate share approach or using the ten-percent alternative, any disallowed interest expense could be carried forward indefinitely. A member of a financial reporting group that is subject to the proposal would continue to be subject to the application of section 163(j). Thus, the amount of interest expense disallowed for a taxable year of a taxpayer that is subject to both interest expense disallowance provisions would be determined based on whichever of the two provisions imposes the lower limitation. A member of a financial reporting group may also be subject to the new Stopping Harmful Inversions and Ending Low-Tax Developments (SHIELD) rule (see *Replace the Base Erosion Anti-Abuse Tax with the Stopping Harmful Inversions and Ending Low-Tax Developments Rule*).

U.S. subgroups of a financial reporting group would be treated as a single member of the financial reporting group for purposes of applying the proposal. For this purpose, a U.S. subgroup is comprised of any U.S. entity that is not owned directly or indirectly by another U.S. entity, and all members (domestic or foreign) that are owned directly or indirectly by such entity. If a member of a U.S. subgroup owns stock in one or more foreign corporations, this proposal would apply before the application of section 265, which generally disallows a deduction for amounts allocable to tax-exempt income. Under the Administration's proposals, tax-exempt income would include dividends from a foreign corporation eligible for a section 245A deduction and a GILTI inclusion eligible for a section 250 deduction. See *Revise the Global Minimum Tax Regime, Disallow Deductions Attributable to Exempt Income, and Limit Inversions*.

The proposal would not apply to financial services entities, and such entities would be excluded from the financial reporting group for purposes of applying the proposal to other members of the financial reporting group. The proposal also would not apply to financial reporting groups that would otherwise report less than $5 million of net interest expense, in the aggregate, on one or more U.S. income tax returns for a taxable year.

The Secretary would be granted authority to promulgate any regulations necessary to carry out the purposes of the proposal, including (i) coordinating the application of the proposal with other interest deductibility rules, including the SHIELD, (ii) defining interest and financial services entities, (iii) permitting financial reporting groups to apply the proportionate share approach using the group's net interest expense for U.S. tax purposes rather than net interest expense reported in the group's financial statements, (iv) providing for the treatment of pass-through entities, (v) providing adjustments to the application of the proposal to address differences in functional currency of members, (vi) if a U.S. subgroup has multiple U.S. entities that are not all members of a single U.S. consolidated group for U.S. tax purposes, providing for the allocation of the U.S. subgroup's excess net interest expense for U.S. tax purposes among the members of the U.S. subgroup; and (vii) providing rules to address structures with a principal purpose to limit application of the proposal. In addition, if a financial reporting group does not prepare financial statements under U.S. GAAP or IFRS, it is expected that regulations generally would allow the use of financial statements prepared under other jurisdictions' generally accepted accounting principles in appropriate circumstances.

The proposal would be effective for taxable years beginning after December 31, 2021.

IMPOSE A 15 PERCENT MINIMUM TAX ON BOOK EARNINGS OF LARGE CORPORATIONS

Current Law

Taxpayers are generally required to compute their taxable income based on their books and records. Although books and records are the starting point for determining taxable income, various provisions of the Internal Revenue Code result in providing profitable corporations with a variety of allowances that reduce their income subject to federal income tax. Corporations are simultaneously able to report large profits to shareholders in financial reports and reward executives based on these measures, while claiming that their taxable income is at such a low level that they do not have any federal income tax liability. In a typical year, around 120 companies report pre-tax net income of $2 billion or more on their financial statements but a significant share of these firms pay zero income tax or receive tax refunds.

Reasons for Change

The proposal would work to reduce the significant disparity between the income reported by large corporations on their federal income tax returns and the profits reported to shareholders in financial statements by requiring them to pay a minimum amount of tax based on their reported financial income. The proposal is a targeted approach to ensure that the most aggressive corporate tax avoiders bear meaningful federal income tax liabilities. The proposal would also provide a backstop for the proposed new international tax regime since highly profitable multinational corporations would no longer be able to report significant profits to shareholders while avoiding federal income taxation entirely.

Proposal

The proposal would impose a 15 percent minimum tax on worldwide book income for corporations with such income in excess of $2 billion. In particular, taxpayers would calculate book tentative minimum tax (BTMT) equal to 15 percent of worldwide pre-tax book income (calculated after subtracting book net operating loss deductions from book income), less General Business Credits (including R&D, clean energy and housing tax credits) and foreign tax credits. The book income tax equals the excess, if any, of tentative minimum tax over regular tax. Additionally, taxpayers would be allowed to claim a book tax credit (generated by a positive book tax liability) against regular tax in future years but this credit could not reduce tax liability below book tentative minimum tax in that year.

The proposal would be effective for taxable years beginning after December 31, 2021.

PROVIDE TAX INCENTIVES FOR LOCATING JOBS AND BUSINESS ACTIVITY IN THE UNITED STATES AND REMOVE TAX DEDUCTIONS FOR SHIPPING JOBS OVERSEAS

Current Law

Under current law, there are limited tax incentives for U.S. employers to bring offshore jobs and investments into the United States. In addition, costs incurred to offshore U.S. jobs generally are deductible for U.S. income tax purposes.

Reasons for Change

The Administration would like to create a tax incentive to bring offshore jobs and investments to the United States. In addition, the Administration would like to reduce the tax benefits that exist under current law for expenses incurred to move U.S. jobs offshore.

Proposal

The proposal would create a new general business credit equal to 10 percent of the eligible expenses paid or incurred in connection with onshoring a U.S. trade or business. For this purpose, onshoring a U.S. trade or business means reducing or eliminating a trade or business (or line of business) currently conducted outside the United States and starting up, expanding, or otherwise moving the same trade or business to a location within the United States, to the extent that this action results in an increase in U.S. jobs. While the eligible expenses may be incurred by a foreign affiliate of the U.S. taxpayer, the tax credit would be claimed by the U.S. taxpayer. If a non-mirror code U.S. territory (the Commonwealth of Puerto Rico and American Samoa) implements a substantially similar proposal, the U.S. Treasury will reimburse the U.S. territory for the new general business credits provided to their taxpayers pursuant to a plan. Furthermore, the U.S. Treasury will reimburse a mirror code U.S. territory (Guam, the Commonwealth of the Northern Mariana Islands, and the U.S. Virgin Islands) for the new general business credits provided to their taxpayers by reason of the enactment of the proposal.

In addition, to reduce tax benefits associated with U.S. companies moving jobs outside of the United States, the proposal would disallow deductions for expenses paid or incurred in connection with offshoring a U.S. trade or business. For this purpose, offshoring a U.S. trade or business means reducing or eliminating a trade or business or line of business currently conducted inside the United States and starting up, expanding, or otherwise moving the same trade or business to a location outside the United States, to the extent that this action results in a loss of U.S. jobs. In determining the income of a U.S. shareholder of a controlled foreign corporation (CFC) on its global minimum tax inclusion or Subpart F income, no deduction would be allowed in determining such amounts for any expenses paid or incurred in connection with moving a U.S. trade or business outside the United States.

For purposes of the proposal, expenses paid or incurred in connection with onshoring or offshoring a U.S. trade or business are limited solely to expenses associated with the relocation of the trade or business and do not include capital expenditures or costs for severance pay and other assistance to displaced workers. The Secretary may prescribe rules to implement the provision, including rules to determine covered expenses and treatment of independent contractors.

The proposal would be effective for expenses paid or incurred after the date of enactment.

SUPPORT HOUSING AND INFRASTRUCTURE

EXPAND THE LOW-INCOME HOUSING TAX CREDIT

Current Law

Low-income housing tax credits (LIHTCs) incentivize and subsidize the construction and rehabilitation of affordable rental housing for low-income tenants. The Internal Revenue Code (Code) offers LIHTCs to each State, the District of Columbia, and each territory of the United States (each referred to as a State). Every year, the Code makes available to each State an inflation-adjusted finite pool of new housing credit dollar amounts (HCDAs), which are potential LIHTCs. The total amount available for the State to allocate each year also includes unused or returned HCDAs from prior years. The predominant way for a project to become eligible to earn LIHTCs is by receiving an allocation of HCDAs. Because the HCDA pools are almost always oversubscribed, potential developers of LIHTC projects compete by offering proposed projects to the relevant State or local housing credit agency (HCA). Each HCA must have a Qualified Allocation Plan (QAP) to guide its allocations.

To actually receive LIHTCs, a project that receives such an allocation must construct and operate the building(s) in the project in compliance with applicable Federal law (including limitations on tenant income, restrictions on gross rents, and habitability requirements). For each of 10 years, the project may claim LIHTCs equal to the lesser of the initial HCDA allocation and the product of three figures: (a) the depreciable cost of the entire building (eligible basis); (b) the portion of the building that consists of low-income units; and (c) a credit rate.

The Code allows a deeper subsidy in certain cases, notably for projects located in difficult development areas (DDAs). A DDA is an area designated by the Secretary of Housing and Urban Development (HUD) as an area that has high construction, land, or utility costs relative to area median gross income. If an HCA both determines that a higher subsidy is necessary for the financial feasibility of a project and allocates sufficient additional HCDAs to support the project's increased annual LIHTCs, the project may compute its LIHTCs based on 130 percent of actual depreciable basis (colloquially called a "basis boost").

Reasons for Change

The volume of HCDAs (and thus of LIHTCs) that are available under current law are grossly insufficient to meet low-income tenants' needs for affordable rental housing. And that inadequate amount will decrease in 2022 with the expiration of a temporary statutory increase in HCDAs.

The current allocation of HCDAs is based on population and does not consider differences among States such as average rent burden or the costs of providing affordable rental housing.

Many HCAs' allocations of HCDAs are concentrated in projects in high-poverty areas, a practice that tends to increase concentrations of poverty in the community, as well as limiting the social mobility of tenants and their families.

<u>Proposal</u>

The proposal would create an additional type of HCDA, called an "Opportunity HCDA" (OHCDA). HCAs would have a separate ceiling for OHCDAs from their existing allocation ceilings of HCDAs. HCAs would continue to receive annual infusions of regular HCDAs, without change to the allocation and ceilings for those HCDAs under current law.

HCAs would be required to allocate the majority of their OHCDAs to projects in Census Tracts of Opportunity (CTOs). The proposal would define a CTO as a tract which is entirely in one or more DDAs or which has low poverty or other advantages, as determined by the Secretary of the Treasury in consultation with HUD.

In each calendar year 2022 through 2026, the aggregate number of new OHCDAs would be 118 percent of the aggregate annual number of new HCDAs under current law. These additional OHCDAs would be made available to all States on a *per capita* basis, but with a different *per capita* amount applied to each State. The *per capita* amount for a State would be determined by a formula established by the Secretary in consultation with HUD that provides higher amounts to States with higher costs of constructing and operating affordable housing, as demonstrated by, for example, larger populations living in DDAs or higher percentages of rent-burdened households.

Buildings in DDAs that receive allocations of either HCDAs or OHCDAs would receive basis boosts of up to 50 percent. All other basis boosts in current law (including those for bond-financed buildings in DDAs) would be unchanged.

The proposal would be effective for calendar years beginning with 2022. The restrictions on use of OHCDAs would last until all OHCDA ceilings (including unused and returned amounts) had been allocated or had expired. The increased basis boost for buildings in DDAs with allocations would be permanent.

PROVIDE NEIGHBORHOOD HOMES INVESTMENT TAX CREDIT

Current Law

Low-income housing credits (LIHTCs) support low-income renters, as do Section 8 housing vouchers from the Department of Housing and Urban Development (HUD). The mortgage interest deduction, tax-exempt housing bonds, and mortgage credit certificates assist homeowners by reducing the after-tax costs of their mortgage payments. The new markets tax credit and the opportunity zone tax incentive primarily support commercial real estate and businesses rather than homeownership. Thus, there are no Federal tax provisions that directly support building or renovating owner-occupied housing or that cover a development or financing gap.

Reasons for Change

Every State has neighborhoods where the homes are in poor condition and the property values are too low to support new construction or substantial renovation. The lack of move-in-ready homes makes it difficult to attract or retain homebuyers in these areas.

This new proposed credit would apply to these neighborhoods. It would ameliorate those problems by covering the gap between the cost of building or renovating homes and the price at which they can be sold. It would also help existing homeowners rehabilitate their homes, even in the absence of any plans to sell them.

Proposal

The proposal would create a new tax credit—the Neighborhood Homes Investment Credit (NHIC). The credit would support new construction for sale, substantial rehabilitation for sale, and substantial rehabilitation for existing homeowners. The constructed or rehabilitated residence must be a single-family home (including homes with up to four dwelling units), a condominium, or a residence in a housing cooperative.

For each year between 2022 and 2031, inclusive, a specified amount of potential NHICs would be allocated to the 50 States, the District of Columbia, and U.S. possessions (collectively, States). The amount for 2022 would be $2 billion, and this amount would be indexed for inflation for the years 2023 to 2031. The Secretary of the Treasury or her delegate (Secretary) would establish rules to divide the potential NHICs among the States, with an emphasis based on populations living in distressed urban, suburban, and rural neighborhoods. The Secretary, in consultation with HUD, would provide criteria for identifying distressed neighborhoods for this purpose and for purposes of determining where NHIC-supported projects must generally be located (NHIC-Qualified Neighborhoods). In addition, the Secretary, in consultation with HUD, may establish criteria according to which a limited volume of NHICs may be earned in certain additional rural communities and/or in gentrifying census tracts for owner-occupied rehabilitation.

Each State would create a new agency (or identify a pre-existing agency) to serve as the Neighborhood Homes Credit Agency (NHCA), with authority to allocate potential NHICs to project sponsors. Sponsors seeking potential NHICs would apply on a competitive basis by providing candidate plans for construction or rehabilitation, generally in one or more NHIC-Qualified Neighborhoods. The NHCA would be responsible for monitoring compliance with all provisions governing NHICs and for reporting violations to the Internal Revenue Service.

Each NHCA would establish a qualified allocation plan (QAP) to guide it in allocating potential NHICs among competing proposals. Every QAP would be required by statute to contain certain factors and preferences.[1] The Secretary could require additional attributes, and each NHCA could add further criteria to address local conditions. NHCAs would also set standards for development costs, building quality, and developer fees.[2]

Each NHCA would be prohibited from allocating more potential NHICs than are reasonably expected to be necessary for financial feasibility. If unforeseen matters render an allocation inadequate, the taxpayer may seek an additional allocation. If potential NHICs remain after the sponsor and the sponsor's investors have received their NHICs from a construction or rehabilitation, the unused potential credits would revert to the NHCA for future allocation. The sponsor returning the potential NHICs would receive a preference in the competition for the returned credits.

A taxpayer may claim NHICs only after construction, inspection, and owner occupancy. In the case of a home to be sold to a qualifying new, purchasing owner-occupant, the credit is claimed when that owner-occupant begins residence. In the case of continuing qualifying owner-occupants who are rehabilitating their homes, the credit is claimed when construction has been completed and inspected and the owner-occupant is in residence.

NHICs can be claimed only if the owner-occupant after construction or rehabilitation is a NHIC-Qualified Owner. NHIC-Qualified Owners are those who meet criteria to be established by the Secretary and whose household income does not exceed 140 percent of area/State median income, adjusting for household size as determined by the Secretary of HUD. The method for determining household income shall be established in consultation with HUD. If, within five years of the date of qualification for the NHIC, the purchasing or rehabilitating owner/occupant ceases to the residence's owner/occupant, a portion of the claimed NHIC amount would

[1] QAPs would require assessments of (i) neighborhood need for new or rehabilitated homes, (ii) neighborhood revitalization strategy and impact, (iii) sponsor capability, and (iv) likely long-term homeownership sustainability. In addition, QAPs would include (v) a preference for proposals that would affirmatively further the purposes of 42 USC, Chapter 45, Subchapter I, as interpreted by HUD. Moreover, the statute would require that non-profit sponsors receive at least 10 percent of potential-NHIC allocations made each year.

[2] Development costs are amounts paid for construction, substantial rehabilitation, and any necessary demolition and environmental remediation. In the case of construction or rehabilitation for sale, development costs include the cost of acquisition of building and land; however, development costs are not taken into account to the extent they exceed two times sales proceeds. In the case of rehabilitation for sale, acquisition costs are not taken into account in excess of 75 percent of costs for construction, substantial rehabilitation, and any necessary demolition and environmental remediation. Rehabilitation costs are not taken into account unless they are at least $20,000 per unit. In the case of rehabilitation for an owner-occupant, the Secretary may establish a lower minimum amount of development costs.

generally have to be repaid to the NHCA for use in activities that further the purposes of the NHIC.[3]

Broadly conceived, the amount of the credit is computed as development costs less the sales price or, in the case of a homeowner rehabilitation, less the amounts paid by the homeowners. The amounts that may actually be claimed, however, are subject to several limits.

The following principles contribute to determining the amount of credit—

- *Necessity*: When sales proceeds meet or exceed development costs, no credit may be claimed.
- *Limited subsidy*: The credit may not exceed 35 percent of the lesser of development costs or 80 percent of the national median sales price for new homes, nor may it exceed the excess of development costs over sales proceeds.
- *Skin in the game*: The taxpayer always has an incentive to sell the residence for a higher sales price. That is, an increase in sales price can result in an increase in the taxpayer's after-tax income. This determination considers both reduction in the credit and reduction in the taxpayer's tax loss on the property. A similar consideration applies to receipt of owner payments toward rehabilitation of an owner-occupant's home.
- *No cliffs*: There is no point at which an additional dollar of sales proceeds precipitously reduces the credit to zero. Instead, the credit smoothly phases out such that it reaches zero at the maximum amount of permitted sales proceeds.

The IRS would be authorized and mandated to collect data relevant to evaluating the socioeconomic effects of the operation of the credit, whether or not that information is directly related to tax administration.

The Secretary would be granted strong anti-abuse regulatory authority, including the ability to recharacterize the otherwise applicable tax consequences of a residence seller's original receipt of the NHIC and a passthrough investor's receipt of the credit as part of a distributive share or other pass-through allocation (including an investor that obtained its interest in the original NHIC recipient not long before receipt of the NHIC).

The proposal would apply to allocations of potential NHICs to and by NHCAs in calendar years after 2021. Credits could be claimed in taxable years ending after December 31, 2021.

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[3] If the residence is sold or exchanged to an unrelated person, the repayment amount is the lesser of the amount of the NHIC and 50 percent of the owner-occupant's gain on the sale if the sale is in the first year following the date of qualification for the NHIC. Each year thereafter, the percentage of gain declines by 10 percent until it is zero in the sixth year. In any other case in which the purchasing or rehabilitating owner-occupant ceases to be the residence's owner or occupant, the amount to be repaid is determined as if the owner-occupant had sold the residence on that date and there had been gain in the amount of the NHIC. This includes a sale or exchange with a related person and a transaction, such as a gift, in which gain or loss is not taxed. This rule, however, does not apply if the owner-occupant, or the owner-occupant's spouse, dies or develops a physical condition that makes continued residence unsafe. The rule also does not apply in additional circumstances specified by the Secretary. To secure the NHCA's right to the possible repayment, the residence must be burdened by a recorded right of first refusal giving the NHCA the right to buy the residence for the amount of the NHIC. The owner occupant can buy out this amount by paying the required repayment amount. The right of first refusal ceases to apply in case of a foreclosure or transfer of the residence to a mortgage lender in full satisfaction of the mortgage loan.

MAKE PERMANENT THE NEW MARKETS TAX CREDIT (NMTC)

Current Law

The NMTC is an up-to-39-percent tax credit for qualified equity investments (QEIs) made to acquire stock in a corporation, or a capital interest in a partnership, that is a qualified community development entity (CDE). The investment must be held for a period of at least seven years and must have been made within five years after the CDE receives an allocation out of the national credit limitation amount for the year. The CDEs in turn make investments in low-income communities.

For calendar years 2010 through 2019, the national credit limitation amount for the year was $3.5 billion, and for 2020 through 2025 the annual amount is $5 billion. No new credit allocation authority is provided beyond 2025.

A taxpayer's allowable credit amount for any given year is the applicable percentage of the amount paid to the CDE for the investment at its original issue. Specifically, the applicable percentage is five percent for the year the equity interest is purchased from the CDE and for each of the two subsequent years, and it is six percent for each of the following four years. The NMTC is available for a taxable year to the taxpayer who holds the QEI on the date of the initial investment or on an investment anniversary date that occurs during the taxable year. The credit is recaptured if, at any time during the seven-year period that begins on the date of the original issue of the investment, the entity ceases to be a qualified CDE, the proceeds of the investment cease to be used as required, or the equity investment is redeemed.

The NMTC can be used to offset regular Federal income tax liability but, if the taxpayer is not a corporation and has an alternative minimum tax (AMT) liability, the NMTC cannot be used to offset the AMT.

Reasons for Change

Permanent extension of the NMTC would allow CDEs to continue to generate investments in low-income communities. This would also create greater certainty for investment planning purposes.

Proposal

The proposal would permanently extend the NMTC, with a new allocation for each year after 2025. These annual amounts would be $5 billion, indexed for inflation after 2026.

The proposal would be effective after the date of enactment.

