DESCRIPTION OF THE CHAIRMAN'S MODIFICATION TO THE PROPOSALS OF THE "FAMILY AND BUSINESS TAX CUT CERTAINTY ACT OF 2012"

Scheduled for Markup
By the
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INTRODUCTION

This document,[1] prepared by the staff of the Joint Committee on Taxation, provides a description of the Chairman's modification to the proposals of the "Family and Business Tax Cut Certainty Act of 2012," which is scheduled to be marked up by the Senate Committee on Finance on August 2, 2012.

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[1] This document may be cited as follows: Joint Committee on Taxation, *Description of the Chairman's Modification to the Proposals of the "Family and Business Tax Cut Certainty Act of 2012"* (JCX-69-12), August 2, 2012. This document can be found on our website at www.jct.gov.

A. Proposals Modifying the Proposals in the Chairman's Mark

1. Modification to Item I.1 of the Chairman's Mark regarding extension of alternative minimum tax relief for individuals

The chairman's modification increases the exemption amounts for 2013 to $51,150 (for individuals) and $79,850 (for joint filers). The chairman's modification also allows an individual to offset the entire regular tax liability and alternative minimum tax liability by the nonrefundable personal credits for taxable years beginning in 2013.

2. Modification to Item I.10 of the Chairman's Mark regarding the look-through of certain regulated investment company stock in determining gross estate of nonresidents

The chairman's modification deletes this proposal from the Chairman's Mark.

3. Modification to Item I.11 of the Chairman's Mark regarding the disclosure of prisoner return information to certain prison officials

In addition to making permanent the specific disclosure authority to prisons, the chairman's modification (1) authorizes the disclosure of actual returns (not just return information), (2) allows the disclosure to be made directly to officers and employees of the prison agency rather than through the head of such agency, (3) allows redisclosure of return information to contractors that operate prisons, and (4) clarifies the authority for the disclosure to, and use by, legal representatives in proceedings.

4. Modification to Item II.13 of the Chairman's Mark regarding extension of increased expensing for small business depreciable assets

The chairman's modification changes the maximum amount a taxpayer may expense, for taxable years beginning in 2012 and 2013 to $500,000 of the cost of qualifying property placed in service for the taxable year. The $500,000 amount is reduced (but not below zero) by the amount by which the cost of qualifying property placed in service during the taxable year exceeds $2,000,000.

For taxable years beginning in 2010 and 2011, qualifying property includes certain real property (qualified leasehold improvement property, qualified restaurant property, and qualified retail improvement property).[2] The maximum amount which may be expensed with respect to such property is $250,000 and amounts disallowed under the trade or business income limitation may only be carried over to taxable years in which the definition of eligible section 179 property includes qualified real property. The chairman's modification extends the treatment of qualified real property as eligible section 179 property for taxable years beginning in 2012 and 2013, including the maximum amount of $250,000 and the limitation on carryovers.

[2] Sec. 179(f).

5. Modification to Item II.16 of the Chairman's Mark regarding the expensing of "Brownfields" environmental remediation costs

The chairman's modification deletes this proposal from the Chairman's Mark.

6. Modification to Item III. 3 of the Chairman's Mark regarding the extension of the cellulosic biofuel producer credit

The Chairman's Mark inadvertently omitted the effective date for the technical drafting correction regarding carryovers. The technical correction is effective as if included in section 15321(b) of the Heartland, Habitat, Harvest, and Horticulture Act of 2008.

7. Modification to Item III.8 of the Chairman's Mark regarding the extension of the special depreciation allowance for cellulosic biofuel plant property

The modification to the Chairman's Mark makes the proposal effective for property placed in service on or after the date of enactment.

B. Additional Proposals

1. Extension and modification of incentives for renewable electricity property (secs. 45 and 48 of the Code)

Present Law

Renewable electricity production credit

An income tax credit is allowed for the production of electricity from qualified energy resources at qualified facilities (the "renewable electricity production credit").[3] Qualified energy resources comprise wind, closed-loop biomass, open-loop biomass, geothermal energy, solar energy, small irrigation power, municipal solid waste, qualified hydropower production, and marine and hydrokinetic renewable energy. Qualified facilities are, generally, facilities that generate electricity using qualified energy resources. To be eligible for the credit, electricity produced from qualified energy resources at qualified facilities must be sold by the taxpayer to an unrelated person.