PROVIDE FEDERALLY SUBSIDIZED STATE AND LOCAL BONDS FOR INFRASTRUCTURE

Current Law

State and local governments issue tax-exempt bonds to finance a wide range of projects, including school construction. There are two basic kinds of tax-exempt bonds: governmental bonds and qualified private activity bonds. Bonds generally are treated as governmental bonds if the proceeds and any financed property are used to carry out governmental purposes or the bonds are repaid with governmental funds. Bonds that have excess private business involvement or private loans are classified as "private activity bonds." Private activity bonds may be issued on a tax-exempt basis only if they meet the general requirements applicable to governmental bonds and certain additional requirements necessary for "qualified private activity bonds."

Section 11143 of Title XI of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU) added highway and freight transfer facilities to the types of qualified activities for private activity bonds in 2005. Moreover, the law provided a total of $15 billion for such bonds to be allocated by the Secretary of Transportation among qualified projects. These tax-exempt bonds were not subject to state volume caps. As of April 2021, $13.54 billion in these private activity bonds have been issued, with an additional $1.18 billion in bonds approved by the U.S. Department of Transportation.

Build America Bonds (BABs) and Qualified School Construction Bonds (QSCBs) were enacted under the American Recovery and Reinvestment Act of 2009 (ARRA) and could finance educational facilities. BABs were taxable bonds issued by State and local governments in which the Federal Government either makes direct payments to State and local governmental issuers or provides tax credits to bondholders (called "refundable credits") to subsidize a portion of the State and local governments borrowing costs in an amount equal to 35 percent of the coupon interest on the bonds. ARRA authorized the issuance of BABs in 2009 and 2010 without volume limitation, and the authority to issue these bonds expired at the end of 2010. Issuers could choose in 2009 and 2010 to issue BABs or traditional tax-exempt bonds. In 2009 and 2010, approximately $50 billion of BABs were issued to finance education.

QSCBs were enacted by ARRA as bonds for which the bondholders receive taxable interest and Federal tax credits. The Hiring Incentives to Restore Employment Act of 2010 made it possible for the issuer to elect to receive direct payment refundable credits to support the issuer's payments of taxable cash interest to the bondholders. The cash payments to the bondholders were in lieu of the Federal tax credits that the bondholder might have otherwise received. The amounts of the refundable credits are determined by a formula and could subsidize up to 100 percent of the interest costs. Issuance of QSCBs was limited to original financing for the construction, rehabilitation, or repair of a public school facility or for the acquisition of land on which such a facility was to be constructed with part of the proceeds of the bond issue. ARRA authorized a volume limitation of $11 billion for each of 2009 and 2010 and permitted unused volume to be carried forward into subsequent years.

Reasons for Change

Aging educational facilities create a need to renovate educational facilities and to encourage construction of new facilities. A subsidy for investment in school facilities that exceeds the current subsidy for tax-exempt governmental bonds would result in more such investment.

The BAB and QSCB programs expanded the market for State and local governmental debt by: (1) providing a broader market for investors without regard to tax liability (e.g., pension funds, charitable endowments, and other tax indifferent persons); and (2) delivering an efficient Federal subsidy directly to State and local governments.

School infrastructure bonds build upon the successful model of the BAB program by providing a new bond program that will attract new sources of capital for investment in our nation's schools.

Similarly, the Administration recognizes the importance of public infrastructure investment and the role that the private sector can play in public infrastructure projects. The existing framework for tax-exempt bonds can limit private sector involvement in public infrastructure projects. The proposal aims to encourage greater private investment in public infrastructure by expanding the types of transportation projects that qualify for tax-exempt bonds and increasing the amount of such bonds eligible to be allocated by the U.S. Department of Transportation.

Proposal

School infrastructure bonds

The proposal would create qualified School Infrastructure Bonds (QSIBs), which would be similar to BABs under prior law. There would be a total national QSIB limitation of $50 billion—$16.7 billion each for 2022, 2023, and 2024. The allocation of this bond authority among States would be based on the proportion of funds that each State receives under Title I, Part A of the Elementary and Secondary Education Act of 1965.

Analogous to the operation of BABs, interest on QSIBs would be taxable. Either the bondholders' interest would take the form of a tax credit equal to 100 percent of the interest on a QSIB, or the bondholders would receive cash from the bond issuer, and the Federal Government would make corresponding direct payments to the bond issuer.

Each State would have to use no less than 0.5 percent of its total QSIB allocation for outlying areas. Similarly, no less than 0.5 percent of the QSIB allocation would have to be for schools funded by the Bureau of Indian Education.

States could enable local education agencies to issue QSIBs to expand access to high-speed broadband sufficient for digital learning. The local authorization may not exceed 10 percent of the State's total authorization to issue QSIBs and must be competitively allocated among local education agencies based on the poverty level of the schools' student population and the severity of the need to improve school facilities.

For QSIBs issued under the 2022 authorization, States would be required to prioritize allocations to finance projects necessary to reopen schools in line with Centers for Disease Control and Prevention (CDC) guidelines.

Bonds for transportation infrastructure

The proposal would also expand the category of private activity bonds created by SAFETEA-LU. It would increase the amount of such bonds to be allocated by the Secretary of Transportation by an additional $15 billion. The proposal would also add public transit, passenger rail, and infrastructure for zero emissions vehicles as qualified activities for which such bonds may be issued. These bonds would not be subject to state private activity bond volume caps.

Both the proposal for QSIBs and the increase in transportation bond volume would be effective beginning with calendar year 2022.

PRIORITIZE CLEAN ENERGY

ELIMINATE FOSSIL FUEL TAX PREFERENCES

Current Law

Current law provides several credits, deductions and other special provisions that are targeted towards encouraging oil, gas, and coal production.

Enhanced oil recovery credit

The general business credit includes a 15 percent credit for eligible costs attributable to enhanced oil recovery (EOR) projects. Eligible costs include the cost of constructing a gas treatment plant to prepare Alaska natural gas for pipeline transportation, the cost of depreciable or amortizable tangible property that is integral to a qualified EOR project, intangible drilling and development costs (IDCs), and deductible tertiary injectant costs. A qualified EOR project must be located in the United States and must involve the application of one or more of nine listed tertiary recovery methods. The allowable credit is phased out over a $6 range for a taxable year if the annual reference price exceeds an inflation adjusted threshold. The credit is completely phased out in 2020 because the 2019 reference price, $55.55, exceeds the beginning of the phase out range, $49.32, by more than $6.

Credit for oil and natural gas produced from marginal wells

In addition, the general business credit includes a credit for crude oil and natural gas produced from marginal wells. The credit rate in 2019 is $3.90 per barrel of oil and 65 cents per 1,000 cubic feet of natural gas and is adjusted for inflation. The credit per well is limited to 1,095 barrels of oil or barrel-of-oil equivalents per year. The credit rates for crude oil and natural gas are phased out for a taxable year if the reference price exceeds the applicable thresholds. The crude oil phase-out range and the applicable threshold at which phase-out begins in 2019 are $3.90 and $19.52 respectively. The natural gas phase-out range and the applicable threshold at which phase-out begins are $0.43 and $2.17. Both sets of rates are adjusted for inflation. In 2019, the credit amount was $0.08 per 1,000 cubic feet of natural gas and the credit for oil was completely phased out.

Expensing of intangible drilling costs

IDCs include all expenditures made by an operator for wages, fuel, repairs, hauling, supplies, and other expenses incident to and necessary for the drilling of wells and the preparation of wells for the production of oil and natural gas. Generally, IDCs do not include expenses for items which have a salvage value or items related to the acquisition of the property. An operator who pays or incurs IDCs in the development of an oil or natural gas property located in the United States, including certain wells drilled offshore, may elect either to expense or capitalize those costs. If a taxpayer elects to expense IDCs, the amount of the IDCs is deductible as an expense in the taxable year the cost is paid or incurred. For any particular taxable year, a taxpayer may deduct some portion of its IDCs and capitalize the rest under the provision.

Deduction of costs paid or incurred for any tertiary injectant used as part of tertiary recovery method

Taxpayers are allowed to deduct the cost of qualified tertiary injectant expenses for the taxable year. Qualified tertiary injectant expenses are amounts paid or incurred for any tertiary injectants, except for recoverable hydrocarbon injectants, that are used as a part of a tertiary recovery method to increase the recovery of crude oil. The deduction is treated as an amortization deduction in determining the amount subject to recapture upon disposition of the property.

Exception to passive loss limitations provided to working interests in oil and natural gas properties

Deductions attributable to passive activities, to the extent they exceed income from passive activities, generally may not be used against other income, such as wages, portfolio income, or business income that is derived from a nonpassive activity. A similar rule applies to credits. Passive activities are defined to include trade or business activities in which the taxpayer does not materially participate. An exception is provided, however, for any working interest in an oil or natural gas property that the taxpayer holds directly or through an entity that does not limit the liability of the taxpayer with respect to the interest. Suspended deductions and credits are carried forward and treated as deductions and credits from passive activities in the next year. The suspended losses and credits from a passive activity are allowed in full when the taxpayer completely disposes of the activity.

Use of percentage depletion with respect to oil and natural gas wells

The capital costs of oil and natural gas wells are recovered through the depletion deduction. Under the cost depletion method, the basis recovery for a taxable year is proportional to the exhaustion of the property during the year and cannot exceed basis. A taxpayer may also qualify for percentage depletion; hence, the amount of the deduction is a statutory percentage of the gross income from the property. In general, only independent producers and royalty owners, in contrast to integrated oil companies, qualify for the percentage depletion deduction. A qualifying taxpayer determines the depletion deduction for each oil and natural gas property under both the percentage depletion method and the cost depletion method then deducts the larger of the two amounts. Because percentage depletion is computed without regard to the taxpayer's basis in the depletable property, a taxpayer may continue to claim percentage depletion after all the expenditures incurred to acquire and develop the property have been recovered.

Two-year amortization of independent producers' geological and geophysical expenditures

Geological and geophysical expenditures are costs incurred for the purpose of obtaining and accumulating data that will serve as the basis for the acquisition and retention of mineral properties. The amortization period for geological and geophysical expenditures incurred in connection with oil and natural gas exploration in the United States is two years for independent producers and seven years for integrated oil and natural gas producers.

Expensing of exploration and development costs

A taxpayer may elect to expense the exploration costs incurred for the purpose of ascertaining the existence, location, extent, or quality of a domestic ore or mineral deposit, including a deposit of coal or other hard mineral fossil fuel. After the existence of a commercially marketable deposit has been disclosed, costs incurred for the development of a mine to exploit the deposit are deductible in the year paid or incurred unless the taxpayer elects to deduct the costs on a ratable basis as the minerals or ores produced from the deposit are sold.

Percentage depletion for hard mineral fossil fuels

The capital costs of coal mines and other hard-mineral fossil-fuel properties are recovered through the depletion deduction. Under the cost depletion method, the basis recovery for a taxable year is proportional to the exhaustion of the property during the year. A taxpayer may also qualify for percentage depletion; hence, the amount of the deduction is a statutory percentage of the gross income from the property. A qualifying taxpayer determines the depletion deduction for each property under both the percentage depletion method and the cost depletion method and deducts the larger of the two amounts. Because percentage depletion is computed without regard to the taxpayer's basis in the depletable property, a taxpayer may continue to claim percentage depletion after all the expenditures incurred to acquire and develop the property have been recovered.

Capital gains treatment for royalties

Royalties received on the disposition of coal or lignite generally qualify for treatment as long-term capital gain, and the royalty owner does not qualify for percentage depletion with respect to the coal or lignite. This treatment does not apply unless the taxpayer has been the owner of the mineral in place for at least one year before it is mined.

Exemption from the corporate income tax for fossil fuel publicly traded partnerships

Publicly traded partnerships are generally subject to the corporate income tax. Partnerships that derive at least 90 percent of their gross income from depletable natural resources, real estate, or commodities are exempt from the corporate income tax. Instead they are taxed as partnerships. They pass through all income, gains, losses, deductions, and credits to their partners, with the partners then being liable for income tax (or benefitting from the losses) on their distributive shares.

Oil Spill Liability Trust Fund (OSTLF) excise tax exemption for crude oil derived from bitumen and kerogen-rich rock

Crudes such as those that are produced from bituminous deposits as well as kerogen-rich rock are not treated as crude oil or petroleum products for purposes of the Oil Spill Liability Trust Fund tax. They are exempt from the oil spill liability excise tax of $0.09 per barrel of crude oil received at a United States refinery, and on petroleum products entered into the United States for consumption, use or warehousing.

Amortization of Air Pollution Control Facilities

Under current law, expenses related to certain pollution control facilities are entitled to amortization over 60 months or 84 months. The 60-month life applies to property placed in service at a plant that began operation prior to January 1, 1976. The 84-month life applies to property placed in service after April 11, 2005 at coal-fired power plants constructed after December 31, 1975. Eligible pollution control facilities include new identifiable treatment facilities which are used, in connection with a plant or other property, to abate or control water or atmospheric pollution by removing, altering, disposing, storing, or preventing the creation or emission of pollutants, contaminants, wastes, or heat. Eligible facilities must be certified by a state certifying authority and a federal certifying authority as being in compliance with applicable regulations and requirements. Without this special treatment, most pollution control facilities would be depreciated over 39 years as nonresidential real estate property.

Reasons for Change

These oil, gas, and coal tax preferences distort markets by encouraging more investment in the fossil fuel sector than would occur under a more neutral tax system. This market distortion is detrimental to long-term energy security and is also inconsistent with the Administration's policy of supporting a clean energy economy, reducing our reliance on oil, and reducing greenhouse gas emissions. Moreover, the subsidies for oil, natural gas, and coal must ultimately be financed with taxes that cause further economic distortions including underinvestment in other, potentially more productive, areas of the economy.

Proposal

The proposal would repeal: (1) the enhanced oil recovery credit for eligible costs attributable to a qualified enhanced oil recovery project; (2) the credit for oil and gas produced from marginal wells; (3) the expensing of intangible drilling costs; (4) the deduction for costs paid or incurred for any tertiary injectant used as part of a tertiary recovery method; (5) the exception to passive loss limitations provided to working interests in oil and natural gas properties; (6) the use of percentage depletion with respect to oil and gas wells; (7) two-year amortization of independent producers' geological and geophysical expenditures, instead allowing amortization over the seven-year period used by integrated oil and gas producers; (8) expensing of exploration and development costs; (9) percentage depletion for hard mineral fossil fuels; (10) capital gains treatment for royalties; (11) the exemption from the corporate income tax for publicly traded partnerships with qualifying income and gains from activities relating to fossil fuels; (12) the Oil Spill Liability Trust Fund excise tax exemption for crude oil derived from bitumen and kerogen-rich rock; and (13) accelerated amortization for air pollution control facilities.

Unless otherwise specified, the proposal provisions would be effective for taxable years beginning after December 31, 2021. In the case of royalties, the proposal provision would be effective for amounts realized in taxable years beginning after December 31, 2021. The repeal of the exemption from the corporate income tax for publicly traded partnerships with qualifying income and gains from activities relating to fossil fuels would be effective for taxable years beginning after December 31, 2026.

EXTEND AND ENHANCE RENEWABLE AND ALTERNATIVE ENERGY INCENTIVES

Current Law

Renewable Electricity Production Credit

The general business tax credits include a renewable electricity production tax credit for each kilowatt hour of electricity produced from qualified energy resources at a qualified facility. The electricity must be sold to an unrelated third party and a taxpayer may generally claim the credit for a 10-year period beginning on the date the facility was placed in service. The production tax credit rate is 1.5 cents per kilowatt hour of electricity, adjusted annually for inflation. Qualified energy resources include wind, open and closed-loop biomass, geothermal energy, municipal solid waste, hydropower, and marine and hydrokinetic renewable energy. Different timing rules apply to the various types of facilities. For example, construction of a wind facility must begin before January 1, 2022 to be eligible for the credit. Further, the credits for wind facilities are reduced by 20 percent if construction begins in 2017, 40 percent if construction begins in 2018, 60 percent if construction begins in 2019, and 40 percent if construction begins in 2020 or 2021. There is no credit for facilities that begin construction after 2021.

Renewable Energy Investment Credit

Current law provides an investment tax credit for certain energy property, including solar and geothermal electric property, qualified fuel cell power plants, stationary microturbine power plants, geothermal heat pumps, small wind property, waste energy recovery property, and combined heat and power property. The investment credit is calculated as a percentage of the basis of energy property placed in service during the taxable year. Generally, the investment credit is 30 percent for property that begins construction before January 1, 2020, 26 percent for property that begins construction after December 31, 2019 and before January 1, 2023, and 22 percent for property that begins construction in after December 31, 2022 and before January 1, 2024, and the energy property must be placed in service before January 1, 2026. For combined heat and power, geothermal electric, geothermal heat pumps, and microturbines, the credit is 10 percent. A 10 percent credit is available for geothermal electric or qualified solar property placed in service after December 31, 2025. Taxpayers cannot claim both the production and investment credit for the same property; however, special rules apply where a taxpayer that is eligible for the production tax credit may elect to claim the investment tax credit in lieu of the production tax credit. For example, offshore wind energy property is eligible for the investment tax credit if construction begins before January 1, 2026.

Residential Energy Efficiency Credit

Taxpayers may claim a nonrefundable credit for the purchase of certain residential energy efficient property, including solar electric property, solar water heaters, fuel cell property, geothermal heat pumps, small wind turbines, and biomass fuel property installed in a taxpayer's U.S. residence. Special rules for fuel cell property require the installation at the taxpayer's principal residence and limit the tax credit to $500 with respect to each half kilowatt of capacity of the qualified fuel cell property. The credit is equal to 30 percent of the cost of qualified property placed in service after December 31, 2016 and before January 1, 2020, 26 percent for property placed in service after December 31, 2019 and before January 1, 2023, and 22 percent for qualified property placed in service after December 31, 2022 and before January 1, 2024. The credit shall not apply to property placed in service after December 31, 2023.

Reasons for Change

The proposal incentivizes investments in renewable energy resources and expands renewable power generation across the economy. Promoting clean energy sources would reduce carbon and other kinds of air pollution, bolster domestic clean energy industries and supply chains, create high-quality jobs, and align the country with international climate initiatives such as the Paris Climate Agreement. The Residential Energy Efficiency Credit encourages similar clean energy investment at the individual household level.

Proposal

The proposal would extend the full production tax credit for qualified facilities commencing construction after December 31, 2021 and before January 1, 2027. Starting in 2027, the credit rate would begin to phase down to zero over five years. The credit rate would be reduced by 20 percent for facilities commencing construction after December 31, 2026 and before January 1, 2028, 40 percent for facilities commencing construction after December 31, 2027 and before January 1, 2029, and so on until the credit rate reaches zero.

The proposal would extend the credits for investments in solar and geothermal electric energy property, qualified fuel cell power plants, geothermal heat pumps, small wind property, offshore wind property, waste energy recovery property, and combined heat and power property. Starting in 2022, the investment credit would be expanded to include stand-alone energy storage technology that stores energy for conversion to electricity and has a capacity of not less than five kilowatt hours. The credit would be restored to the full 30 percent rate for eligible property that begins construction after December 31, 2021 and before January 1, 2027. After 2026, the credit rate will begin to phase down to zero over five years. Eligible property commencing construction after December 31, 2026 and before January 1, 2028 will receive 80 percent of the full credit, property commencing construction after December 31, 2027 and before January 1, 2029 will receive 60 percent of the full credit, and so on until the credit rate reaches zero in 2031.

Taxpayers would have the option to elect a cash payment in lieu of the business tax credits (i.e., a direct pay option).

The Administration will work with Congress on measures to pair these credits with strong labor standards, benefitting employers that provide good-paying and good-quality jobs.

The proposal would also extend the Residential Energy Efficiency Credit and expand residential energy efficient property to include qualified battery storage technology of at least three kilowatt hours of capacity installed in a residence. Starting in 2022, the credit would return to the full 30 percent rate for property placed in service after December 31, 2021 and before January 1, 2027.

The credit would be phased out over the next five years. The credit would be reduced by 20 percent of the full credit for property placed in service after December 31, 2026 and before January 1, 2028, 40 percent of the full credit for property placed in service after December 31, 2027 and before January 1, 2029, and so on until the credit reaches zero in 2031.

The proposal would be effective after December 31, 2021.

PROVIDE TAX CREDIT FOR ELECTRICITY TRANSMISSION INVESTMENTS

Current Law

The Internal Revenue Code (Code) provides investment credits for various types of energy property used to generate electricity from several different sources. Presently there is no credit for investments in transmission infrastructure used to deliver electricity from where it is generated to where it is used.

Reasons for Change

It is widely recognized that significant investments in the United States' electricity transmission system are necessary to facilitate the clean energy transition. These investments are also instrumental in enhancing and maintaining the reliability and resilience of the electricity supply. Many factors will influence the viability and pace of these transmission investments, including permitting considerations and the need for cross-jurisdictional coordination. However, targeted Federal financial support for these investments via the Code can make them more attractive to those that must navigate the many hurdles to bringing such projects to fruition. The benefits of such support can also extend beyond the users and payers of specific facilities, generating positive externalities such as system-wide reliability, job creation, and cleaner air.

Proposal

The proposal would provide a credit equal to 30 percent of a taxpayer's investment in qualifying electric power transmission property placed in service in a given year. Qualifying electric power transmission property would include overhead, submarine, and underground transmission facilities meeting certain criteria, including a minimum voltage of 275 kilovolts and a minimum transmission capacity of 500 megawatts. Qualifying property would also include any ancillary facilities and equipment necessary for the proper operation of the transmission facility.

Taxpayers would have the option to elect a cash payment in lieu of the tax credits (i.e., a direct pay option).

The Administration will work with Congress on measures to pair these credits with strong labor standards, benefitting employers that provide good-paying and good-quality jobs.

The proposal would be effective for property placed in service after December 31, 2021, and before January 1, 2032.

PROVIDE ALLOCATED CREDIT FOR ELECTRICITY GENERATION FROM EXISTING NUCLEAR POWER FACILITIES

Current Law

Section 45J of the Internal Revenue Code provides an allocated production tax credit for the first 8 years of operation of new advanced nuclear power facilities. The credit is based on the amount of electricity produced and sold by the advanced nuclear power facility. The amount of the credit is subject both to a national limit on the amount of eligible new nuclear capacity and to a facility-specific limit on the amount of credit that can be received. Presently, there is no tax credit for generation of electricity from existing nuclear power facilities.

Reasons for Change

In 2020, existing nuclear power facilities contributed about one-fifth of the United States' total electricity generation and about half of all generation that did not produce greenhouse gas emissions. Changes in wholesale electricity markets in recent years have significantly affected the economics of many of these facilities. Many considerations influence decisions to retire nuclear power facilities. However, under current conditions, some facilities are expected to be retired before the expiration of their existing operating licenses, and before they would be retired if their revenue reflected the full value of their electricity. This full value includes nuclear power facilities' contribution to avoiding pollution, such as greenhouse gas emissions, that would otherwise result from meeting U.S. electricity demand.

Targeted Federal financial support for generation from economically-at-risk facilities could prevent the premature retirement of nuclear power facilities that could otherwise continue to operate safely for decades. Such support could maintain these facilities' contributions to employment and the economy, and it could help maintain the progress that has already been made in the United States' clean energy transition.

Proposal

The proposal would create an allocated production credit for electricity generation from eligible existing nuclear power facilities that bid for the credits. Eligibility to bid for these credits would depend on, among other potential requirements, demonstration of a good operation and safety record, demonstration that the facility is facing financial operating losses and that future projections include continued losses, and demonstration that emissions of various air pollutants would increase if the facility ceased operations. Eligible facilities would bid to receive credits over two-year windows. A solicitation of bids would be held every two years. In addition to providing all information necessary for determination of eligibility, bidding facilities would identify the minimum credit amount per megawatt-hour of their generation that would be sufficient for them to maintain operations during the two-year window.

Up to $1 billion in credits would be available in each year to be allocated based on an evaluation of the bids received and the goal of maximizing the preservation of existing nuclear electricity generation. Eligible facilities would have the option to elect a cash payment in lieu of the allocated tax credits (i.e., a direct pay option).

The Administration will work with Congress on measures to pair these credits with strong labor standards, benefitting employers that provide good-paying and good-quality jobs.

The proposal would be effective after December 31, 2021. The first two-year crediting window would commence on January 1, 2022, and the last crediting window would commence on January 1, 2030.

ESTABLISH NEW TAX CREDITS FOR QUALIFYING ADVANCED ENERGY MANUFACTURING

Current Law

Section 48C of the Internal Revenue Code (Code) authorized the Department of the Treasury to award $2.3 billion in tax credits (48C tax credits) to promote investment and job creation in clean energy manufacturing. The tax credit is equal to 30 percent of the eligible investment in qualifying advanced energy projects. A qualifying advanced energy project is a project that re-equips, expands, or establishes a manufacturing facility for the production of: solar, wind, geothermal, or other renewable energy equipment; electric grids and storage for renewables; fuel cells and microturbines; energy storage systems for electric or hybrid vehicles; carbon dioxide capture and sequestration equipment; equipment for refining or blending renewable fuels; equipment for energy conservation, including lighting and smart grid technologies; and other advanced energy property designed to reduce greenhouse gas emissions may also be eligible as determined by the Secretary of the Treasury or her delegate.

The Department of the Treasury, in consultation with the Department of Energy, established the 48C tax credit program to review and evaluate applications and award the tax credits to qualified applicants. Projects are assessed on the following criteria: commercial viability, domestic job creation, technological innovation, speed to project completion, and potential for reducing air pollution and greenhouse gas emissions. Additional factors such as diversity of geography, technology, project size, and regional economic development are also considered.

All $2.3 billion of tax credits were allocated through two application rounds with the last allocations awarded in November 2013. The Congress has not authorized additional 48C tax credits.

Reasons for Change

Domestic manufacturing of clean energy property is a critical component of building a clean and equitable economy. The $2.3 billion cap on 48C tax credits resulted in the funding of less than one-third of the technically acceptable applications that were received. Applicants requested over $8 billion in tax credits. The 48C tax credits have proven successful in leveraging private investment in building and equipping factories that produce clean energy products and create good jobs for workers and communities. To support worthy projects that could be deployed quickly to create jobs and economic activity, 48C tax credits should be expanded.

Proposal

The proposal would modify and expand section 48C of the Code. The definition of a qualifying advanced energy project would be revised to include: industrial facilities; recycling in addition to production; and expanded eligible technologies, including but not limited to energy storage and components, electric grid modernization equipment, carbon oxide sequestration, and energy conservation technologies. Selection criteria would be revised to include evaluating wages for laborers and additional consideration for projects that create jobs in communities impacted by the closure of coal mines or coal power plants.

The proposal would authorize an additional $10 billion of 48C tax credits for investments in eligible property used in a qualifying advanced energy manufacturing project. Of the $10 billion allocation, $5 billion would be specifically allocated to projects in coal communities. Successful applicants would have the option to elect a cash payment in lieu of the 48C tax credits (i.e., a direct pay option).

Applications for the additional 48C tax credits would be made during the three-year period beginning on the date on which the additional authorization is enacted. Applicants who are allocated the additional credits must provide evidence that program requirements have been met within 18 months of the date of acceptance of the application and must place the property in service within three years of the date of the issuance of the certification.

The Administration will work with Congress on measures to pair these credits with strong labor standards, benefitting employers that provide good-paying and good-quality jobs.

The proposal would be effective after December 31, 2021.

ESTABLISH TAX CREDITS FOR HEAVY- AND MEDIUM-DUTY ZERO EMISSIONS VEHICLES

Current Law

Section 30D of the Internal Revenue Code provides business and individual taxpayers a nonrefundable tax credit for "qualified plug-in electric drive motor vehicles" including passenger vehicles and light trucks. A qualified plug-in electric motor vehicle is defined, in part, as a vehicle weighing less than 14,000 pounds that is propelled by an electric motor that uses a rechargeable battery and such vehicle is subject to and in compliance with applicable Clean Air Act Standards. The vehicle must be acquired for use or lease and not for resale, the original use of the vehicle must commence with the taxpayer, and the vehicle must be used predominantly in the United States. Vehicle manufacturers submit to the Internal Revenue Service the vehicles eligible for the credit that satisfy the specifications of the credit.

The credit amount varies based on the battery size and the number of electric vehicles sold per manufacturer. The total amount of the credit allowed for a vehicle is limited to $7,500. The credit begins to phase out for a manufacturer's vehicles when at least 200,000 qualifying vehicles have been sold for use in the United States (determined on a cumulative basis for sales after December 31, 2009).

Notably, this tax credit for electric vehicles does not extend to medium- and heavy-duty vehicles. A tax credit of up to $18,000 for heavy-duty hybrid electric vehicles expired in 2009. Individual states do provide tax credits for medium- and heavy-duty all-electric vehicles. For example, Colorado's tax credit for medium- and heavy-duty vehicles varies by vehicle size and is capped at $16,000 per vehicle.

Reasons for Change

The current tax credit applies only to passenger vehicles and light-duty trucks. There are no similar federal tax incentives for medium- and heavy-duty vehicles. Heavy duty trucks emit 23 percent of U.S. transportation greenhouse gas emissions and are a major source of local pollution. The Administration supports a rapid shift to zero emission vehicles, including battery electric and fuel cell electric vehicles. A tax credit specifically for medium- and heavy-duty vehicles will accelerate adoption of such vehicles, which is a key component of the overall shift to a zero-emission economy.

Proposal

The proposal would provide a business tax credit for new medium- and heavy-duty zero-emission vehicles, including battery electric vehicles and fuel cell electric vehicles, to promote consumer choice and vehicle adoption. These vehicles would be in Classes 3 through 8, as defined by the Federal Highway Administration's vehicle classification system.

Similar to the section 30D tax credit, vehicle manufacturers would submit to the Internal Revenue Service the medium- and heavy-duty vehicles eligible for the credit. Additionally, the vehicle must be acquired for use or lease by the taxpayer and not for resale, the original use of the vehicle must commence with the taxpayer, and the vehicle must be used predominantly in the United States. Compliance with applicable Clean Air Act standards and federal motor vehicle safety standards would be required for a vehicle to be eligible for the tax credit.

For each vehicle class, the tax credit would be a set amount per vehicle as follows:

- For a Class 3 vehicle, the credit is:
  - $25,000 per vehicle purchased between January 1, 2022 and December 31, 2024.
  - $20,000 per vehicle purchased between January 1, 2025 and December 31, 2025.
  - $15,000 per vehicle purchased between January 1, 2026 and December 31, 2026.
  - $10,000 per vehicle purchased between January 1, 2027 and December 31, 2027.
- For Class 4-6 vehicles, the credit is:
  - $45,000 per vehicle purchased between January 1, 2022 and December 31, 2024.
  - $40,000 per vehicle purchased between January 1, 2025 and December 31, 2025.
  - $35,000 per vehicle purchased between January 1, 2026 and December 31, 2026.
  - $30,000 per vehicle purchased between January 1, 2027 and December 31, 2027.
- For Class 7-8 short-haul vehicles, the credit is:
  - $120,000 per vehicle purchased between January 1, 2022 and December 31, 2023.
  - $100,000 per vehicle purchased between January 1, 2024 and December 31, 2024.
  - $80,000 per vehicle purchased between January 1, 2025 and December 31, 2027.
- For Class 7-8 long-haul vehicles, the credit is:
  - $120,000 per vehicle purchased between January 1, 2022 and December 31, 2024.
  - $100,000 per vehicle purchased between January 1, 2025 and December 31, 2027.

Taxpayers would have the option to elect a cash payment in lieu of a general business credit (i.e., a direct pay option).

The Administration will work with Congress on measures to pair these credits with strong labor standards, benefitting employers that provide good-paying and good-quality jobs.

The proposal would be effective after December 31, 2021.

PROVIDE TAX INCENTIVES FOR SUSTAINABLE AVIATION FUEL

Current Law

Current law does not include an investment tax credit for sustainable aviation fuel production facilities or property. However, sustainable aviation fuel is eligible for the biodiesel tax credit. The current production tax credit of $1 per gallon of biodiesel is set to expire on December 31, 2022.

Reasons for Change

While the ground transportation industry is expanding use of clean energy technologies such as electrification and fuel cell technology, the aviation industry is heavily reliant on fossil fuels and lacks similar renewable alternatives. Sustainable aviation fuel is a substitute for fossil jet fuel up to a certain blending percentage and multiple types have been certified by the American Society for Testing and Materials (ASTM) International for safe use in aviation up to certain blending levels.

Sustainable aviation fuel is beginning to enter the U.S. market but at a very slow pace due to its expense and demand for the same feedstock inputs to produce marginally cheaper renewable diesel. Providing incentives to spur the production of sustainable aviation fuel would deliver more feedstocks to sustainable aviation fuel production and help decarbonize the aviation industry.

Proposal

The proposal would introduce a production tax credit of $1.50 per gallon for sustainable aviation fuel that achieves at least a 50 percent reduction in emissions relative to conventional jet fuel. The credit would be offered for fuel produced after December 31, 2021 and before January 1, 2028. A supplementary credit of up to $0.25 per gallon would be available on a sliding scale depending on the emissions reduction relative to conventional jet fuel. The emissions reduction certification amount would be $0.01 for every two percentage points above the 50 percent reduction baseline. Sustainable aviation fuel with a 50 percent emissions reduction relative to conventional fuel would receive a $1.50 per gallon credit, while fuel with a 100 percent emissions reduction would receive a $1.75 per gallon credit.

The Administration will work with Congress on measures to pair these credits with strong labor standards, benefitting employers that provide good-paying and good-quality jobs.

The proposal would be effective after December 31, 2021.

PROVIDE A PRODUCTION TAX CREDIT FOR LOW-CARBON HYDROGEN

Current Law

Section 30B of the Internal Revenue Code (Code) provides alternative motor vehicle credits to taxpayers who place in service new qualified fuel cell motor vehicles, including vehicles propelled by hydrogen fuel cells. Prior to 2021, the Code had also provided a 30 percent credit for the cost of qualified alternative fuel vehicle refueling property placed in service by a taxpayer, including for fuel at least 85 percent of the volume of which consists of hydrogen. Current law does not provide a tax credit for low-carbon hydrogen production.

Reasons for Change

The use of low-carbon hydrogen as a fuel source, an industrial feedstock, or to produce and store electricity, can play a critical role in accelerating the reduction of carbon emissions (and other kinds of pollution) in the United States. Investments in facilities for producing low-carbon hydrogen will provide an opportunity to transition existing jobs and create new jobs needed to support a low-carbon economy. In order to create a low-carbon economy at the scale necessary to achieve national objectives, the Federal government must take action to significantly reduce the carbon intensity of hydrogen production.

Proposal

The proposal would implement a low-carbon hydrogen production tax credit. For the purposes of the proposal, "low-carbon" refers to hydrogen produced using zero-carbon emissions electricity (renewables or nuclear) and water as a feedstock, or hydrogen produced using natural gas as a feedstock and with all carbon emitted in the production process captured and sequestered. The credit would apply to each kilogram of qualified low-carbon hydrogen: (1) produced by the taxpayer, (2) for an end use application in the energy, industrial, chemicals, or transportation sector; and (3) from a qualified low-carbon hydrogen production facility during the 6-year period beginning on the date the facility was originally placed in service. The credit would be indexed annually for inflation measured after the facility is placed into service, based upon the initial amount of $3.00 per kilogram of hydrogen between 2022 and 2024 and $2.00 per kilogram between 2025 and 2027. Taxpayers would have the option to elect a cash payment in lieu of the tax credits (i.e., a direct pay option).

The hydrogen may be sold to an unrelated third party or, if directly consumed by the taxpayer that owns the facility, the production must be independently verified. Construction of a qualified facility must have begun before the end of 2026 for the facility to be eligible for the low-carbon hydrogen production tax credit.

The Administration will work with Congress on measures to pair these credits with strong labor standards, benefitting employers that provide good-paying and good-quality jobs.

The proposal would be effective after December 31, 2021.

EXTEND AND ENHANCE ENERGY EFFICIENCY AND ELECTRIFICATION INCENTIVES

Current Law

Taxpayers can claim deductions and tax credits for investments in energy efficiency property and improvements for their homes and businesses.

Nonbusiness energy property

Section 25C of the Internal Revenue Code (Code) provides a tax credit for certain expenditures to improve the energy efficiency of a taxpayer's principal U.S. residence. Two types of property qualify for the credit: "qualified energy efficiency improvements" and "residential energy property expenditures." The 25C tax credit is equal to the sum of ten percent of the cost of qualified energy efficiency improvements and eligible costs for residential energy property expenditures, subject to a limit of a $500 nonrefundable tax credit for the taxpayer's lifetime. Qualified energy efficiency improvements are defined, in part, as energy efficient building components, including insulation, windows, exterior doors, certain metal or asphalt roofs, that satisfy energy savings criteria established by the 2009 International Energy Conservation Code (IECC). Residential energy property expenditures must meet energy efficiency standards prescribed by the Secretary and include certain types of property, such as natural gas, propane, or oil furnace or hot water boiler; an advanced main air circulating fan; and "energy-efficient building property." For residential energy property expenditures, the credit amount is limited to $50 for any advanced main air circulating fan; $150 for any qualified natural gas, propane, or oil furnace or hot water boiler; and $300 for any item of energy-efficient building property. A separate tax credit limit of $200 applies to windows. The 25C tax credit will expire December 31, 2021.

Construction of new energy efficient homes

Section 45L of the Code provides a tax credit for the construction of new energy efficient homes that are purchased on or before December 31, 2021. A new energy efficient home is defined as a dwelling unit located in the United States that meets specified energy saving requirements. Energy savings may be accomplished through energy-efficient roofs, windows, insulation, air conditioners, and other energy efficient property. The tax credit for a new energy efficient home is $2,000 per dwelling unit. For manufactured homes, the tax credit is $1,000 per dwelling unit and manufactured homes are subject to different energy savings requirements. A certification process requires that the energy savings are verified. The 45L tax credit will expire December 31, 2021.

Energy efficient commercial buildings

Section 179D of the Code provides a tax deduction for energy efficient commercial building property placed in service during a taxable year. Energy efficient commercial building property is defined as property to which depreciation or amortization is allowable and meets certain building energy efficiency standards established by the American Society of Heating, Refrigerating, and Air Conditioning Engineers and the Illuminating Engineering Society of North America. A certification process is required to ensure compliance with energy-savings plans and targets for the buildings.

The maximum allowable section 179D deduction is $1.80 per square foot. In the case of a building that does not achieve at least 50 percent energy savings, a partial deduction of $0.60 per square foot is available for systems that meet energy-saving targets established by the Secretary of the Treasury.

The section 179D deduction has been in effect since 2006 and was made permanent in 2020. For taxable years beginning after 2020, the dollar amount of the allowable deduction will be indexed for inflation using the C-CPI-U determined for the calendar year in which the taxable year begins.

Mechanical insulation labor costs

Presently, there is no tax credit solely for the labor costs for mechanical insulation.

Reasons for Change

Increasing the value and duration of the energy efficiency incentives would help bring clean energy building projects into existence. Also, increasing incentives for electric appliances and expanding credits for equipment that supports higher on-premise electricity demand will help promote electrification goals.

Proposal

Nonbusiness energy property

The proposal would extend the section 25C tax credit five years and increase the lifetime limit to $1,200 for property placed in service after December 31, 2021 and before January 1, 2027. For qualified energy efficiency improvements, the credit rate would be increased to 15 percent and the credit amounts for certain types of residential energy property expenditures would also be increased. Also, the proposal would modify the definitions of eligible qualified energy efficiency improvements and residential energy property expenditures and update the required energy efficiency standards for such property. Roofs, advanced circulating fans, and certain equipment, such as water heaters and furnaces, powered by fossil fuels, would no longer be eligible for the tax credit; however, certain geothermal and load center equipment would be eligible for the tax credit.

The proposal would be effective after December 31, 2021.

Construction of new energy efficient homes

The proposal would increase the section 45L tax credit for an energy efficient home from $2,000 to $2,500 and extend the tax credit five years to December 31, 2026. The proposal would also modify and expand the dwelling units eligible for the credit. For new energy efficient homes, the required energy savings percentage would increase from 50 percent to 60 percent under the 2006 IECC standards. In addition, certified Energy Star homes would also be eligible for the 45L tax credit as well as dwelling units with annual heating and cooling consumption at least 15 percent below the annual energy consumption level of a comparable dwelling unit under the 2018 IECC standards.

The proposal would be effective after December 31, 2021.

Energy efficient commercial buildings

The proposal would increase the maximum section 179D deduction per square foot from $1.80 to $3.00 for qualifying property placed in service after December 31, 2021. The partial deduction rate would be increased from $0.60 to $1.00 per square foot for qualifying property placed in service after December 31, 2021. The required efficiency standard in relation to the reference building's total annual energy reduction would be adjusted from 50 percent to 30 percent.

The proposal would be effective after December 31, 2021.

Mechanical insulation labor costs

The proposal would create a new general business tax credit for qualifying mechanical insulation labor costs. The tax credit would be equal to 10 percent of the mechanical insulation labor costs paid or incurred by the taxpayer during such taxable year. Mechanical insulation labor costs would include the labor cost of installing mechanical insulation property, including insulation materials, and facings and accessory products, for a depreciable mechanical system that is placed in service in the United States and that satisfies certain energy loss reductions. The credit would be available for labor costs incurred after December 31, 2021 through December 31, 2026.

The Administration will work with Congress on measures to pair these credits with strong labor standards, benefitting employers that provide good-paying and good-quality jobs.

The proposal would be effective after December 31, 2021.

PROVIDE DISASTER MITIGATION TAX CREDIT

Current Law

Federal tax credits related to disasters, such as earthquakes, fire, and hurricanes, focus on providing tax relief after damage has occurred. Generally, home- and business-owners can deduct casualty losses if the loss is caused by a Federal declared disaster. These losses only include those not covered by insurance or other federal aid. Taxpayers whose principal residences are involuntarily destroyed or condemned by a Federal declared disaster are allowed special treatment. Owners of low-income rental properties are allowed disaster-based relief from certain requirements of credit programs.

In addition to these and other permanent features the Internal Revenue Code, there are temporary measures to allow for tax relief after specific disasters. Features of these temporary packages may include enhanced access to retirement funds, employee retention tax credits, increased charitable giving limits, and increased casualty loss deductions.