Summary of Credit for Electricity Produced from Certain Renewable Resources

Eligible electricity production activity (sec. 45)	Credit amount for 2012[1] (cents per kilowatt-hour)	Expiration[2]
Wind	2.2	December 31, 2012
Closed-loop biomass	2.2	December 31, 2013
Open-loop biomass (including agricultural livestock waste nutrient facilities)	1.1	December 31, 2013
Geothermal	2.2	December 31, 2013
Solar (pre-2006 facilities only)	2.2	December 31, 2005
Small irrigation power	1.1	December 31, 2013
Municipal solid waste (including landfill gas facilities and trash combustion facilities)	1.1	December 31, 2013

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

Summary of Credit for Electricity Produced from Certain Renewable Resources		
Eligible electricity production activity (sec. 45)	**Credit amount for 2012[1] (cents per kilowatt-hour)**	**Expiration[2]**
Qualified hydropower	1.1	December 31, 2013
Marine and hydrokinetic	1.1	December 31, 2013

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

[2] Expires for property placed in service after this date.

Municipal Solid Waste

One feedstock that can be used to generate credit-eligible renewable electricity is municipal solid waste. For this purpose, the term "municipal solid waste" has the meaning given the term "solid waste" under section 2(27) of the Solid Waste Disposal Act.[4] Under that Act, the term "solid waste" generally means any garbage, refuse, or sludge from a waste treatment plant, water supply treatment plant, or air pollution control facility and other discarded material, including solid, liquid, semisolid, or contained gaseous material resulting from industrial, commercial, mining, and agricultural operations, and from community activities, but does not include solid or dissolved material in domestic sewage, or solid or dissolved materials in irrigation return flows or industrial discharges.

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

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

Description of Proposal

The proposal extends and modifies the expiration dates for the renewable electricity production credit and the 30-percent investment credit in lieu of such production credit. The proposal extends the wind credits (production and investment) for one year, through December 31, 2013. In addition, the expiration date for all renewable power facilities (including wind

[4] Sec. 45(c)(6).

facilities) is modified such that qualified facilities or property will be eligible for the renewable electricity production credit, or the investment credit in lieu of such credit, if the construction of such facilities or property begins before January 1, 2014.

The proposal also modifies the definition of municipal solid waste to exclude commonly recycled paper that has been segregated from such waste for purposes of this credit.

Effective Date

The proposal is effective on the date of enactment.

2. 7-year recovery period for motorsports entertainment complexes (sec. 168 of the Code)

Present Law

A taxpayer generally must capitalize the cost of property used in a trade or business and recover such cost over time through annual deductions for depreciation or amortization. Tangible property generally is depreciated under the modified accelerated cost recovery system ("MACRS"), which determines depreciation by applying specific recovery periods, placed-in-service conventions, and depreciation methods to the cost of various types of depreciable property.[5] The cost of nonresidential real property is recovered using the straight-line method of depreciation and a recovery period of 39 years. Nonresidential real property is subject to the mid-month placed-in-service convention. Under the mid-month convention, the depreciation allowance for the first year property is placed in service is based on the number of months the property was in service, and property placed in service at any time during a month is treated as having been placed in service in the middle of the month. Land improvements (such as roads and fences) are recovered over 15 years. An exception exists for the theme and amusement park industry, whose assets are assigned a recovery period of seven years. Additionally, a motorsports entertainment complex placed in service on or before December 31, 2011 is assigned a recovery period of seven years.[6] For these purposes, a motorsports entertainment complex means a racing track facility which is permanently situated on land and which during the 36-month period following its placed-in-service date hosts a racing event.[7] The term motorsports entertainment complex also includes ancillary facilities, land improvements (*e.g.*, parking lots, sidewalks, fences), support facilities (*e.g.*, food and beverage retailing, souvenir vending), and appurtenances associated with such facilities (*e.g.*, ticket booths, grandstands).