Reasons for Change

The National Oceanic and Atmospheric Administration reports that since 1980, the United States has sustained 241 weather and climate disasters with overall damage costs exceeding $1.6 trillion. The benefit-to-cost ratio of mitigation efforts for the United States is estimated to be around 4; for every $1 spent on mitigation, $4 are saved in rehabilitation costs after disasters. Several states, including Alabama, Louisiana, and South Carolina, have tax credits for installation of disaster mitigation measures. The proposal offers a federal incentive to install disaster mitigation measures prior to the occurrence of a disaster.

Proposal

The proposal provides a nonrefundable tax credit for homeowners and businesses equal to 25 percent of qualified disaster mitigation expenditures capped at $5,000. For individual taxpayers, the credit begins to phase out at an adjusted gross income of approximately $85,000 for single tax filers and approximately $170,000 for joint filers. For businesses, the credit begins to phase out when the business has gross receipts above $5 million. The credit is only available to homeowners and businesses in areas where a Federal disaster declaration has been made within the preceding 10-year period or in areas adjacent to where a Federal disaster declaration has been made within the preceding 10-year period.

The credit would be available for taxable years beginning after the date of enactment.

EXPAND AND ENHANCE THE CARBON OXIDE SEQUESTRATION CREDIT

Current Law

Current law allows a tax credit for the capture and sequestration of qualified carbon oxide using carbon capture equipment that is placed in service at a qualified facility on or after February 9, 2018. The amount of the credit depends on when and how the carbon oxide is sequestered. In 2020, qualified carbon oxide disposed of in secure geological storage and not used as a tertiary injectant in a qualified enhanced oil or natural gas recovery project could receive a credit of $31.77 per metric ton. The credit increases to $50 by 2026 and is adjusted for inflation in later years. In 2020, qualified carbon oxide that is used as a tertiary injectant in an enhanced oil or natural gas recovery project could receive a credit of $20.22 per metric ton. This credit increases to $35 by 2026 and is adjusted for inflation in later years.[1] In 2020, the fixation of qualified carbon oxide through photosynthesis or chemosynthesis, the chemical conversion of qualified carbon oxide to a material or chemical compound in which qualified carbon oxide is securely stored, or the use of qualified carbon oxide for any other purpose for which a commercial market exists as determined by the Secretary could receive a credit of $20.22 per metric ton. The credit increases to $35 by 2026 and is adjusted for inflation in later years.

Qualified facilities must begin construction by January 1, 2026. Taxpayers may claim these credits for a 12-year period from the date the carbon capture equipment was originally placed in service.

Reasons for Change

Carbon oxide sequestration can play an important role in reducing greenhouse gas emissions from point sources and from the ambient air. The current credit provides incentives for carbon oxide sequestration, but additional incentives are required to achieve greater carbon oxide reductions and address the cost differences among methods of carbon capture. With additional incentives, nascent carbon capture technologies could continue to become less expensive over time and with experience. Additional investments in carbon oxide capture and sequestration technologies will help facilitate further technological improvements that will be important for reducing the costs of controlling future greenhouse gas emissions.

Proposal

The proposal would extend the “commence construction” date by 5 years, such that qualified facilities must begin construction by January 1, 2031.

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[1] Current law provides lower credit rates for carbon oxide that is captured using carbon capture equipment that was placed in service before February 9, 2018. For these earlier projects, current law allows for a $23.82 (in 2020) per metric ton of qualified carbon oxide disposed of in secure geological storage and not used as a tertiary injectant in a qualified enhanced oil or natural gas recovery project. A credit of $11.91 (in 2020) per metric ton is available if qualified carbon oxide is used as a tertiary injectant in an enhanced oil or natural gas recovery project. The credit in connection with pre-February 9, 2018 equipment is allowed through the end of the calendar year in which the Secretary certifies that 75 million metric tons of qualified carbon dioxide have been sequestered under this credit. As of June 2020, 72 million metric tons had been sequestered.

The proposal would provide an enhanced credit for carbon oxide captured from hard-to-abate industrial carbon oxide capture sectors such as cement production, steelmaking, hydrogen production, and petroleum refining. The enhanced credit for industrial capture would not apply to ethanol, natural gas processing, or ammonia production facilities. An additional $35 per metric ton of qualified carbon oxide is available for qualified carbon oxide that is captured from such sources and is disposed of in secure geological storage. The amount of the $35 per-ton additional credit does not change each year. The total per-ton credit for these projects would be $85 in 2026.

The proposal would also provide an enhanced credit for direct air capture projects. An additional $70 per metric ton of qualified carbon oxide is available for qualified carbon oxide that is disposed of in secure geological storage. The amount of the $70 per-ton additional credit does not change each year. The total per-ton credit for direct air capture projects with secure geological storage would be $120 in 2026.

Taxpayers would have the option to elect a cash payment in lieu of the carbon sequestration credit (i.e., a direct pay option).

The Administration will work with Congress on measures to pair these credits with strong labor standards, benefitting employers that provide good-paying and good-quality jobs.

The proposal would be effective after December 31, 2021.

EXTEND AND ENHANCE THE ELECTRIC VEHICLE CHARGING STATION CREDIT

Current Law

Current law allows an investment tax credit equal to 30 percent of the cost of alternative fuel vehicle refueling property, which includes electric vehicle charging stations and hydrogen refueling stations. The tax credit is capped at $1,000 for refueling property installed at a taxpayer's residence and at $30,000 for refueling property installed for commercial use. Notably, the credit is allowed on a per-location basis, not on a per-device basis. The credit is currently set to expire on December 31, 2021.

Reasons for Change

Since the tax credit is currently applied on a per-location basis, it is difficult to finance multiple charging or refueling stations at one commercial location. Also, the $30,000 tax credit limit on business investments, which is set to expire at the end of 2021, does not provide adequate financial incentive to promote refueling infrastructure. The proposal seeks to encourage more private, long-term investment in the latest technologies in refueling infrastructure.

Proposal

The proposal modifies and expands the tax credit for electric vehicle charging stations. The proposal allows taxpayers to claim the tax credits on a per-device basis (i.e., electric vehicle supply equipment, or ESVE, also called a port or a charger), increases the tax credit limit on individual devices to $200,000, and extends the tax credit for five years through December 31, 2026. Taxpayers would have the option to elect a cash payment in lieu of the general business tax credits (i.e., a direct pay option). The $1,000 tax credit for refueling property installed at a taxpayer's residence would not increase but would also be extended for five years.

The Administration will work with Congress on measures to pair these credits with strong labor standards, benefitting employers that provide good-paying and good-quality jobs.

The proposal would be effective for taxable years beginning after December 31, 2021.

REINSTATE SUPERFUND EXCISE TAXES AND MODIFY OIL SPILL LIABILITY TRUST FUND FINANCING

Current Law

The following Superfund excise taxes were imposed before January 1, 1996: (1) An excise tax on domestic crude oil and on imported petroleum products at a rate of 9.7 cents per barrel; (2) An excise tax on listed hazardous chemicals at a rate that varied from 22 cents to $4.87 per ton; and (3) An excise tax on imported substances that use as materials in their manufacture or production one or more of the hazardous chemicals subject to the excise tax described in (2) above.

The revenues from these taxes were dedicated to the Hazardous Substance Superfund Trust Fund. Amounts in the Trust Fund are available for expenditures incurred in connection with releases or threats of releases of hazardous substances into the environment under specified provisions of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (as amended).

An excise tax to finance the Oil Spill Liability Trust Fund (OSLTF) is imposed on: (1) crude oil received at a U.S. refinery; (2) imported petroleum products (including crude oil) entered into the United States for consumption, use, or warehousing; and (3) any domestically produced crude oil that is used (other than on the premises where produced for extracting oil or natural gas) in or exported from the United States if, before such use or exportation, no taxes were imposed on the crude oil. The tax is eight cents per barrel before January 1, 2017, and nine cents per barrel thereafter. Crudes such as those that are produced from bituminous deposits as well as kerogen-rich rock (e.g., tar sands) are not treated as crude oil or petroleum products for purposes of the tax. The tax is deposited in the OSLTF to pay costs associated with oil removal and damages resulting from oil spills, as well as to provide annual funding to certain agencies for a wide range of oil pollution prevention and response programs, including research and development. In the case of an oil spill, the OSLTF makes it possible for the Federal government to pay for removal costs up front, and then seek full reimbursement from the responsible parties.

The Customs drawback statute (Title 19 U.S.C (Customs Duties) section 1313) has been administratively interpreted to allow drawback of the tax when products subject to this tax are exported.

Reasons for Change

The Superfund excise taxes should be reinstated and increased because of the continuing need for funds to remedy damages caused by releases of hazardous substances. In addition, it is appropriate to extend the tax to other crudes such as those produced from bituminous deposits as well as kerogen-rich rock.

The magnitude of the Federal response to recent disasters has reinforced the importance of the OSLTF and the need to maintain a sufficient balance, particularly in order to accommodate spills of national significance. It is appropriate to extend the tax to other sources of crudes that present environmental risks comparable to those associated with crude oil and petroleum products.

The drawback of the tax is granted when the product is exported even though there is no concomitant reduction in the risk of an oil spill. A prohibition on the drawbacks of the tax will strengthen the finances of the OSLTF and remove an incentive to export crude and like products.

Proposal

The proposal would reinstate the three Superfund excise taxes at double the previous rates for periods beginning after December 31, 2021 and through December 31, 2031. In addition, the proposal would extend the Superfund excise tax on domestic crude oil and imported petroleum products to other crudes such as those produced from bituminous deposits as well as kerogen-rich rock. To support the OSLTF, the proposal would also extend the OSLTF tax to include crudes such as those produced from bituminous deposits as well as kerogen-rich rock. Finally, the eligibility of the OSLTF for drawback would be eliminated.

The proposal would be effective after December 31, 2021.

American Families Plan

STRENGTHEN TAXATION OF HIGH-INCOME TAXPAYERS

INCREASE THE TOP MARGINAL INCOME TAX RATE FOR HIGH EARNERS

Current Law

For taxable years beginning after December 31, 2017 and before January 1, 2026, the top marginal tax rate for the individual income tax is 37 percent. For taxable years beginning after December 31, 2025, the top marginal tax rate for the individual income tax is 39.6 percent.

For 2021, the 37 percent marginal individual income tax rate applies to taxable income over $628,300 for married individuals filing a joint return and surviving spouses, $523,600 for unmarried individuals (other than surviving spouses) and head of household filers, and $314,150 for married individuals filing a separate return.

Reasons for Change

The proposal would reverse a recent tax cut for the highest income taxpayers. It would raise revenue while increasing the progressivity of the tax system.

Proposal

The proposal would increase the top marginal individual income tax rate to 39.6 percent. This rate would be applied to taxable income in excess of the 2017 top bracket threshold, adjusted for inflation. In taxable year 2022, the top marginal tax rate would apply to taxable income over $509,300 for married individuals filing a joint return, $452,700 for unmarried individuals (other than surviving spouses), $481,000 for head of household filers, and $254,650 for married individuals filing a separate return. After 2022, the thresholds would be indexed for inflation using the C-CPI-U, which is used for all current tax rate thresholds for the individual income tax.

The proposal would be effective for taxable years beginning after December 31, 2021.

REFORM THE TAXATION OF CAPITAL INCOME

Current Law

Most realized long-term capital gains and qualified dividends are taxed at graduated rates under the individual income tax, with 20 percent generally being the highest rate (23.8 percent including the net investment income tax, if applicable, based on the taxpayer's modified adjusted gross income). Moreover, capital gains are taxable only upon realization, such as the sale or other disposition of an appreciated asset. When a donor gives an appreciated asset to a donee during the donor's life, the donee's basis in the asset is the basis of the donor; in effect, the basis is "carried over" from the donor to the donee. There is no realization of capital gain by the donor at the time of the gift, and there is no recognition of capital gain (or loss) by the donee until the donee later disposes of that asset. When an appreciated asset is held by a decedent at death, the basis of the asset for the decedent's heir is adjusted (usually "stepped up") to the fair market value of the asset at the date of the decedent's death. As a result, the amount of appreciation accruing during the decedent's life on assets that are still held by the decedent at death completely avoids federal income tax.

Reasons for Change

Preferential tax rates on long-term capital gains and qualified dividends disproportionately benefit high-income taxpayers and provide many high-income taxpayers with a lower tax rate than many low- and middle-income taxpayers. The rate disparity between ordinary income taxes and capital gains and dividends taxes also encourages economically wasteful efforts to convert labor income into capital income as a tax avoidance strategy.

Under current law, since a person who inherits an appreciated asset receives a basis in that asset equal to the asset's fair market value at the time of the decedent's death, appreciation that had accrued during the decedent's life is never subjected to income tax. In contrast, less-wealthy individuals who must spend down their assets during retirement pay income tax on their realized capital gains. This increases the inequity in the tax treatment of capital gains. In addition, the preferential treatment for assets held until death produces an incentive for taxpayers to inefficiently lock in portfolios of assets and hold them primarily for the purpose of avoiding capital gains tax on the appreciation, rather than reinvesting the capital in more economically productive investments.

Moreover, the distribution of wealth among Americans has grown increasingly unequal, concentrating economic resources among a steadily shrinking percentage of individuals. Coinciding with this period of growing inequality, the long-term fiscal shortfall of the United States has significantly increased. Reforms to the taxation of capital gains and qualified dividends will reduce economic disparities among Americans and raise needed revenue.

Proposal

Tax capital income for high-income earners at ordinary rates.

Long-term capital gains and qualified dividends of taxpayers with adjusted gross income of more than $1 million would be taxed at ordinary income tax rates, with 37 percent generally being the highest rate (40.8 percent including the net investment income tax),[1] but only to the extent that the taxpayer's income exceeds $1 million ($500,000 for married filing separately), indexed for inflation after 2022.[2]

This proposal would be effective for gains required to be recognized after the date of announcement.

Treat transfers of appreciated property by gift or on death as realization events.

Under the proposal, the donor or deceased owner of an appreciated asset would realize a capital gain at the time of the transfer. For a donor, the amount of the gain realized would be the excess of the asset's fair market value on the date of the gift over the donor's basis in that asset. For a decedent, the amount of gain would be the excess of the asset's fair market value on the decedent's date of death over the decedent's basis in that asset. That gain would be taxable income to the decedent on the Federal gift or estate tax return or on a separate capital gains return. The use of capital losses and carry-forwards from transfers at death would be allowed against capital gains income and up to $3,000 of ordinary income on the decedent's final income tax return, and the tax imposed on gains deemed realized at death would be deductible on the estate tax return of the decedent's estate (if any).

Gain on unrealized appreciation also would be recognized by a trust, partnership, or other non-corporate entity that is the owner of property if that property has not been the subject of a recognition event within the prior 90 years, with such testing period beginning on January 1, 1940. The first possible recognition event for any taxpayer under this provision would thus be December 31, 2030.

A transfer would be defined under the gift and estate tax provisions and would be valued using the methodologies used for gift or estate tax purposes. However, for purposes of the imposition of this tax on appreciated assets, the following would apply. First, a transferred partial interest would be its proportional share of the fair market value of the entire property. Second, transfers of property into, and distributions in kind from, a trust, partnership, or other non-corporate entity, other than a grantor trust that is deemed to be wholly owned and revocable by the donor, would be recognition events. The deemed owner of such a revocable grantor trust would recognize gain on the unrealized appreciation in any asset distributed from the trust to any person other than the deemed owner or the U.S. spouse of the deemed owner, other than a distribution made in discharge of an obligation of the deemed owner. All of the unrealized appreciation on assets of

[1] A separate proposal would first increase the top ordinary individual income tax rate to 39.6 percent (43.4 percent including the net investment income tax).

[2] For example, a taxpayer with $900,000 in labor income and $200,000 in preferential capital income would have $100,000 of capital income taxed at the current preferential tax rate and $100,000 taxed at ordinary income tax rates.

such a revocable grantor trust would be realized at the deemed owner's death or at any other time when the trust becomes irrevocable.

Certain exclusions would apply. Transfers by a decedent to a U.S. spouse or to charity would carry over the basis of the decedent. Capital gain would not be recognized until the surviving spouse disposes of the asset or dies, and appreciated property transferred to charity would not generate a taxable capital gain. The transfer of appreciated assets to a split-interest trust would generate a taxable capital gain, with an exclusion allowed for the charity's share of the gain based on the charity's share of the value transferred as determined for gift or estate tax purposes.

The proposal would exclude from recognition any gain on tangible personal property such as household furnishings and personal effects (excluding collectibles). The $250,000 per-person exclusion under current law for capital gain on a principal residence would apply to all residences and would be portable to the decedent's surviving spouse, making the exclusion effectively $500,000 per couple. Finally, the exclusion under current law for capital gain on certain small business stock would also apply.

In addition to the above exclusions, the proposal would allow a $1 million per-person exclusion from recognition of other unrealized capital gains on property transferred by gift or held at death. The per-person exclusion would be indexed for inflation after 2022 and would be portable to the decedent's surviving spouse under the same rules that apply to portability for estate and gift tax purposes (making the exclusion effectively $2 million per married couple). The recipient's basis in property received by reason of the decedent's death would be the property's fair market value at the decedent's death. The same basis rule would apply to the donee of gifted property to the extent the unrealized gain on that property at the time of the gift was not shielded from being a recognition event by the donor's $1 million exclusion. However, the donee's basis in property received by gift during the donor's life would be the donor's basis in that property at the time of the gift to the extent that the unrealized gain on that property counted against the donor's $1 million exclusion from recognition.

Payment of tax on the appreciation of certain family-owned and -operated businesses would not be due until the interest in the business is sold or the business ceases to be family-owned and operated. Furthermore, the proposal would allow a 15-year fixed-rate payment plan for the tax on appreciated assets transferred at death, other than liquid assets such as publicly traded financial assets and other than businesses for which the deferral election is made. The Internal Revenue Service (IRS) would be authorized to require security at any time when there is a reasonable need for security to continue this deferral. That security may be provided from any person, and in any form, deemed acceptable by the IRS.

Additionally, the proposal would include other legislative changes designed to facilitate and implement this proposal, including: the allowance of a deduction for the full cost of appraisals of appreciated assets; the imposition of liens; the waiver of penalty for underpayment of estimated tax to the extent that underpayment is attributable to unrealized gains at death; the grant of a right of recovery of the tax on unrealized gains; rules to determine who has the right to select the return filed; the achievement of consistency in valuation for transfer and income tax purposes; coordinating changes to reflect that the recipient would have a basis in the property equal to the value on which the capital gains tax is computed; and a broad grant of regulatory authority to provide implementing rules.

To facilitate the transition to taxing gains at gift, death and periodically under this proposal, the Secretary would be granted authority to issue any regulations necessary or appropriate to implement the proposal, including rules and safe harbors for determining the basis of assets in cases where complete records are unavailable, reporting requirements for all transfers of appreciated property including value and basis information, and rules where reporting could be permitted on the decedent's final income tax return.

The proposal would be effective for gains on property transferred by gift, and on property owned at death by decedents dying, after December 31, 2021, and on certain property owned by trusts, partnerships, and other non-corporate entities on January 1, 2022.

RATIONALIZE NET INVESTMENT INCOME AND SELF-EMPLOYMENT CONTRIBUTIONS ACT TAXES

Current Law

Individuals with incomes over a threshold amount are subject to a 3.8 percent tax on net investment income. The threshold is $200,000 for single and head of household returns and $250,000 for joint returns. Net investment income generally includes: (1) interest, dividends, rents, annuities, and royalties, other than such income derived in the ordinary course of a trade or business; (2) income derived from a trade or business in which the taxpayer does not materially participate; (3) income from a business of trading in financial instruments or commodities; and (4) net gain from the disposition of property other than property held in a trade or business in which the taxpayer materially participates. The net investment income tax (NIIT) does not apply to self-employment earnings. Proceeds from the NIIT flow into the General Fund of the Treasury.

Self-employment earnings and wages are subject to employment taxes under either the Self-Employment Contributions Act (SECA) or the Federal Insurance Contributions Act (FICA), respectively. Both SECA and FICA taxes apply at a rate of 12.4 percent for social security tax on employment earnings (capped at $142,800 in 2021) and at a rate of 2.9 percent for Medicare tax on all employment earnings (not subject to a cap). An additional 0.9 percent Medicare tax is imposed on self-employment earnings and wages of high-income taxpayers, above the same NIIT thresholds of $200,000 for single and head of household filers and $250,000 for joint filers. The SECA and FICA taxes flow into the Social Security and Hospital Insurance Trust Funds.

General partners and sole proprietors pay SECA tax on the full amount of their net trade or business income, subject to certain exceptions. Section 1402(a)(13) of the Internal Revenue Code provides that limited partners are statutorily excluded from paying SECA tax with respect to their distributive shares of partnership income or loss, although they are subject to SECA tax on their section 707(c) guaranteed payments from the partnership that are for services they provide to, or on behalf of, the partnership. Because the statutory exclusion only refers to limited partners, questions have arisen as to the meaning of this term and whether the limited partner exclusion might be applicable to limited liability company (LLC) members. Some partners who might more accurately be considered general partners and some LLC members avoid SECA by claiming the treatment of limited partners.

S corporation shareholders are not subject to SECA tax. However, tax law requires that owner-employees pay themselves “reasonable compensation” for services provided, on which they pay FICA tax like any other employee. Nonwage distributions to shareholders of S corporations are not subject to either FICA or SECA taxes.

Reason for Change

Active owners of pass-through businesses are treated differently for purposes of the NIIT and SECA tax according to the legal form of their ownership and the legal form of the payment that they receive. While general partners and sole proprietors pay SECA tax on earnings from their businesses, S corporation owner-employees and limited partners (their counterparts and sometimes competitors) pay employment taxes on only a portion of their earnings. LLC members often pay little or no SECA tax at all. Although the NIIT reflects an intention to impose the 3.8 percent tax on both earned and unearned income of high-income taxpayers, certain income escapes both SECA tax and the NIIT, including the distributive shares of S corporation shareholder-employees, limited partners, and LLC members who claim the statutory exclusion for limited partners. Different treatment is unfair, inefficient, distorts choice of organizational form, and provides tax planning opportunities for business owners, particularly those with high incomes, to avoid paying their fair share of taxes.

The current system is also a challenge for the Internal Revenue Service (IRS) to administer. The determination of "reasonable compensation" of S corporation owners generally depends on facts and circumstances and requires a valuation analysis, which is expensive, and which can be contested by the taxpayer, adding to the cost of administration and enforcement. Uncertainty surrounding the treatment of limited partners and LLC members who materially participate in their businesses undermines the IRS's ability to ensure payment of SECA tax and the NIIT.

In addition, proceeds from the NIIT are paid into the General Fund of the Treasury, while the Medicare portion of FICA and SECA taxes are paid into the Hospital Insurance Trust Fund. This treatment of the taxes is inconsistent with the fact that the taxes are intended for the same purpose.

<u>Proposal</u>

The proposal would (i) ensure that all pass-through business income of high-income taxpayers is subject to either the NIIT or SECA tax, (ii) redirect NIIT funds to the Hospital Insurance Trust Fund, (iii) make the application of SECA to partnership and LLC income more consistent for high-income taxpayers, and (iv) apply SECA to the ordinary business income of high-income nonpassive S corporation owners.

First, the proposal would ensure that all trade or business income of high-income taxpayers is subject to the 3.8-percent Medicare tax, either through the NIIT or SECA tax. In particular, for taxpayers with adjusted gross income in excess of $400,000, the definition of net investment tax would be amended to include gross income and gain from any trades or businesses that is not otherwise subject to employment taxes.

Second, all of the revenue from the NIIT (that raised under current law and that which would be raised by the proposed expansion) would be directed to the Hospital Insurance Trust Fund, just as is the revenue from the 3.8 percent tax under FICA and SECA.

Third, limited partners and LLC members who provide services and materially participate in their partnerships and LLCs would be subject to SECA tax on their distributive shares of partnership or LLC income to the extent that this income exceeds certain threshold amounts. The exemptions from SECA tax provided under current law for certain types of partnership income (e.g., rents, dividends, capital gains, and certain retired partner income) would continue to apply to these types of income.

Fourth, S corporation owners who materially participate in the trade or business would be subject to SECA taxes on their distributive shares of the business's income to the extent that this income exceeds certain threshold amounts. The exemptions from SECA tax provided under current law for certain types of S corporation income (e.g., rents, dividends, and capital gains) would continue to apply to these types of income.

In order to determine the amount of partnership income and S corporation income that would be subject to SECA tax under the proposal, the taxpayer would sum (a) ordinary business income derived from S corporations for which the owner materially participates in the trade or business, and (b) ordinary business income derived from either limited partnership interests or interests in LLCs that are classified as partnerships to the extent a limited partner or LLC member materially participates in its partnership's or LLC's trade or business (this sum referred to as the "potential SECA income"). Beginning in 2022, the additional income that would be subject to SECA tax would be the lesser of (i) the potential SECA income, and (ii) the excess over $400,000 of the sum of the potential SECA income, wage income subject to FICA under current law, and 92.35 percent of self-employment income subject to SECA tax under current law. The $400,000 threshold amount would <u>not</u> be indexed for inflation.

Material participation standards would apply to individuals who participate in a business in which they have a direct or indirect ownership interest. Taxpayers are usually considered to materially participate in a business if they are involved in it in a regular, continuous, and substantial way. Often this means they work for the business for at least 500 hours per year. The statutory exception to SECA tax for limited partners would not exempt a limited partner from SECA tax if the limited partner otherwise materially participated.

The proposal would be effective for taxable years beginning after December 31, 2021.

SUPPORT WORKERS, FAMILIES, AND ECONOMIC SECURITY

MAKE PERMANENT THE AMERICAN RESCUE PLAN EXPANSION OF PREMIUM TAX CREDITS

Current Law

A premium assistance tax credit (premium tax credit or PTC) is provided to certain individuals who purchase health insurance through a Marketplace exchange in the individual health insurance market established under the Affordable Care Act of 2010 (ACA). The PTC is refundable and payable in advance (as advance payments of the premium tax credit, or APTC) directly to the insurer. Eligibility for the APTC is based on the individual's household income and family size for the most recent available year of tax data. However, eligibility may be updated to reflect changes in income, marital status or other household circumstances, and employment status.

The PTC is generally available to individuals with household income between 100 and 400 percent of the Federal poverty line (FPL) for the relevant family size. Individuals are eligible for the PTC only if they are not eligible for health care under programs such as Medicare, Medicaid, the Children's Health Insurance Program, or Tricare, or for certain types of health insurance provided through an employer.

A taxpayer's PTC is equal to the lesser of: (1) the premium for the plan chosen by the taxpayer, or (2) the amount by which the cost of the benchmark plan exceeds a required contribution by the taxpayer. The taxpayer's required contribution is a percentage of household income (the applicable contribution percentage) calculated with reference to the taxpayer's FPL.

The American Rescue Plan Act of 2021 (ARP) decreased the applicable contribution percentages and extended PTC eligibility to taxpayers with household income above 400 percent of FPL for taxable years 2021 and 2022. The ARP changed the household income limitation on eligibility for the credit so that the PTC phases out with income as the required contribution eventually exceeds the benchmark premium. By fixing the parameters for two years, the ARP paused the pre-ARP indexation of the applicable contribution percentages. The chart below shows the applicable contribution percentages for 2021 under the ARP and prior law.

Applicable Contribution Percentages for 2021[1]

Percent of FPL	ARP[2]	Pre-ARP[3]
Up to 133%	0%	2%
133% up to 150%	0%	3%-4%
150% up to 200%	0%-2%	4%-6.3%
200% up to 250%	2%-4%	6.3%-8.05%
250% up to 300%	4%-6%	8.05%-9.5%
300% up to 400%	6%-8.5%	9.5%
400%+	8.5%	Not Eligible

[1] Required contributions increase incrementally between income breaks.
[2] These percentages also apply in 2022.
[3] Pre-ARP applicable contribution percentages have been indexed beginning in 2015. These are the percentages for 2021.

<u>Reasons for Change</u>

Even with the ACA's changes to the individual market, health coverage can still be expensive for some families and out of reach for others. Under the American Families Plan, expanding the PTC will reduce individuals' cost of individual market coverage by increasing the amount and availability of premium tax credits for a wide range of income levels.

<u>Proposal</u>

The proposal would make permanent the ARP decrease in the applicable contribution percentages of household income used for determining the PTC. The proposal would also make permanent the ARP expansion of PTC eligibility to taxpayers with household income above 400 percent of FPL.

In addition, the proposal would permanently repeal the indexation of the applicable contribution percentages for years after 2022.

The proposal would be effective after December 31, 2022.

MAKE PERMANENT THE EXPANSION OF THE EARNED INCOME TAX CREDIT (EITC) FOR WORKERS WITHOUT QUALIFYING CHILDREN

Current Law

Low- and moderate-income workers may be eligible for a refundable EITC. Eligibility for the EITC is based on the presence and number of qualifying children in the worker's household, as well as the worker's earned income, adjusted gross income (AGI), investment income, filing status, age, and immigration and work status in the United States.

The EITC has a phase-in range (where each additional dollar of earned income results in a larger credit), a plateau (where additional dollars of earned income or AGI have no effect on the size of the credit), and a phase-out range (where each additional dollar of the larger of earned income or AGI results in a smaller total credit). The dollar thresholds are adjusted annually for inflation.

The American Rescue Plan Act of 2021 (ARP) expanded the credit for workers without children in taxable year 2021 by increasing the phase-in and phase-out rates, and increasing the income range over which the credit phases in. These changes increased the maximum credit from $542 to $1,502. The chart below shows the 2021 parameters for workers without children, with and without the ARP expansion.

EITC Parameters for Workers Without Children in 2021

Parameter	ARP	Pre-ARP
Credit phase-in rate	15.30%	7.65%
Credit phase-out rate	15.30%	7.65%
End of phase-in range	$9,820	$7,100
End of plateau	$11,610	$8,880
(married joint filers)	$17,550	$14,820
End of phase-out range	$21,430	$15,980
(married joint filers)	$27,370	$21,920
Maximum credit	$1,502	$543

To be eligible for the EITC for workers without qualifying children, the taxpayer must meet the relevant age requirements. In 2021, the taxpayer must be at least 19 years old or at least 23 if a full-time student. In the case of married taxpayers filing jointly, the credit may be claimed if at least one spouse is over age 19 (or at least 23 if a full-time student). Former foster children and qualified homeless individuals are eligible at age 18, regardless of student status. In years before and after 2021 the taxpayer must be at least 25 years old and less than 65. In the case of married taxpayers filing jointly, at least one spouse must be within the eligible age range to qualify for the credit.

In all years there is no age limitation to the EITC for workers with qualifying children. A taxpayer who may be claimed as a dependent or as a qualifying child by another taxpayer, including most college students, is not eligible to claim the EITC for workers without children.

Also, in all taxable years beginning with 2021 taxpayers who live with qualifying children who they do not claim for EITC purposes because the children do not have social security numbers may claim the EITC for workers without children if otherwise eligible.

U.S. Territories (Permanent Change):

The ARP provides for a reimbursement of mirror code Territories (those whose tax codes mirror the U.S. federal income tax code: Guam, the U.S. Virgin Islands, and the Northern Mariana Islands) for the costs of this credit in 2021; reimbursement is done on a permanent basis so it will also affect credits in future years. American Samoa will be reimbursed if it institutes a similar earned income tax credit. Puerto Rico will be reimbursed for increasing the credit they have, plus some base amount that depends on the cost of Puerto Rico's EITC.

Reasons for Change

The permanent EITC for workers without children is relatively small and phases out at very low incomes. As such, it provides little or no assistance to individuals at or near the poverty line. For example, in 2021 under pre-ARP law, a single worker without children who earned $13,000 (a wage close to the poverty line), would be in the phase-out range and eligible for a credit of about $228. This credit would generate a net refund of about $183 after subtracting his or her Federal income tax. (The taxpayer would pay nearly $1,000 in Federal payroll taxes.) A larger EITC for workers without children would promote employment and reduce poverty for this group of workers. It also would increase the progressivity of the Federal tax system.

The current age restrictions prevent young workers and older workers from claiming the EITC. As a result, young workers living independently from their families are unable to benefit from the antipoverty and work-related effects of the EITC just when they are establishing the patterns of behavior that may persist throughout their working lives. The EITC, by increasing the effective after-tax wage, encourages additional work effort in the short run, which may in turn affect long-run labor force attachment and wages.

The current age restriction on older workers is inconsistent with recent increases in the full retirement age for Social Security retirement benefits and the increased labor force participation by older adults.

Proposal

The proposal would make permanent the increase in the EITC parameters for workers without children that was enacted in the ARP. The end of the phase-in and the end of the plateau income ranges would be indexed for inflation in the same manner as other EITC parameters (by the C-CPI-U).

The proposal would also make permanent the ARP expansion of age-eligibility. As under ARP law, taxpayers who could be claimed as a qualifying child or a dependent would not be eligible for the EITC for childless workers. Thus, full-time students who are dependent on their parents would not be allowed to claim the EITC for workers without qualifying children, despite meeting the new age requirements, even if their parents did not claim a dependent exemption or an EITC on their behalf.

This proposal would be effective for taxable years beginning after December 31, 2021.

MAKE PERMANENT AMERICAN RESCUE PLAN CHANGES TO THE CHILD AND DEPENDENT CARE TAX CREDIT

Current Law

Taxpayers with child or dependent care expenses who are working, training, or looking for work are eligible for a tax credit that partially offsets the cost of care. Married couples are eligible only if they file a joint return and either both spouses are working or looking for work, or if one spouse is working or looking for work and the other is attending school full-time. To qualify for the tax credit, the child and dependent care expenses must be for either (1) a child under age 13 when the care was provided or (2) a disabled dependent of any age with the same place of abode as the taxpayer. The expenses eligible for tax credit are reduced by the total amount of dependent care expenses that the taxpayer excludes from income under a dependent care assistance program.

The credit is calculated as a percentage of qualified expenses up to a cap. The cap varies with the number of qualified children or other dependents, up to two. The percentage match decreases with income.

Taxpayers may also be offered dependent care assistance through their employers. Certain amounts of employer assistance or employee contributions to a flexible spending account (FSA) may be excluded from employee wages for both income and payroll tax purposes. The maximum amount of expenses that may be used to claim the Child and Dependent Care Tax Credit (CDCTC) must be reduced by any amount of employer assistance that is excluded from wages.

Under current law, expenses are self-reported, though taxpayers provide employment identification number (EIN) or taxpayer identification number (TIN) for the payee. The Internal Revenue Service (IRS) has limited ability to identify noncompliance outside of an audit.

Paid preparers of returns with a claim for the earned income tax credit, the child tax credit/additional child tax credit, the credit for other dependents, the American opportunity tax credit and/or head of household status must meet due diligence requirements in determining the taxpayer's eligibility and the appropriate credit amount(s). These are described in section 6695(g) of the Internal Revenue Code.

Low and moderate-income families with childcare expenses may receive financial assistance from federal, state, local or private organizations that offset some or all of the out-of-pocket costs for child and dependent care. Providers include the state and local partners of the Child Care Development Fund (CCDF) in the Department of Health and Human Services.

The CDCTC and dependent care employer assistance plans have special rules for taxable year 2021, which were part of the American Rescue Plan Act of 2021 (ARP).

The CDCTC and dependent care assistance for taxable year 2021

Eligible taxpayers may claim a refundable credit for up to 50 percent of up to $8,000 in eligible expenses for one child or disabled dependent and up to $16,000 in eligible expenses for more than one child and/or disabled dependent. The percentage of expenses for which a credit may be taken (the match rate) is reduced by 1 percentage point for each $2,000 or part thereof by which the taxpayer's adjusted gross income (AGI) exceeds $125,000 until the match rate reaches 20 percent (at an AGI of $183,000) after which point the match rate plateaus. The match rate begins decreasing again by 1 percentage point for each $2,000 or part thereof by which the taxpayer's AGI exceeds $400,000, reaching zero at AGI in excess of $438,000.

Up to $10,500 in employer assistance or employee contributions for dependent care may be excluded from employee wages for both income and payroll tax purposes. As under pre-ARP law, the maximum amount of expenses that may be used to claim the CDCTC must be reduced by any amount of employer assistance that is excluded from wages.

Reporting of expenses is unchanged by ARP.

The CDCTC and dependent care assistance before and after taxable year 2021

Eligible taxpayers may claim a nonrefundable credit for up to 35 percent of up to $3,000 in eligible expenses for one child or disabled dependent and up to $6,000 in eligible expenses for more than one child and/or disabled dependent. The percentage of expenses for which a credit may be taken is reduced by 1 percentage point for each $2,000 or part thereof by which the taxpayer's AGI exceeds $15,000 until the percentage of expenses reaches 20 percent (at an AGI of $43,000). This 20 percent credit rate applies at all income levels above $43,000. The phase-down thresholds and the amount of expenses eligible for the credit are not indexed for inflation and have been unchanged since 2003.

The value of the credit has eroded over time. No taxpayer actually receives the maximum credit of $2,100 (35 percent of $6,000) because no taxpayer with dependent children incurs an income tax liability with AGI as low as $15,000.

Up to $5,000 in employer assistance or employee contributions to a dependent care flexible spending account (FSA) may be excluded from employee wages for both income and payroll tax purposes. The maximum amount of expenses that may be used to claim the CDCTC must be reduced by any amount of employer assistance that is excluded from wages.

US territories (permanent change)

The ARP provides for a reimbursement of mirror code Territories (those whose tax codes mirror the U.S. federal income tax code: Guam, the U.S. Virgin Islands, and the Northern Mariana Islands) for the costs of this refundable credit in 2021; reimbursement is done on a permanent basis, so it also affects credits in future years. Additionally, for non-mirror code Territories (that is, Puerto Rico and American Samoa), the ARP provides a reimbursement for the aggregate value of such a credit, provided the Territory develops a plan, approved by the Secretary, to distribute these amounts to its residents promptly. This extension of a CDCTC to the Territories is permanent.

Reasons for Change

Good quality care for children and disabled dependents is expensive. For moderate income taxpayers, the cost of childcare can be more than a third of their resources, and good quality care may be out of reach. The expansions in the ARP recognize the importance of access to quality childcare by providing a broad subsidy to most families, including those with limited income tax liability.

Strong reporting requirements maintain the integrity of the tax system. The expansion of the CDCTC will increase the number of people who claim the credit and the total value of the credits claimed. In order to maintain compliance, improved reporting requirements are useful. A small additional burden to taxpayers and providers is appropriate given the size of the tax benefit.

Families who pay for childcare find solutions to their childcare needs through many different types of care, including large childcare centers, small centers or individual providers, or week-long or day-long "camps" coordinated with school closings. Relationships between a family and a provider might last for years or change with employment or preferences. A broad set of reporting rules is needed to address all kind of care.

Proposal

The proposal would make permanent the changes to the CDCTC enacted in the ARP for taxable year 2021.

In addition, the proposal would establish reporting requirements appropriate for an expanded refundable tax credit. For example, the following requirements would further compliance:

The CDCTC would be added to the list of credits subject to paid preparer due diligence requirements described in section 6695(g). This change would treat the CDCTC in a comparable manner to the other refundable credits.

To claim the CDCTC, taxpayers would be required to provide the information about the organizations or persons who provide the care, including the name, address, and the EIN or TIN of the care provider. Math error authority would be provided to the IRS to decline credit claims if such information is missing or deemed invalid.

Another helpful measure would be the establishment of an information return requirement for agencies that provide childcare subsidies on behalf of children or other dependents, including those associated with the Child Care Development Fund (CCDF) or the Child Care for American Families program proposed in this Budget. This requirement would prevent credit claims in excess of allowable limits or on amounts not paid by the taxpayer. The Secretary of the Treasury or her delegate would be granted authority to issue regulations to exempt certain agencies from this reporting requirement and to prescribe a standardized form detailing the information about the care expenses claimed for the CDCTC that would apply to the exempted agencies and other care providers.

The American Families Plan would establish Child Care for American Families to ensure that low and middle-income families pay no more than 7 percent of their income for high-quality childcare for children from birth to five-years-old. While families can benefit from both this childcare program and the tax benefits, including for the same child, they cannot claim the CDCTC (or the exclusion) for a care expense, including a co-pay, that was already subsidized under Child Care for American Families.

The proposal would be effective for taxable years beginning after December 31, 2021.

EXTEND THE CHILD TAX CREDIT INCREASE THROUGH 2025 AND MAKE PERMANENT FULL REFUNDABILITY

Current Law

A taxpayer may claim a child tax credit (CTC) for each qualifying child. A qualifying child for the CTC must meet the following five requirements:

1. Relationship – The child generally must be the taxpayer's son, daughter, grandchild, sibling, niece, nephew, or foster child.

2. Residence – The child must live with the taxpayer in the same principal place of abode for over half the year.

3. Support – The child must not have provided more than half of his or her own support.

4. Age – The child must be under the age of 17 (or under age 18 in taxable year 2021).

5. Identification – The child must have a taxpayer identification number (TIN) at the time the return is filed. (In taxable years 2021 through 2025 this TIN must be a social security number valid for work.)

The value of the credit, the portion of the credit that may be received as a refund, the presence of a related credit for children and dependents who do not meet the requirements for the CTC, and the income thresholds differ across taxable years. Taxpayers receive the credit in two parts: the portion that offsets individual income tax liability which is generally called the CTC, and the remainder which is received as an additional child tax credit (ACTC).

The CTC was substantially expanded for taxable year 2021 by the American Rescue Plan of 2021 (ARP). Prior expansions under the Tax Cuts and Jobs Act of 2017 (TCJA) still apply for taxable years 2021 through 2025. For subsequent taxable years, most elements of the child credit reflect pre-TCJA law. Specific rules for each period are described below:

<u>CTC in taxable year 2021 (ARP in effect)</u>

Taxpayers may claim a child tax credit (CTC) for up to $3,600 for each qualifying child under age 6 and up to $3,000 for all other qualifying children under age 18. To be a qualifying child in taxable year 2021, a child must have a social security number (SSN) at the time the return is due.

The full amount of the credit is refundable, regardless of the taxpayer's Federal income tax liability or the presence of earned income.

A taxpayer may also claim a $500 nonrefundable credit for all children and other dependents for whom a CTC may not be claimed. This second credit is called the credit for other dependents (ODTC).