Description of Proposal

The proposal extends the present law seven-year recovery period for motorsports entertainment complexes two years to apply to property placed in service before January 1, 2014.

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[5] Sec. 168.

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

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

Effective Date

The proposal is effective for property placed in service after December 31, 2011.

3. Modification of tax treatment of certain payments to controlling exempt organizations (sec. 512 of the Code)

Present Law

In general, organizations exempt from Federal income tax are subject to the unrelated business income tax on income derived from a trade or business regularly carried on by the organization that is not substantially related to the performance of the organization's tax-exempt functions.[8] In general, interest, rents, royalties, and annuities are excluded from the unrelated business income of tax-exempt organizations.[9]

Section 512(b)(13) provides special rules regarding income derived by an exempt organization from a controlled subsidiary. In general, section 512(b)(13) treats otherwise excluded rent, royalty, annuity, and interest income as unrelated business taxable income if such income is received from a taxable or tax-exempt subsidiary that is 50-percent controlled by the parent tax-exempt organization to the extent the payment reduces the net unrelated income (or increases any net unrelated loss) of the controlled entity (determined as if the entity were tax exempt). However, a special rule provides that, for payments made pursuant to a binding written contract in effect on August 17, 2006 (or renewal of such a contract on substantially similar terms), the general rule of section 512(b)(13) applies only to the portion of payments received or accrued in a taxable year that exceeds the amount of the payment that would have been paid or accrued if the amount of such payment had been determined under the principles of section 482 (i.e., at arm's length).[10] In addition, the special rule imposes a 20-percent penalty on the larger of such excess determined without regard to any amendment or supplement to a return of tax, or such excess determined with regard to all such amendments and supplements.

In the case of a stock subsidiary, "control" means ownership by vote or value of more than 50 percent of the stock. In the case of a partnership or other entity, "control" means ownership of more than 50 percent of the profits, capital, or beneficial interests. In addition, present law applies the constructive ownership rules of section 318 for purposes of section 512(b)(13). Thus, a parent exempt organization is deemed to control any subsidiary in which it holds more than 50 percent of the voting power or value, directly (as in the case of a first-tier subsidiary) or indirectly (as in the case of a second-tier subsidiary).

The special rule does not apply to payments received or accrued after December 31, 2011.

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[8] Sec. 511.

[9] Sec. 512(b).

[10] Sec. 512(b)(13)(E).

Description of Proposal

The proposal extends the special rule for two years to payments received or accrued before January 1, 2014. Accordingly, under the proposal, payments of rent, royalties, annuities, or interest income by a controlled organization to a controlling organization pursuant to a binding written contract in effect on August 17, 2006 (or renewal of such a contract on substantially similar terms), may be includible in the unrelated business taxable income of the controlling organization only to the extent the payment exceeds the amount of the payment determined under the principles of section 482 (i.e., at arm's length). Any such excess is subject to a 20-percent penalty on the larger of such excess determined without regard to any amendment or supplement to a return of tax, or such excess determined with regard to all such amendments and supplements.

Effective Date

The proposal is effective for payments received or accrued after December 31, 2011.

4. American Samoa economic development credit (sec. 119 of Pub. L. No. 109-432)

Present Law

A domestic corporation that was an existing credit claimant with respect to American Samoa and that elected the application of section 936 for its last taxable year beginning before January 1, 2006 is allowed a credit based on the corporation's economic activity-based limitation with respect to American Samoa. The credit is not part of the Code but is computed based on the rules of sections 30A and 936. The credit is allowed for the first six taxable years of a corporation that begin after December 31, 2005, and before January 1, 2012.

A corporation was an existing credit claimant with respect to American Samoa if (1) the corporation was engaged in the active conduct of a trade or business within American Samoa on October 13, 1995, and (2) the corporation elected the benefits of the possession tax credit[11] in an

[11] For taxable years beginning before January 1, 2006, certain domestic corporations with business operations in the U.S. possessions were eligible for the possession tax credit. Secs. 27(b), 936. This credit offset the U.S. tax imposed on certain income related to operations in the U.S. possessions. Subject to certain limitations, the amount of the possession tax credit allowed to any domestic corporation equaled the portion of that corporation's U.S. tax that was attributable to the corporation's non-U.S. source taxable income from (1) the active conduct of a trade or business within a U.S. possession, (2) the sale or exchange of substantially all of the assets that were used in such a trade or business, or (3) certain possessions investment. No deduction or foreign tax credit was allowed for any possessions or foreign tax paid or accrued with respect to taxable income that was taken into account in computing the credit under section 936.