The first $1,600 of the CTC per qualifying child under age 6 and the first $1,000 per qualifying child age 6 through 17 phase out sequentially with modified adjusted gross income (modified AGI) in excess of $150,000 for married joint filers or surviving spouses, $112,500 for head of household filers, and $75,000 for all other filers, at a rate of $50 per $1,000 (or part thereof) of modified AGI in excess of the relevant threshold.

The remainder of the CTC, plus any amount of ODTC, is further reduced by $50 for each $1,000 (or part thereof) that exceeds $200,000 ($400,000 for married taxpayers filing a joint return) of modified AGI. Larger families follow a modified phaseout rule that extends the AGI range of the phaseout.

For taxable year 2021 only, taxpayers may receive up to 50 percent of their estimated total CTC (including ACTC) in advance, in a series of periodic payments. These payments will be issued from July to December of 2021. A taxpayer may receive up to 50 percent of their otherwise allowable credit based on information reported on their 2020 individual income tax return (or the 2019 return if the 2020 return is not available).

Taxpayers may opt out of advance payments using a designated Internal Revenue Service (IRS) portal. The portal may also be used to report changes in circumstances during the year that affect taxable year 2021 CTC eligibility. A taxpayer's Federal income tax will be increased, dollar-for-dollar, if their total CTC advance payments during 2021 exceeds the amount of the CTC to which they are eventually entitled. However, safe harbor rules may reduce the additional income tax owed depending on the taxpayer's modified AGI.

<u>CTC for taxable years 2022-2025 (TCJA in effect, ARP changes expired)</u>

For taxable years 2022 through 2025, a taxpayer may claim a CTC of up to $2,000 per qualifying child, only part of which is refundable. To be a qualifying child in these taxable years, a child must be under age 17 and have an SSN valid for work at the time the return is due.

A taxpayer without sufficient Federal income tax liability to claim the full CTC can claim the ACTC. The ACTC will be the lesser of (1) $1,400 per qualifying child, and (2) 15 percent of earnings in excess of $2,500, up to the amount of any unclaimed CTC.

As in taxable year 2021, a taxpayer may claim a $500 ODTC for all children and other dependents for whom a CTC may not be claimed. The sum of the CTC (including any ACTC) and the ODTC will be reduced by $50 for each $1,000 that exceeds $200,000 of modified AGI (or $400,000 for married taxpayers filing a joint return).

The $1,400 maximum refundable amount per qualifying child is indexed for inflation but cannot exceed $2,000. The maximum credit amount per qualifying child, the income at which the phaseout begins, and the $2,500 earned income threshold for refundability are not indexed.

CTC in taxable years after 2025 (TCJA has expired)

For taxable years beginning after December 31, 2025, a taxpayer may claim a CTC of up to $1,000 per qualifying child. To be a qualifying child, a child must have a TIN at the time the return is due.

A taxpayer without sufficient Federal income tax liability to claim the full $1,000 credit can claim the ACTC. The ACTC will be the lesser of (1) $1,000 per qualifying child, and (2) 15 percent of earnings in excess of $3,000, up to the amount of any unclaimed CTC.

The credit will be reduced for taxpayers with over $75,000 of modified AGI (or $110,000 for married taxpayers filing a joint return). No parameters are indexed for inflation.

U.S. territories (permanent change):

The ARP provides for a reimbursement of mirror code Territories (those whose tax codes mirror the U.S. Federal income tax code: Guam, the U.S. Virgin Islands, and the Northern Mariana Islands) for the costs of this credit in 2021; reimbursement is done on a permanent basis so it will also affect child tax credits in future years. Mirror code Territories also receive administrative costs to set up the advance child tax credit payments in 2021. Puerto Rico's child tax credit will be administered by the IRS directly, with no advance payments. American Samoa may choose to be reimbursed (and issue advance payments of the CTC) or have IRS administer (no advance payments).

Reasons for Change

The ARP expansion of the Child Tax Credit will substantially reduce child poverty by supplementing the earnings of families receiving the tax credit, making the full credit available to a significant number of new families with limited earnings and income tax liability (through complete refundability), and providing regular financial assistance to families throughout the year.

Proposal

The proposal would extend to taxable years beginning before January 1, 2026 most of the ARP changes to the CTC:

1. The age to qualify for the CTC would be increased one additional year to include children who are 17 years old.

2. The maximum tax credit per child would be increased to $3,600 for qualifying children under 6 and to $3,000 for all other qualifying children. The portion of the credit in excess of $2,000 will phase out sequentially with income in excess of $150,000 of modified AGI for married joint filers or surviving spouses, $112,500 for head of household filers, and $75,000 for all other filers, with a modified rule for large families.

3. Allow 50 percent of the otherwise allowable credit to be paid in advance based on information on the previous year's income tax return.

The CTC would be made fully refundable, regardless of earned income, for all taxable years.

Advance payments of the CTC would be automatically deposited by electronic funds transfer into the recipient's bank or card account each month to the maximum extent possible. This disbursement method would help ensure the quick and secure delivery of advance CTC payments.

The Treasury and the Internal Revenue Service will develop strategies to minimize the amount of advance CTC payments that is paid to individuals who are ultimately not eligible for the credit. This effort will include additional statutory recommendations, regulatory changes, data collection, and data matching.

The proposal would be effective for taxable years beginning after December 31, 2021.

INCREASE THE EMPLOYER-PROVIDED CHILDCARE TAX CREDIT FOR BUSINESSES

Current Law

Employers who provide childcare facilities or contract with an outside facility for the provision of care may claim a nonrefundable credit of 25 percent of qualified care expenses and 10 percent of referral expenses, for a maximum total credit of $150,000 per year. Qualified expenses include the acquisition, construction, rehabilitation or expansion of qualifying properties, operating costs, or contracting with a qualified childcare facility to provide services for the taxpayer's employees.

Reasons for Change

Increased tax credits available to businesses would subsidize the cost and encourage the provision of childcare for employees. On-site childcare is valued by parents, and may generate important benefits such as lower absenteeism, higher employee performance, higher employee retention, and higher employee satisfaction.

Proposal

The proposal would increase the existing tax credit to 50 percent of the first $1 million of qualified care expenses for a maximum total credit of $500,000 per year. The portion of the tax credit related to referral expenses would remain at 10 percent with a maximum amount of $150,000.

The proposal would be effective for taxable years beginning after December 31, 2021.

CLOSE LOOPHOLES

TAX CARRIED (PROFITS) INTERESTS AS ORDINARY INCOME

Current Law

A partnership is not subject to Federal income tax. Instead, an item of income or loss of the partnership retains its character and flows through to the partners who must include such item on their tax returns. Generally, certain partners receive partnership interests in exchange for contributions of cash and/or property, while certain partners (not necessarily other partners) receive partnership interests, typically interests in future partnership profits referred to as "profits interests" or "carried interests," in exchange for services. Accordingly, if and to the extent a partnership recognizes long-term capital gain, the partners, including partners who provide services, will reflect their shares of such gain on their tax returns as long-term capital gain. If the partner is an individual, such gain would be taxed at the reduced rates for long-term capital gains. Gain recognized on the sale of a partnership interest, whether it was received in exchange for property, cash, or services, is generally capital gain. Section 1061 of the Internal Revenue Code (Code) generally extends the long-term holding period requirement for certain capital gains resulting from partnership property dispositions and from partnership interest sales, from one year to three years.

Under current law, income attributable to a profits interest is generally subject to self-employment tax, except to the extent the partnership generates types of income that are excluded from self-employment taxes, e.g., capital gains, certain interest, and dividends. A limited partner's distributive share is generally excluded from self-employment tax under section 1402(a)(13) of the Code.

Reasons for Change

Although profits interests are structured as partnership interests, the income allocable to such interests is received in connection with the performance of services. A service provider's share of the income of a partnership attributable to a carried interest should be taxed as ordinary income and subject to self-employment tax because such income is derived from the performance of services. By allowing service partners to receive capital gains treatment on labor income without limit, even with the holding period extension provided by section 1061, the current system creates an unfair and inefficient tax preference. Activity among large private equity firms and investment funds has increased the breadth and cost of this tax preference, with some of the highest-income Americans benefiting from this preferential tax treatment.

Proposal

The proposal would generally tax as ordinary income a partner's share of income on an "investment services partnership interest" (ISPI) in an investment partnership, regardless of the character of the income at the partnership level, if the partner's taxable income (from all sources) exceeds $400,000. Accordingly, such income would not be eligible for the reduced rates that apply to long-term capital gains. In addition, the proposal would require partners in such investment partnerships to pay self-employment taxes on such income. In order to prevent income derived from labor services from avoiding taxation at ordinary income rates, this proposal assumes that the gain recognized on the sale of an ISPI would generally be taxed as ordinary income, not as capital gain, if the partner is above the income threshold. To ensure more consistent treatment with the sales of other types of businesses, the Administration remains committed to working with Congress to develop mechanisms to assure the proper amount of income recharacterization where the business has goodwill or other assets unrelated to the services of the ISPI holder.

An ISPI is a profits interest in an investment partnership that is held by a person who provides services to the partnership. A partnership is an investment partnership if substantially all of its assets are investment-type assets (certain securities, real estate, interests in partnerships, commodities, cash or cash equivalents, or derivative contracts with respect to those assets), but only if over half of the partnership's contributed capital is from partners in whose hands the interests constitute property not held in connection with a trade or business. To the extent (1) the partner who holds an ISPI contributes "invested capital" (which is generally money or other property) to the partnership, and (2) such partner's invested capital is a qualified capital interest (which generally requires that (a) the partnership allocations to the invested capital be made in the same manner as allocations to other capital interests held by partners who do not hold an ISPI and (b) the allocations to these non-ISPI holders are significant), income attributable to the invested capital would not be recharacterized. Similarly, the portion of any gain recognized on the sale of an ISPI that is attributable to the invested capital would be treated as capital gain. However, "invested capital" will not include contributed capital that is attributable to the proceeds of any loan or advance made or guaranteed by any partner or the partnership (or any person related to such persons).

Also, any person who performs services for any entity and holds a "disqualified interest" in the entity is subject to tax at rates applicable to ordinary income on any income or gain received with respect to the interest, if the person's taxable income (from all sources) exceeds $400,000. A "disqualified interest" is defined as convertible or contingent debt, an option, or any derivative instrument with respect to the entity (but does not include a partnership interest, stock in certain taxable corporations, or stock in an S corporation). This is an anti-abuse rule designed to prevent the avoidance of the property through the use of compensatory arrangements other than partnership interests. Other anti-abuse rules may be necessary.

The proposal is not intended to adversely affect qualification of a real estate investment trust owning a profits interest in a real estate partnership.

The proposal would repeal section 1061 for taxpayers with taxable income (from all sources) in excess of $400,000 and would be effective for taxable years beginning after December 31, 2021.

REPEAL DEFERRAL OF GAIN FROM LIKE-KIND EXCHANGES

Current Law

Currently, owners of appreciated real property used in a trade or business or held for investment can defer gain on the exchange of the property for real property of a "like kind." As a result, the tax on the gain is deferred until a later recognition event, provided that certain requirements are met.

Reasons for Change

The proposal would treat the exchanges of real property used in a trade or business (or held for investment) similarly to sales of real property, resulting in fewer distortions.

The change would raise revenue while increasing the progressivity of the tax system.

Proposal

The proposal would allow the deferral of gain up to an aggregate amount of $500,000 for each taxpayer ($1 million in the case of married individuals filing a joint return) each year for real property exchanges that are like kind. Any gains from like-kind exchanges in excess of $500,000 (or $1 million in the case of married individuals filing a joint return) during a taxable year would be recognized by the taxpayer in the year the taxpayer transfers the real property subject to the exchange.

The proposal would be effective for exchanges completed in taxable years beginning after December 31, 2021.

MAKE PERMANENT EXCESS BUSINESS LOSS LIMITATION OF NONCORPORATE TAXPAYERS

Current Law

Section 461(l) of the Internal Revenue Code limits the extent to which pass-through business losses may be used to offset other income. In particular, for taxable years beginning after December 31, 2020, and before January 1, 2027, noncorporate taxpayers may not deduct an "excess business loss" from taxable income. Instead, these losses are carried forward to subsequent taxable years as net operating losses.

Excess business loss is defined as the excess of losses from business activities over the sum of (a) gains from business activities, and (b) a specified threshold amount. In 2021, these thresholds are $524,000 for married couples filing jointly and $262,000 for all other taxpayers; these amounts are indexed for inflation thereafter. The determination of excess business loss is made at the taxpayer level, aggregating across all business activities. However, gains or losses attributable to any trade or business of performing services as an employee are not considered.

Reasons for Change

The proposal would bring the tax treatment of losses from nonpassive pass-through business activities closer in line with the tax treatment of losses from corporations and passive pass-through business activities.

Corporate losses do not flow through to individual owners. Instead, they are carried forward (or backward) to other taxable years to offset other income sources derived from the same business.

Losses from passive pass-through business activities face somewhat less restrictive constraints. They may generally only be used to offset income derived from other passive pass-through business activities. Generally, they may not offset other income sources, such as wage income.

By constraining individuals' abilities to offset income sources such as wages with nonpassive pass-through business losses, section 461(l) creates a more similar tax regime for business losses across different forms of business organization and types of business activity. However, the provision is set to expire in 2027.

Proposal

The proposal would make permanent the section 461(l) excess business loss limitation on noncorporate taxpayers.

The proposal would be effective for taxable years beginning after December 31, 2026.

IMPROVE COMPLIANCE

IMPLEMENT A PROGRAM INTEGRITY ALLOCATION ADJUSTMENT AND PROVIDE ADDITIONAL FUNDING FOR TAX ADMINISTRATION

Current Law

Almost all Internal Revenue Service (IRS) operating costs are funded by congressional appropriations. Previous Administrations and Congresses have used a budget mechanism called a program integrity allocation adjustment to increase congressional allocations for annual budget appropriations. Under the mechanism, funding above the discretionary levels specified in the annual congressional appropriations process is granted for certain program integrity purposes, where the term "program integrity" broadly refers to activity that maintains the effectiveness of a government program. In the past, Congress has appropriated funding to the IRS through a program integrity allocation adjustment for enforcement and compliance programs that generate positive net revenue.

Reasons for Change

The IRS's operating budget fell by about 20 percent in constant dollars between 2010 and 2020. At the same time, the IRS needed additional resources to identify and respond to many emerging areas of noncompliance, implement some of the most significant tax legislative changes in decades, and stand up several new or expanded programs in response to a global pandemic and economic crisis. A robust and reliable stream of resources is critical for the IRS to maintain its enforcement functions, expand and improve its compliance programs, and help the agency increase its effectiveness and efficiency. A visible, robust presence of IRS functions helps promote voluntary compliance and ensure confidence in the tax system.

Proposal

The Administration proposes a multi-year adjustment to the discretionary spending allocation for the IRS Enforcement and Operations Support accounts. The total adjustment would be $6.7 billion over the budget window. The proposed allocation adjustment for 2022 would fund $417 million in enforcement and compliance initiatives and investments above current levels of activity. The adjustment would cover inflation and the cost to sustain the new initiatives and investments through 2031.

In addition, the Administration proposes to provide the IRS $72.5 billion in mandatory funding over the budget window. A portion of these proposed IRS resources would fund improvements and expansions in enforcement and compliance activities. The proposed mandatory funding would also provide the IRS with resources to enhance its information technology capability, including implementation of the proposed financial information reporting regime, and to strengthen taxpayer service.

The proposal would direct that additional resources go toward enforcement against those with the highest incomes, rather than Americans with actual income of less than $400,000.

Details about these IRS funding programs are provided elsewhere in the Budget.

INTRODUCE COMPREHENSIVE FINANCIAL ACCOUNT REPORTING TO IMPROVE TAX COMPLIANCE

Current Law

Business income is subject to limited information reporting. Current information reporting of gross receipts exists for only certain types of revenue (from Forms 1099-MISC, 1099-NEC, and 1099-K), and there is no information reporting on total deductible expenses.

Reasons for Change

The tax gap for business income (outside of large corporations) from the most recently published Internal Revenue Service (IRS) estimates is $166 billion a year.[1] The scale of this revenue loss is driven primarily by the lack of comprehensive information reporting and the resulting difficulty identifying noncompliance outside of an audit. While the net misreporting percentage is only 5 percent for income subject to substantial information reporting, the net misreporting percentage for certain categories of business income exceeds 50 percent.

Requiring comprehensive information reporting on the inflows and outflows of financial accounts will increase the visibility of gross receipts and deductible expenses to the IRS. Increased visibility of business income will enhance the effectiveness of IRS enforcement measures and encourage voluntary compliance.

Proposal

This proposal would create a comprehensive financial account information reporting regime. Financial institutions would report data on financial accounts in an information return. The annual return will report gross inflows and outflows with a breakdown for physical cash, transactions with a foreign account, and transfers to and from another account with the same owner. This requirement would apply to all business and personal accounts from financial institutions, including bank, loan, and investment accounts,[2] with the exception of accounts below a low de minimis gross flow threshold of $600 or fair market value of $600.

Other accounts with characteristics similar to financial institution accounts will be covered under this information reporting regime. In particular, payment settlement entities would collect Taxpayer Identification Numbers (TINs) and file a revised Form 1099-K expanded to all payee accounts (subject to the same de minimis threshold), reporting not only gross receipts but also gross purchases, physical cash, as well as payments to and from foreign accounts, and transfer inflows and outflows.

Similar reporting requirements would apply to crypto asset exchanges and custodians. Separately, reporting requirements would apply in cases in which taxpayers buy crypto assets

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[1] Computed from individual income tax business income, small corporations, and self-employment tax components.
[2] Current income reporting by financial institutions would be expanded to all entities, including certain corporations. Interest payments would be included in the loan account reporting. Transferee information would be reported for all real estate transactions on Form 1099-S.

from one broker and then transfer the crypto assets to another broker, and businesses that receive crypto assets in transactions with a fair market value of more than $10,000 would have to report such transactions.

The Secretary would be given broad authority to issue regulations necessary to implement this proposal.

The proposal would be effective for tax years beginning after December 31, 2022.

IMPROVE TAX ADMINISTRATION

INCREASE OVERSIGHT OF PAID TAX RETURN PREPARERS

Current Law

Oversight of paid preparers by the Internal Revenue Service (IRS)

Taxpayers are increasingly turning to paid tax return preparers and software to assist them in meeting their tax filing obligations. Under U.S.C. Title 31 (Money and Finance), Section 330 – Practice before the Department, the Secretary has the authority to regulate practice before the IRS. Regulations under that section, referred to as "Circular 230," regulate the practice of licensed attorneys, certified public accountants, and enrolled agents and actuaries. In 2009, in response to concerns about the lack of regulation of unlicensed and unenrolled paid tax return preparers, the IRS conducted a formal review of its regulation of paid tax return preparers. After significant consideration and input from taxpayers, tax professionals, and other stakeholders, Treasury and the IRS amended Circular 230 to regulate the practice of all paid tax return preparers, including individuals who are unlicensed and unenrolled. Paid tax return preparers challenged these regulations in *Loving v. Commissioner*. The Court of Appeals for the District of Columbia Circuit determined that these regulations exceeded the authority of the IRS.

Penalties on ghost preparers

By law, anyone who is paid to prepare or assists in preparing federal tax returns must identify themselves on those returns by using the prescribed identifying number. Under the applicable regulations, that number is a valid Preparer Tax Identification Number, or PTIN. Paid tax return preparers must sign and include their PTIN on the return. Paid tax return preparers who fail to identify themselves on tax returns are generally referred to as "ghost preparers." The penalty for failure to identify a paid tax return preparer is $50 per return, not to exceed $25,000 per preparer per year. The penalty must be assessed within three years after the return has been filed.

Reasons for Change

These proposals would improve compliance by increasing the tools available to ensure that those who prepare tax returns do so in a high-quality and professional manner.

Paid tax return preparers have an important role in tax administration because they assist taxpayers in complying with their obligations under the tax laws. Incompetent and dishonest tax return preparers increase collection costs, reduce revenues, disadvantage taxpayers by potentially subjecting them to penalties and interest as a result of incorrect returns, and undermine confidence in the tax system. Regulation of paid tax return preparers, in conjunction with diligent enforcement, will help promote high quality services from paid tax return preparers, will improve voluntary compliance, and will foster taxpayer confidence in the fairness of the tax system. The lack of authority to provide federal oversight on tax preparers can result in greater non-compliance by taxpayers due to their preparers' incompetence or unscrupulous conduct. This potentially harms taxpayers who become subject to penalties or avoidable costs of litigation.

It also results in less revenue to the IRS when the noncompliance is not mitigated during return processing.

Requiring paid tax return preparers to obtain and report a PTIN improves tax compliance. Ghost preparers are compensated for preparing returns but refuse to identify themselves on the returns purposely to avoid detection. These preparers may be: (1) attempting to avoid IRS scrutiny of positions taken on the return; (2) already subject to a compliance action or under a federal court order barring them from further return preparation; or (3) underreporting their own income from tax preparation, thereby increasing the tax gap.

The IRS spends significant resources identifying and investigating those paid tax return preparers who fail to include a valid identifying number on returns they prepared. The costs to the IRS for a single infraction can easily exceed the $50 penalty per return.

Proposal

Increase oversight of paid tax return preparers

The proposal would amend Title 31, U.S. Code (Money and Finance) to provide the Secretary with explicit authority to regulate all paid preparers of Federal tax returns, including by establishing mandatory minimum competency standards.

The proposal would be effective on the date of enactment.

Increase penalties on ghost preparers

The proposal would increase the penalty amount to the greater of $500 per return or 100 percent of the income derived per return by a ghost preparer. The proposal would also increase the limitations period during which the penalty may be assessed from three years to six years.

The proposal would be effective for returns required to be filed after December 31, 2021.

ENHANCE ACCURACY OF TAX INFORMATION

Current Law

Electronic filing of forms and returns

Generally, the Secretary of the Treasury or her delegate (Secretary) may issue regulations that require electronic filing of returns (as opposed to paper filing of returns) if the taxpayer files a minimum number of returns during a year. For example, corporations that have assets of $10 million or more and file at least 250 returns of any type during a calendar year are required to file electronically their Form 1120/1120S income tax returns. Partnerships with more than 100 partners are required to file electronically, regardless of how many returns they file.

Before requiring electronic filing, the Internal Revenue Service (IRS) and the Department of the Treasury are generally required to take into account the ability of taxpayers to comply at a reasonable cost. Taxpayers may request waivers of the electronic filing requirement if they cannot meet that requirement due to technological constraints, or if compliance with the requirement would result in undue financial burden on the taxpayer. In general, the Secretary may not require individuals, estates, and trusts to file their income tax returns electronically.

Reportable payments subject to backup withholding

Backup withholding applies to a reportable payment if a payee fails to furnish the payee's taxpayer identification number (TIN) to the payor in the manner required. Currently, the IRS may only require that the payee furnish the TIN under penalties of perjury with respect to interest, dividends, patronage dividends, and amounts subject to broker reporting. Accordingly, payees of these reportable payments are generally required to provide payors with a certified TIN using a Form W-9, Request for Taxpayer Identification Number and Certification under penalties of perjury. Payees of other reportable payments subject to backup withholding may furnish their TINs in other ways, including orally, unless the IRS has notified a payor that the TIN furnished is incorrect. This applies to payments under sections 6041, 6041A, 6050A, 6050N, and 6050W of the Internal Revenue Code.

Reasons for Change

Facilitating more accurate tax information supports the broader goals of improving IRS service to taxpayers, enhancing compliance, and modernizing tax administration.

Expanding electronic filing will help provide tax return information to the IRS in a more uniform electronic form, which will enhance the ability of the IRS to better target its audit activities. This in turn can reduce burdens on compliant taxpayers by decreasing the probability that they will be among those selected for audit. Consequently, increased electronic filing of returns may improve satisfaction and confidence in the filing process. The proposal would provide the Secretary broader authority to require electronic filing that would facilitate the IRS's compliance risk assessment process and allow for more efficient tax administration, particularly with respect to large or complex business entities and certain types of transactions that may warrant greater scrutiny.

The intent of backup withholding is to serve as an enforcement tool in ensuring payors and payees are compliant with their reporting obligations. Requiring payees to certify their TINs to payors on a Form W-9 or equivalent form reduces the level of enforcement necessary to ensure information is accurate. Information reporting increases compliance by providing taxpayers with the information that they need to accurately complete their tax returns and by providing the IRS with information that can be used to verify taxpayer compliance. Without accurate taxpayer identifying information, information reporting requirements impose avoidable burdens on businesses and the IRS.

Proposal

Expand the Secretary's authority to require electronic filing for forms and returns

Electronic filing would be required for returns filed by taxpayers reporting larger amounts or that are complex business entities, including: (1) income tax returns of individuals with gross income of $400,000 or more; (2) income, estate, or gift tax returns of all related individuals, estates, and trusts with assets or gross income of $400,000 or more in any of the three preceding years; (3) partnership returns for partnerships with assets or any item of income of more than $10 million in any of the three preceding years; (4) partnership returns for partnerships with more than 10 partners; (5) returns of REITs, REMICs, RICs, and all insurance companies; and (6) corporate returns for corporations with $10 million or more in assets or more than 10 shareholders. Further, electronic filing would be required for the following forms: (1) Forms 8918, "Material Advisor Disclosure Statement"; (2) Forms 8886, "Reportable Transaction Disclosure Statement"; (3) Forms 1042, "Annual Withholding Tax Return for U.S. Source Income of Foreign Persons"; (4) Forms 8038-CP, "Return for Credit Payments to Issuers of Qualified Bonds"; and (5) Forms 8300, "Report of Cash Payments Over $10,000 Received in a Trade or Business."

Return preparers that expect to prepare more than 10 corporation income tax returns or partnership returns would be required to file such returns electronically.

The Secretary would also be authorized to determine which additional returns, statements, and other documents must be filed in electronic form in order to ensure the efficient administration of the internal revenue laws without regard to the number of returns that a person files during a year.

Improve information reporting for reportable payments subject to backup withholding

The proposal would also treat all information returns subject to backup withholding similarly. Specifically, the IRS would be permitted to require payees of any reportable payments to furnish their TINs to payors under penalty of perjury. The proposal would be effective for payments made after December 31, 2021.

EXPAND BROKER INFORMATION REPORTING WITH RESPECT TO CRYPTO ASSETS

Current Law

Under current law, any person doing business as a broker is required to report certain information about their customers to the Internal Revenue Service (IRS), such as the identity of each customer, the gross proceeds from sales of securities and certain commodities for such customer, and, for covered securities, cost basis information. A broker means a dealer, barter exchange, or a person who, for a consideration, regularly acts as a middleman with respect to property or services. A customer means any person for whom the broker has transacted any business.

Pursuant to an income tax treaty or other international agreement to which the United States is a party and that authorizes the exchange of tax information with a foreign jurisdiction (information exchange agreements), the United States may receive, as well as provide, tax information. Information that is foreseeably relevant for tax administration may be exchanged under these agreements, including information about the identity of beneficial owners of entities.

Reasons for Change

Tax evasion using crypto assets is a rapidly growing problem. Since the industry is entirely digital, taxpayers can transact with offshore crypto exchanges and wallet providers without leaving the United States. The global nature of the crypto market offers opportunities for U.S. taxpayers to conceal assets and taxable income by using offshore crypto exchanges and wallet providers. U.S. taxpayers also attempt to avoid U.S. tax reporting by creating entities through which they can act. To combat the potential for crypto assets to be used for tax evasion, third party information reporting is critical to help identify taxpayers and bolster voluntary tax compliance.

The United States has established a broad network of information exchange relationships with foreign jurisdictions under information exchange agreements. The information obtained through those agreements has been central to recent successful IRS enforcement efforts against offshore tax evasion involving traditional assets. The strength of those information exchange relationships depends, however, on cooperation and reciprocity. Further, as the IRS has gained more experience with exchange of tax information on an automatic basis with appropriate partner jurisdictions, it is clear that a jurisdiction's willingness to share information on an automatic basis with the United States often depends on the United States' willingness and ability to reciprocate by exchanging comparable information.

In order to ensure that the United States is able to benefit from a global automatic exchange of information framework with respect to offshore crypto assets and receive information about U.S. beneficial owners it is essential that United States reciprocally provide information on foreign beneficial owners of certain entities transacting in crypto assets with U.S. brokers.

Proposal

The proposal would expand the scope of information reporting by brokers who report on crypto assets to include reporting on certain beneficial owners of entities holding accounts with the broker. This would allow the United States to share such information on an automatic basis with appropriate partner jurisdictions, in order to reciprocally receive information on U.S. taxpayers that directly or through passive entities engage in crypto asset transactions outside the United States pursuant to a global automatic exchange of information framework.

The proposal would require brokers, including entities such as U.S. crypto asset exchanges and hosted wallet providers, to report information relating to certain passive entities and their substantial foreign owners when reporting with respect to crypto assets held by those entities in an account with the broker. The proposal, if adopted, and combined with existing law, would require a broker to report gross proceeds and such other information as the Secretary may require with respect to sales of crypto assets with respect to customers, and in the case of certain passive entities, their substantial foreign owners.

The proposal would be effective for returns required to be filed after December 31, 2022.

ADDRESS TAXPAYER NONCOMPLIANCE WITH LISTED TRANSACTIONS

<u>Current Law</u>

Generally, the assessment of any internal revenue tax must be made within three years after the date the return is filed. A special rule applies if a taxpayer fails to include on any return or statement information that is required with respect to a listed transaction. A listed transaction means a reportable transaction which is the same as, or substantially similar to, a transaction specifically identified by the Secretary of the Treasury or her delegate (Secretary) as a tax avoidance transaction. The period for assessment of tax with respect to a listed transaction does not expire before one year after the earlier of the date the required information is furnished to the Secretary or the date that a material advisor makes the required disclosure.

The Department of the Treasury and Internal Revenue Service (IRS) have identified "Intermediary Transaction Tax Shelters" as listed transactions that require disclosure on a tax return to avoid certain penalties. These transactions typically involve a sale of a controlling interest in the stock of a C corporation to another entity (an intermediary entity) that is undertaken as part of a plan to cause the C corporation to recognize income or gain from the sale of its assets shortly before or shortly after the sale of the C corporation's stock.

In a typical case, an intermediary entity borrows funds to purchase the stock of the C corporation from the C corporation's shareholders, and the consideration received by the C corporation from the sale of its assets is effectively used to repay that loan. These transactions are structured so that when a C corporation's assets are sold, the C corporation is ultimately left with insufficient assets from which to pay the tax owed from the asset sale. In many cases, the intermediary does not pay the corporate income tax liability and is judgment-proof, frustrating the IRS' ability to collect taxes that are legally owed.

The transaction may yield the selling shareholders a higher sales price for their C corporation stock than could be supported if the corporate income tax liability were to be paid. However, outside of the consolidated return context, former shareholders of a C corporation generally are not liable for any unpaid income taxes, interest, additions to tax, or penalties owed by the C corporation.

<u>Reasons for Change</u>

Additional time is needed for the IRS to conduct examinations and assess taxes in connection with listed transactions, which may be complex in nature and require a thorough examination of the relevant facts.

Despite Intermediary Transaction Tax Shelters having been identified by the IRS as listed transactions since 2001, shareholders, corporate officers, directors, and their advisors have continued to engage in Intermediary Transaction Tax Shelters or substantially similar transactions. Because the unpaid Federal tax evaded through these transactions is reflected in the price paid for the corporation's stock, either the buyer or the seller could be liable for such unpaid amounts. Although the Federal government generally has adequate tools under current law to collect amounts from the buyer or its lenders, these parties typically do not have assets in the United States against which the IRS can proceed to collect the unpaid taxes. The selling shareholders are typically the only parties with sufficient assets in the United States against which the IRS could proceed for collection; however, it has proven difficult for the IRS to effectively collect the unpaid Federal taxes from these selling shareholders under current law. Even though the IRS has pursued litigation to enforce collection from the selling shareholders of several corporations, these actions have yielded mixed results in factually similar cases. Thus, existing law does not adequately protect the Federal government's interest in collecting the amounts due from selling shareholders as a result of these transactions.

Proposal

Extend statute of limitations for listed transactions

The proposal would increase the limitations period under section 6501(a) of the Internal Revenue Code (Code) for returns reporting benefits from listed transactions from three years to six years. The proposal also would increase the limitations period for listed transactions under section 6501(c)(10) from one year to three years. This proposed change would be effective on the date of enactment.

Impose liability on shareholders to collect unpaid income taxes of applicable corporations

The proposal would also add a new section to the Code that would impose on shareholders who sell the stock of an "applicable C corporation" secondary liability (without resort to any State law) for payment of the applicable C corporation's income taxes, interest, additions to tax, and penalties to the extent of the sales proceeds received by the shareholders. The proposal applies to shareholders who, directly or indirectly, dispose of a controlling interest (at least 50 percent) in the stock of an applicable C corporation within a 12-month period in exchange for consideration other than stock issued by the acquirer of the applicable C corporation stock. The secondary liability would arise only after the applicable C corporation was assessed income taxes, interest, additions to tax, and penalties with respect to any taxable year within the 12- month period before or after the date that its stock was disposed of and the applicable C corporation did not pay such amounts within 180 days after assessment.

For purposes of the proposal, an applicable C corporation is any C corporation (or successor) two thirds or more of whose assets consist of cash, passive investment assets, or assets that are the subject of a contract of sale or whose sale has been substantially negotiated on the date that a controlling interest in its stock is sold. The proposal would grant the Department of the Treasury authority to prescribe regulations necessary or appropriate to carry out the proposal.
The proposal would not apply with respect to dispositions of a controlling interest (1) in the stock of a C corporation or real estate investment trust with shares traded on an established securities market in the United States, (2) in the shares of a regulated investment company that offers shares to the public, or (3) to an acquirer whose stock or securities are publicly traded on an established market in the United States, or is consolidated for financial reporting purposes with such a public issuer of stock or securities.

The proposal would close the taxable year of an applicable C corporation as of the later of a disposition of a controlling interest in its stock or a disposition of all of its assets. The proposal would also amend the Code to provide that the amount that the selling shareholder was secondarily liable for under this proposal would constitute a deficiency that was governed by the general notice and demand rules of the Code but with an additional year added to the statute of limitations for assessment. The proposal would not limit the government's ability to pursue any cause of action available under current law against any person.

The proposed changes above would be effective for sales of controlling interests in the stock of applicable C corporations occurring on or after April 10, 2013.

MODIFY TAX ADMINISTRATION RULES

<u>Current Law</u>

<u>Centralized partnership audit regime</u>

Section 6226 of the Internal Revenue Code (Code) requires reviewed year partners to include in their reporting year taxes an amount equal to the change in tax that would have occurred for the reviewed year and all years between the reviewed year and the reporting year if the partnership adjustments were taken into account by the partners in those taxable years. The statutory formula provides, however, that for each of those years, the partners take into account the changes in tax liability that would have occurred in those years by increasing or decreasing their tax liability on their reporting year return by the sum of those changes in tax. If the calculation results in a net decrease, current law treats that net decrease as an amount that can be used by the partners to reduce their reporting year income tax liabilities to zero. Any excess of that amount not offset with an income tax due in the reporting year at the partner level does not result in an overpayment that can be refunded. The excess amount cannot be carried forward and is permanently lost.

<u>Requisite supervisory approval of penalty included in notice</u>

Section 6751(b)(1) provides that no penalty under Title 26 shall be assessed unless the initial determination of such assessment is personally approved in writing by the immediate supervisor of the individual making such determination or such higher-level official as the Secretary of the Treasury or her delegate may designate. This section applies to all civil penalties imposed by the Code, except for penalties under section 6651 for failure to file tax returns or to pay tax; section 6654 for failure by individuals to pay estimated income tax; section 6655 for failure by corporations to pay estimated income tax; section 6662 with respect to an overstatement of certain qualified charitable contributions; and penalties that are automatically calculated through electronic means. With respect to individuals, the Internal Revenue Service (IRS) has the burden of production in a United States Tax Court proceeding challenging penalties to show the penalties are appropriate.

<u>Reasons for Change</u>

The inability for reviewed year partners to receive the full benefit of any reductions in tax as a result of partnership adjustments can lead to situations where a partner may be viewed as being taxed more for an adjustment made under the centralized partnership audit regime than the partner would have outside of the centralized partnership audit regime.

With respect to obtaining supervisory approval pursuant to section 6751(b), recent court decisions have led to uncertainty concerning, among other things, the requisite timing of the approval and qualified approvers. Judicial opinions have required supervisory approval of a penalty before the penalty is communicated to a taxpayer when a taxpayer still has the opportunity to raise defenses to the penalty. As a result, a supervisor may not have all the information relevant to making a decision whether a penalty is appropriate by the deadline certain opinions have imposed. Many judicial opinions have barred penalties that a supervisor approved before assessment and before any opportunity for judicial review. When supervisory approval did not meet judicially-created deadlines, courts have barred penalties without considering whether the penalties were appropriate under the facts of the particular case. These barred penalties have included accuracy-related penalties where the taxpayers did not show they acted with reasonable care for underpayments on their returns. Barred penalties have also included those arising from understatements attributable to reportable transactions that the IRS identified as tax avoidance transactions or that taxpayers entered into with a significant purpose of income tax avoidance or evasion. In some cases, barred penalties have even included civil fraud penalties where the IRS has met its burden of showing by clear and convincing evidence that an underpayment of tax was attributable to fraud. These cases undercut the purpose of penalties to deter taxpayer non-compliance with tax laws, based on unclear, hard to apply rules that often apply retroactively.

Proposal

Amend the centralized partnership audit regime to address tax decreases greater than a partner's income tax liability

The proposal would amend sections 6226 and 6401 of the Code to provide that the amount of the net negative change in tax that exceeds the income tax liability of a partner in the reporting year is considered an overpayment under section 6401 and may be refunded.

Modify requisite supervisory approval of penalty included in notice

The proposal also clarifies that a penalty can be approved at any time prior to the issuance of a notice from which the Tax Court can review the proposed penalty and, if the taxpayer petitions the court, the IRS may raise a penalty in the court if there is supervisory approval before doing so. For any penalty not subject to Tax Court review prior to assessment, supervisory approval may occur at any time before assessment. In addition, this proposal expands approval authority from an "immediate supervisor" to any supervisory official, including those that are at higher levels in the management structure or others responsible for review of a potential penalty. Finally, this proposal eliminates the written approval requirement under section 6662 for underpayments of tax; section 6662A for understatements with respect to reportable transactions; and section 6663 for fraud penalties.

The proposals would be effective upon enactment.

AUTHORIZE LIMITED SHARING OF BUSINESS TAX RETURN INFORMATION TO MEASURE THE ECONOMY MORE ACCURATELY

Current Law

Current law authorizes the Internal Revenue Service (IRS) to disclose certain Federal tax information (FTI) for governmental statistical use. Business FTI may be disclosed to officers and employees of the Census Bureau for all businesses. Similarly, business FTI may be disclosed to officers and employees of the Bureau of Economic Analysis (BEA), but only for corporate businesses. Specific items permitted to be disclosed are detailed in the associated Treasury Regulations. The Bureau of Labor Statistics (BLS) is currently not authorized to receive FTI.

Reasons for Change

BEA's limited access to business FTI and BLS's lack of access to business FTI prevent BEA, BLS, and Census Bureau from synchronizing their business lists. Synchronization of business lists would significantly improve the consistency and quality of sensitive economic statistics including productivity, payroll, employment, and average hourly earnings.

In addition, given the growth of non-corporate businesses, especially in the service sector, the current limitation on BEA's access to corporate FTI impedes the measurement of income and international transactions in the National Accounts. The accuracy and consistency of income data are important to the formulation of fiscal policies.

Further, the Census Bureau's Business Register is constructed using both FTI and non-tax business data derived from the Economic Census and current economic surveys. Because this non-tax business data is inextricably comingled with FTI, it is not possible for the Census Bureau to share data with BEA and BLS in any meaningful way.

Proposal

The proposal would give officers and employees of BEA access to FTI of those sole proprietorships with receipts greater than $250,000 and of all partnerships. BEA contractors would not have access to FTI.

The proposal would also give BLS officers and employees access to certain business (and tax-exempt entities) FTI including: TIN; name(s) of the business; business address (mailing address and physical location); principal industry activity (including business description); number of employees and total business-level wages (including wages, tips, and other compensation, quarterly from Form 941, Employer's Quarterly Federal Tax Return, and annually from Forms 943, Employer's Annual Federal Return for Agricultural Employees, and 944, Employer's Annual Federal Tax Return); and sales revenue for employer businesses only. BLS would not have access to individual employee FTI. In other words, the proposal would allow officers and employees of each of BLS, BEA, and the Census Bureau to access the same FTI for businesses, and would permit BLS, BEA, and the Census Bureau to share such FTI amongst themselves (subject to the restrictions described below).

For the purpose of synchronizing BLS and Census Bureau business lists, the proposal would permit employees of State agencies to receive from BLS the following FTI identity items: TIN, business name(s), business address(es), and principal industry activity (including business description). No BLS contractor or State agency contractor would have access to FTI.

The proposal would require any FTI to which BEA and BLS would have access, either directly from the IRS, from the Census Bureau, or from each other, to be used for statistical purposes consistently with the Confidential Information Protection and Statistical Efficiency Act (CIPSEA). The three statistical agencies and State agencies would be subject to taxpayer privacy law, safeguards, and penalties. They would also be subject to CIPSEA confidentiality safeguard procedures, requirements, and penalties. Conforming amendments to applicable statutes would be made as necessary to apply the taxpayer privacy law, including safeguards and penalties to BLS as well as the Census Bureau and BEA. BLS would be required to monitor compliance by State agencies with the prescribed safeguard protocols.

The proposal would be effective upon enactment.