Under the economic activity-based limit, the amount of the credit could not exceed an amount equal to the sum of (1) 60 percent of the taxpayer's qualified possession wages and allocable employee fringe benefit expenses, (2) 15 percent of depreciation allowances with respect to short-life qualified tangible property, plus 40 percent of depreciation allowances with respect to medium-life qualified tangible property, plus 65 percent of depreciation allowances with respect to long-life qualified tangible property, and (3) in certain cases, a portion of the taxpayer's possession income taxes. A taxpayer could elect, instead of the economic activity-based limit, a limit equal to the

election in effect for its taxable year that included October 13, 1995.[12] A corporation that added a substantial new line of business (other than in a qualifying acquisition of all the assets of a trade or business of an existing credit claimant) ceased to be an existing credit claimant as of the close of the taxable year ending before the date on which that new line of business was added.

The amount of the credit allowed to a qualifying domestic corporation under the provision is equal to the sum of the amounts used in computing the corporation's economic activity-based limitation with respect to American Samoa, except that no credit is allowed for the amount of any American Samoa income taxes. Thus, for any qualifying corporation the amount of the credit equals the sum of (1) 60 percent of the corporation's qualified American Samoa wages and allocable employee fringe benefit expenses and (2) 15 percent of the corporation's depreciation allowances with respect to short-life qualified American Samoa tangible property, plus 40 percent of the corporation's depreciation allowances with respect to medium-life qualified American Samoa tangible property, plus 65 percent of the corporation's depreciation allowances with respect to long-life qualified American Samoa tangible property.

The section 936(c) rule denying a credit or deduction for any possessions or foreign tax paid with respect to taxable income taken into account in computing the credit under section 936 does not apply with respect to the credit allowed by the provision.

The credit applies to the first six taxable years of a taxpayer which begin after December 31, 2005, and before January 1, 2012.

Description of Proposal

The proposal extends the credit to apply to the first eight taxable years of a taxpayer beginning after December 31, 2005, and before January 1, 2014. Additionally the proposal modifies the credit by making it available to domestic corporations that are engaged in domestic production activities (as defined in section 199) in American Samoa and that meet the conditions in section 30A(b)(1) and 30A(b)(2). Thus, a domestic corporation engaged in domestic production activities operating in American Samoa can qualify for the credit if 80 percent or more of its gross income for the three-year period preceding the close of the taxable year (or part of the period as may be applicable) is derived from sources within American Samoa, and 75

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applicable percentage of the credit that otherwise would have been allowable with respect to possession business income, beginning in 1998, the applicable percentage was 40 percent.

To qualify for the possession tax credit for a taxable year, a domestic corporation was required to satisfy two conditions. First, the corporation was required to derive at least 80 percent of its gross income for the three-year period immediately preceding the close of the taxable year from sources within a possession. Second, the corporation was required to derive at least 75 percent of its gross income for that same period from the active conduct of a possession business. Sec. 936(a)(2). The section 936 credit generally expired for taxable years beginning after December 31, 2005.

[12] A corporation will qualify as an existing credit claimant if it acquired all the assets of a trade or business of a corporation that (1) actively conducted that trade or business in a possession on October 13, 1995, and (2) had elected the benefits of the possession tax credit in an election in effect for the taxable year that included October 13, 1995.

percent or more of its gross income is derived from the active conduct of a trade or business within American Samoa.

Effective Date

The proposal is effective on the date of enactment.

C. Errata to Description of Proposals in the Chairman's Mark

1. Description of extension of mine rescue team training credit proposal (Item II.6)

The proposal would extend the credit for two years through taxable years beginning on or before December 31, 2013.

2. Description of extension of election to expense mine safety equipment (Item II.14)

The proposal extends for two years, to December 31, 2013, the present-law placed in service date relating to expensing of mine safety equipment.