TABLE OF REVENUE ESTIMATES

REVENUE ESTIMATES OF THE ADMINISTRATION'S FISCAL YEAR 2022 REVENUE PROPOSALS 1/ 2/

(fiscal years, in millions of dollars)

	2021	2022	2023	2024	2025	2026	2027	2028	2029	2030	2031	2022-26	2022-31
AMERICAN JOBS PLAN													
Reform corporate taxation:													
Raise the corporate income tax rate to 28 percent	0	51,127	86,182	88,059	89,385	91,784	92,065	90,730	89,357	88,798	90,330	406,537	857,817
Revise the global minimum tax regime, disallow deductions attributable to exempt income, and limit inversions	0	29,816	51,386	54,192	57,030	55,283	54,699	56,056	56,988	58,223	59,830	247,707	533,503
Reform taxation of foreign fossil fuel income:													
Modify foreign oil and gas extraction income and foreign oil related income rules	0	4,178	7,173	7,468	7,834	8,393	9,055	9,633	10,051	10,358	10,638	35,046	84,781
Modify tax rule for dual capacity taxpayers	0	48	123	128	134	143	154	165	173	178	183	576	1,429
Subtotal, reform taxation of foreign fossil fuel income	0	4,226	7,296	7,596	7,968	8,536	9,209	9,798	10,224	10,536	10,821	35,622	86,210
Repeal the deduction for Foreign-Derived Intangible Income:													
Repeal the deduction for Foreign-Derived Intangible Income	0	8,839	15,210	16,010	16,828	12,962	10,410	10,640	10,781	10,988	11,275	69,849	123,943
Provide additional support for research and experimentation expenditures	0	-8,839	-15,210	-16,010	-16,828	-12,962	-10,410	-10,640	-10,781	-10,988	-11,275	-69,849	-123,943
Subtotal, repeal the deduction for Foreign-Derived Intangible Income	0	0	0	0	0	0	0	0	0	0	0	0	0
Replace the Base Erosion Anti-Abuse Tax with the Stopping Harmful Inversions and Ending Low-Tax Developments Rule	0	0	33,244	53,796	51,111	47,655	44,463	41,914	39,425	38,990	39,453	185,806	390,051
Limit foreign tax credits for sales of hybrid entities	0	23	39	41	43	45	47	48	49	50	51	191	436
Restrict deductions of excessive interest of members of financial reporting groups for disproportionate borrowing in the United States	0	2,100	2,334	1,586	1,638	1,690	1,743	1,795	1,846	1,900	1,956	9,348	18,588
Impose a 15 percent minimum tax on book earnings of large corporations	0	10,736	15,245	14,588	13,812	14,561	15,203	16,049	16,158	15,775	16,217	68,942	148,344
Provide tax incentives for locating jobs and business activity in the United States and remove tax deductions for shipping jobs overseas:													
Provide tax credit for inshoring jobs to the United States	0	-6	-10	-10	-11	-11	-12	-12	-13	-13	-14	-48	-112
Remove tax deductions for shipping jobs overseas	0	6	10	10	11	11	12	12	13	13	14	48	112
Subtotal, provide tax incentives for locating jobs and business activity in the United States and remove tax deductions for shipping jobs overseas	0	0	0	0	0	0	0	0	0	0	0	0	0
Subtotal, reform corporate taxation	**0**	**98,028**	**195,726**	**219,858**	**220,987**	**219,554**	**217,429**	**216,390**	**214,047**	**214,272**	**218,658**	**954,153**	**2,034,949**
Support housing and infrastructure:													
Expand the Low-Income Housing Tax Credit	0	-35	-212	-707	-1,592	-2,527	-3,427	-4,370	-5,362	-6,339	-7,356	-5,073	-31,927
Provide Neighborhood Homes Investment Tax Credit	0	-10	-99	-398	-944	-1,512	-1,889	-2,063	-2,083	-2,035	-2,001	-2,963	-13,034
Make permanent the New Markets Tax Credit	0	0	0	0	0	-97	-280	-492	-736	-1,006	-1,294	-97	-3,905
Provide federally subsidized state and local bonds for infrastructure 3/	0	-291	-767	-1,292	-1,458	-1,439	-1,403	-1,357	-1,308	-1,257	-1,204	-5,247	-11,776
Subtotal, support housing and infrastructure	**0**	**-336**	**-1,078**	**-2,397**	**-3,994**	**-5,575**	**-6,999**	**-8,282**	**-9,489**	**-10,637**	**-11,855**	**-13,380**	**-60,642**
Prioritize clean energy:													
Eliminate fossil fuel tax preferences:													
Repeal enhanced oil recovery credit	0	158	389	599	808	951	988	980	975	974	976	2,905	7,798
Repeal credit for oil and gas produced from marginal wells	0	39	100	128	116	78	38	14	3	0	0	461	516
Repeal expensing of intangible drilling costs	0	2,182	1,954	1,569	1,174	747	562	586	591	585	536	7,626	10,486
Repeal deduction for tertiary injectants				*included in repeal enhanced oil recovery credit*									
Repeal exception to passive loss limitations provided to working interests in oil and natural gas properties	0	10	10	9	9	9	8	8	8	8	7	47	86
Repeal percentage depletion with respect to oil and natural gas wells	0	678	767	794	831	890	946	996	1,045	1,093	1,132	3,960	9,172
Increase geological and geophysical amortization period for independent producers	0	38	139	227	247	246	242	233	217	201	195	897	1,985
Repeal expensing of exploration and development costs	0	190	170	136	102	65	49	51	51	51	46	663	911
Repeal percentage depletion for hard mineral fossil fuels	0	97	110	114	119	127	136	142	149	156	161	567	1,311
Repeal capital gains treatment for royalties	0	46	47	48	49	51	52	50	44	37	31	241	455
Repeal the exemption from the corporate income tax for fossil fuel publicly traded partnerships	0	0	0	0	0	0	83	169	216	259	300	0	1,027
Repeal the excise tax exemption for crude oil derived from bitumen and kerogen-rich rock	0	31	39	39	39	39	40	41	41	42	44	187	395

REVENUE ESTIMATES OF THE
ADMINISTRATION'S FISCAL YEAR 2022 REVENUE PROPOSALS 1/ 2/ -- continued
(fiscal years, in millions of dollars)

	2021	2022	2023	2024	2025	2026	2027	2028	2029	2030	2031	2022-26	2022-31
Repeal amortization of air pollution control facilities	0	16	39	60	80	99	117	134	132	119	105	294	901
Subtotal, eliminate fossil fuel tax preferences	0	3,485	3,764	3,723	3,574	3,302	3,261	3,404	3,472	3,525	3,533	17,848	35,043
Extend and enhance renewable and alternative energy incentives:													
Extend and modify the renewable electricity production credit 3/	0	-2,059	-2,106	-937	-1,429	-1,903	-2,780	-4,606	-6,267	-7,730	-8,802	-8,434	-38,619
Extend and modify the renewable energy investment credit 3/	0	-1,397	-5,767	-26,324	-30,423	-31,149	-35,455	-26,833	-23,061	-18,540	-11,642	-95,060	-210,591
Extend and modify the residential energy efficient credit	0	-290	-480	-1,594	-2,256	-2,538	-2,846	-2,425	-1,933	-1,342	-392	-7,158	-16,096
Subtotal, extend and enhance renewable and alternative energy incentives	0	-3,746	-8,353	-28,855	-34,108	-35,590	-41,081	-33,864	-31,261	-27,612	-20,836	-110,652	-265,306
Provide tax credit for electricity transmission investments 3/	0	-187	-250	-1,746	-2,280	-2,863	-3,118	-3,239	-3,246	-3,420	-3,447	-7,326	-23,796
Provide allocated credit for electricity generation from existing nuclear power facilities 3/	0	-750	-1,000	-1,000	-1,000	-1,000	-1,000	-1,000	-1,000	-1,000	-1,000	-4,750	-9,750
Establish new tax credits for qualifying advanced energy manufacturing 3/	0	-425	-1,102	-1,492	-988	-824	-940	-1,396	-576	-58	-131	-4,831	-7,932
Establish tax credits for heavy- and medium-duty zero emission vehicles 3/	0	-71	-295	-835	-1,471	-2,692	-4,028	-1,178	-63	-11	0	-5,364	-10,644
Provide tax incentives for sustainable aviation fuel	0	-363	-503	-633	-693	-1,313	-1,696	-743	-376	-199	-117	-3,505	-6,636
Provide a production tax credit for low-carbon hydrogen 3/	0	-14	-53	-156	-358	-548	-979	-1,570	-445	-5	0	-1,129	-4,128
Extend and enhance energy efficiency and electrification incentives:													
Extend and modify the nonbusiness energy property credit	0	-532	-1,806	-2,460	-1,940	-1,056	-634	0	0	0	0	-7,794	-8,428
Extend and increase the tax credit for construction of new energy efficient homes	0	-128	-271	-298	-313	-337	-220	-72	-25	-8	-2	-1,347	-1,674
Extend and increase the energy efficient commercial buildings deduction	0	-146	-280	-328	-346	-350	-350	-350	-350	-351	-354	-1,450	-3,205
Provide tax credits for mechanical insulation labor costs	0	-317	-606	-736	-867	-1,007	-737	-454	-344	-229	-110	-3,533	-5,407
Subtotal, extend and enhance energy efficiency and electrification incentives	0	-1,123	-2,963	-3,822	-3,466	-2,750	-1,941	-876	-719	-588	-466	-14,124	-18,714
Provide disaster mitigation tax credit	0	-391	-411	-415	-415	-415	-415	-415	-415	-415	-332	-2,047	-4,039
Expand and enhance the carbon oxide sequestration credit 3/	0	-21	-10	-10	-19	-27	-101	-101	-53	-2,082	-3,634	-87	-6,058
Extend and enhance the electric vehicle charging station credit 3/	0	-236	-432	-848	-1,457	-2,599	-771	-18	26	35	33	-5,572	-6,267
Reinstate Superfund excise taxes and modify Oil Spill Liability Trust Fund financing:													
Reinstate Superfund excise taxes	0	1,715	2,340	2,406	2,455	2,517	2,560	2,610	2,670	2,723	2,787	11,433	24,783
Modify Oil Spill Liability Trust Fund financing	0	38	51	53	53	53	53	53	53	53	53	248	513
Subtotal, reinstate Superfund excise taxes and modify Oil Spill Liability Trust Fund financing	0	1,753	2,391	2,459	2,508	2,570	2,613	2,663	2,723	2,776	2,840	11,681	25,296
Subtotal, prioritize clean energy	**0**	**-2,089**	**-9,217**	**-33,630**	**-40,173**	**-44,749**	**-50,196**	**-38,333**	**-31,933**	**-29,054**	**-23,557**	**-129,858**	**-302,931**
Subtotal, American Jobs Plan	**0**	**95,603**	**185,431**	**183,831**	**176,820**	**169,230**	**160,234**	**169,775**	**172,625**	**174,581**	**183,246**	**810,915**	**1,671,376**
AMERICAN FAMILIES PLAN													
Strengthen taxation of high-income taxpayers:													
Increase the top marginal income tax rate for high earners	0	19,991	30,594	33,278	36,525	11,532	0	0	0	0	0	131,920	131,920
Reform the taxation of capital income	1,241	7,656	25,451	32,906	36,303	33,947	32,252	34,276	36,064	37,937	45,693	136,263	322,485
Rationalize net investment income and Self-Employment Contributions Act taxes	0	11,383	19,535	20,779	23,038	24,205	25,464	26,719	27,559	28,416	29,402	98,940	236,500
Subtotal, strengthen taxation of high-income taxpayers	**1,241**	**39,030**	**75,580**	**86,963**	**95,866**	**69,684**	**57,716**	**60,995**	**63,623**	**66,353**	**75,095**	**367,123**	**690,905**
Support workers, families, and economic security:													
Make permanent the American Rescue Plan expansion of Premium Tax Credits 3/	0	0	-11,490	-15,679	-16,513	-17,215	-18,076	-18,888	-20,149	-21,704	-23,334	-60,897	-163,048
Make permanent the expansion of the Earned Income Tax Credit for workers without qualifying children 3/	0	-27	-5,589	-11,782	-11,970	-12,145	-12,445	-12,576	-12,745	-12,908	-13,032	-41,513	-105,219
Make permanent American Rescue Plan changes to the Child and Dependent Care Tax Credit 3/	0	-3,134	-10,588	-10,588	-10,633	-12,303	-11,032	-11,195	-11,391	-11,573	-11,761	-47,246	-104,198
Extend the Child Tax Credit increase through 2025 and make permanent full refundability 3/	0	-47,125	-110,999	-108,559	-107,190	-62,060	-2,860	-2,725	-2,611	-2,512	-2,420	-435,933	-449,061
Increase the employer-provided childcare tax credit for businesses	0	-28	-28	-29	-29	-29	-31	-31	-32	-32	-33	-143	-302
Subtotal, support workers, families, and economic security	**0**	**-50,314**	**-138,694**	**-146,637**	**-146,335**	**-103,752**	**-44,444**	**-45,415**	**-46,928**	**-48,729**	**-50,580**	**-585,732**	**-821,828**

REVENUE ESTIMATES OF THE
ADMINISTRATION'S FISCAL YEAR 2022 REVENUE PROPOSALS 1/ 2/ -- continued
(fiscal years, in millions of dollars)

	2021	2022	2023	2024	2025	2026	2027	2028	2029	2030	2031	2022-26	2022-31
Close loopholes:													
Tax carried (profits) interest as ordinary income	0	100	135	138	141	143	149	155	162	169	176	657	1,468
Repeal deferral of gain from like-kind exchanges	0	676	1,857	1,914	1,971	2,030	2,091	2,154	2,218	2,285	2,354	8,448	19,550
Make permanent excess business loss limitation of noncorporate taxpayers	0	0	0	0	0	0	9,996	11,782	7,627	6,836	6,619	0	42,860
Subtotal, close loopholes	**0**	**776**	**1,992**	**2,052**	**2,112**	**2,173**	**12,236**	**14,091**	**10,007**	**9,290**	**9,149**	**9,105**	**63,878**
Improve compliance:													
Implement a program integrity allocation adjustment and provide additional funding for tax administration:													
Implement a program integrity allocation adjustment	*0*	*334*	*1,858*	*3,165*	*4,055*	*4,894*	*5,889*	*6,595*	*7,243*	*7,796*	*8,451*	*14,306*	*50,280*
Provide additional funding for tax administration	*0*	*0*	*631*	*3,312*	*7,562*	*13,837*	*22,342*	*34,081*	*46,941*	*62,253*	*74,937*	*25,342*	*265,896*
Subtotal, implement a program integrity allocation adjustment and provide additional funding for tax administration	0	334	2,489	6,477	11,617	18,731	28,231	40,676	54,184	70,049	83,388	39,648	316,176
Introduce comprehensive financial account reporting to improve tax compliance	0	8,378	32,413	36,551	42,517	46,980	53,032	57,123	61,024	61,886	62,742	166,839	462,646
Subtotal, improve compliance	**0**	**8,712**	**34,902**	**43,028**	**54,134**	**65,711**	**81,263**	**97,799**	**115,208**	**131,935**	**146,130**	**206,487**	**778,822**
Improve tax administration:													
Increase oversight of paid tax return preparers:													
Increase oversight of paid tax return preparers 3/	*0*	*35*	*52*	*57*	*59*	*58*	*55*	*57*	*61*	*68*	*73*	*261*	*575*
Increase penalties on ghost preparers 3/	*0*	*13*	*19*	*21*	*24*	*25*	*26*	*27*	*28*	*29*	*30*	*102*	*242*
Subtotal, increase oversight of paid tax return preparers	0	48	71	78	83	83	81	84	89	97	103	363	817
Enhance accuracy of tax information:													
Expand the Secretary's authority to require electronic filing for forms and returns				*negligible revenue effect*									
Improve information reporting for reportable payments subject to backup withholding	*0*	*36*	*83*	*141*	*193*	*202*	*211*	*221*	*231*	*241*	*252*	*655*	*1,811*
Subtotal, enhance accuracy of tax information	0	36	83	141	193	202	211	221	231	241	252	655	1,811
Expand broker information reporting with respect to crypto assets				*negligible revenue effect*									
Address taxpayer noncompliance with listed transactions:													
Extend statute of limitation for listed transactions	*0*	*23*	*52*	*66*	*79*	*77*	*76*	*74*	*73*	*71*	*70*	*297*	*661*
Impose liability on shareholders to collect unpaid income taxes of applicable corporations	*0*	*395*	*412*	*428*	*444*	*462*	*479*	*498*	*518*	*539*	*560*	*2,141*	*4,735*
Subtotal, address taxpayer noncompliance with listed transactions	0	418	464	494	523	539	555	572	591	610	630	2,438	5,396
Modify tax administration rules:													
Amend the centralized partnership audit regime to address tax decreases greater than a partner's income tax liability	*0*	*-5*	*-5*	*-5*	*-5*	*-6*	*-6*	*-7*	*-7*	*-7*	*-7*	*-26*	*-60*
Modify requisite supervisory approval of penalty included in notice	*0*	*29*	*254*	*245*	*248*	*222*	*197*	*174*	*173*	*179*	*186*	*998*	*1,907*
Subtotal, modify tax administration rules	0	24	249	240	243	216	191	167	166	172	179	972	1,847
Authorize limited sharing of business tax return information to measure the economy more accurately				*no revenue effect*									
Subtotal, improve tax administration	**0**	**526**	**867**	**953**	**1,042**	**1,040**	**1,038**	**1,044**	**1,077**	**1,120**	**1,164**	**4,428**	**9,871**
Subtotal, American Families Plan	**1,241**	**-1,270**	**-25,353**	**-13,641**	**6,819**	**34,856**	**107,809**	**128,514**	**142,987**	**159,969**	**180,958**	**1,411**	**721,648**
Total, Administration's Fiscal Year 2022 Revenue Proposals	**1,241**	**94,333**	**160,078**	**170,190**	**183,639**	**204,086**	**268,043**	**298,289**	**315,612**	**334,550**	**364,204**	**812,326**	**2,393,024**
Total, receipt effect	1,241	185,012	336,167	376,280	396,721	339,548	357,817	379,787	392,050	409,093	434,925	1,633,728	3,607,400
Total, outlay effect	0	90,679	176,089	206,090	213,082	135,462	89,774	81,498	76,438	74,543	70,721	821,402	1,214,376

Department of the Treasury

Notes:
1/ Presentation in this table does not necessarily reflect the order in which these proposals were estimated.

2/ The FY 2022 Budget includes additional receipts effects from the proposal to create a mandatory reemployment services and eligibility assessment program and to account for interactions with proposed spending programs to make community college and child and dependent care more affordable, and to spark further adoption of electric vehicles.

REVENUE ESTIMATES OF THE
ADMINISTRATION'S FISCAL YEAR 2022 REVENUE PROPOSALS 1/ 2/ -- continued
(fiscal years, in millions of dollars)

	2021	2022	2023	2024	2025	2026	2027	2028	2029	2030	2031	2022-26	2022-31
3/ This proposal affects both receipts and outlays. Both effects are shown above. The outlay effects included in these estimates are listed below.													
Provide federally subsidized state and local bonds for infrastructure	0	345	964	1,637	1,880	1,819	1,753	1,686	1,620	1,554	1,488	6,645	14,746
Extend and modify the renewable electricity production credit	0	3,416	4,582	4,703	5,895	6,530	7,167	8,574	9,749	10,557	10,895	25,126	72,068
Extend and modify the renewable energy investment credit	0	3,936	9,020	29,234	33,801	34,021	38,010	29,039	24,531	19,430	12,567	110,012	233,589
Provide tax credit for electricity transmission investments	0	203	270	1,789	2,295	2,801	2,970	3,071	3,105	3,308	3,375	7,358	23,187
Provide allocated credit for electricity generation from existing nuclear power facilities	0	675	900	900	900	900	900	900	900	900	900	4,275	8,775
Establish new tax credits for qualifying advanced energy manufacturing	0	385	1,000	1,350	889	735	847	1,261	518	39	117	4,359	7,141
Establish tax credits for heavy- and medium-duty zero emission vehicles	0	66	272	768	1,346	2,462	3,673	992	0	0	0	4,914	9,579
Provide a production tax credit for low-carbon hydrogen	0	11	42	128	313	469	839	1,495	419	0	0	963	3,716
Expand and enhance the carbon oxide sequestration credit	0	547	655	752	939	1,206	2,063	2,767	2,950	5,018	6,520	4,099	23,417
Extend and enhance the electric vehicle charging station credit	0	158	259	334	412	540	144	0	0	0	0	1,703	1,847
Make permanent the American Rescue Plan expansion of Premium Tax Credits	0	0	8,620	11,666	12,244	12,327	12,768	13,247	14,073	15,052	16,094	44,857	116,091
Make permanent the expansion of the Earned Income Tax Credit for workers without qualifying children	0	0	5,231	10,670	10,839	10,984	11,122	11,018	11,163	11,304	11,409	37,724	93,740
Make permanent American Rescue Plan changes to the Child and Dependent Care Tax Credit	0	0	6,442	6,455	6,486	6,554	4,694	4,758	4,835	4,908	4,977	25,937	50,109
Extend the Child Tax Credit increase through 2025 and make permanent full refundability	0	80,956	137,868	135,741	134,880	54,147	2,851	2,716	2,602	2,503	2,411	543,592	556,675
Increase oversight of paid tax return preparers	0	-19	-34	-35	-34	-30	-24	-23	-24	-27	-29	-152	-279
Increase penalties on ghost preparers	0	0	-2	-2	-3	-3	-3	-3	-3	-3	-3	-10	-25
Total, outlay effect	0	90,679	176,089	206,090	213,082	135,462	89,774	81,498	76,438	74,543	70,721	821,402	1,214,376