



FOR IMMEDIATE RELEASE
September 23, 2008

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SENATE PASSES BAUCUS-GRASSLEY CLEAN ENERGY INCENTIVES, EXTENSIONS OF EXPIRING TAX CUTS, DISASTER TAX RELIEF AND PROTECTION FROM ALTERNATIVE MINIMUM TAX

Fiscally responsible tax package jump starts energy independence, garners bipartisan support to address top tax issues for 110th Congress

Washington, DC – Senate Finance Committee Chairman Max Baucus (D-Mont.) and Ranking Member Chuck Grassley (R-Iowa) today won Senate passage, by an overwhelming vote of 93-2, of legislation to carry out the remaining Finance Committee objectives for the year, including passage of clean energy tax incentives, protection of millions of Americans from the alternative minimum tax (AMT), and extensions of expiring family and business tax cuts. Today’s vote replaced the current text of H.R. 6049, energy tax legislation approved in the House of Representatives earlier this year. The Finance leaders combined key provisions of a bipartisan energy bill they introduced at the beginning of the month with an agreement to update alternative minimum tax rules and continue tax cuts for college tuition, state and local sales taxes, and research and development for U.S. businesses.

“These tax measures represent real support for the American families, workers, and businesses that need a break now. Businesses need provisions like the R&D tax credit to innovate and grow, and families need the college tuition deduction and protection from the AMT just to get by. This bill’s energy tax incentives will spark clean, homegrown sources of power and thousands of good-paying jobs here at home, too,” said Baucus. **“These tax cuts for jobs, energy and families are coming not a moment too soon. I commend my colleagues on their action today to pass this bill.”**

“This is must-do legislation,” Grassley said. **“The AMT relief prevents 24 million families from facing an average tax increase of at least \$2,000 each. We’re extending tax benefits for middle-income taxpayers, including deductions for out-of-pocket expenses for teachers, sales tax, and college tuition. Millions of taxpaying families would face an unexpected tax increase if we don’t act. Businesses need continued job-creating incentives, like the research and development tax credit. Congress should send a clear signal in support of alternative energy and conservation. And we need to help the Midwest and the Gulf Coast with disaster recovery, the sooner, the better.”**

The bipartisan Senate agreement includes the following elements:

- Clean energy tax incentives totaling approximately \$18 billion, fully paid for by several offset provisions including a delay of the tax deduction for domestic manufacturing activities of major American oil and gas companies. Another offset provision tightens the rules by which oil and gas companies pay taxes on income earned overseas, and makes general fund monies available with increased payments into the oil spill liability trust fund as new drilling is considered. The incentives are also funded in part by a one year extension of the Federal Unemployment Tax Act surtax at the current level, and by increasing reporting requirements for brokers on sales of stock.
- An increase in the income threshold at which Americans become subject to the higher alternative minimum tax. This measure would protect more than 21 million taxpayers from higher taxes at a cost of \$64 billion. The cost of the AMT “patch” is not offset.
- Extensions of expiring family and business tax cuts and other policies – including an expansion of the child tax credit, legislation providing parity for mental health treatment in the U.S. health care system, and tax relief for victims of natural disasters. Extensions of expiring tax cuts are partially offset by requiring hedge fund managers and others to account for deferred compensation – income held in offshore accounts and other corporate structures – as it accrues, rather than avoiding appropriate and timely income taxes.

Detailed summaries of both amendments follow here:

SENATE FINANCE COMMITTEE SUMMARY AMENDMENT TO THE SUBSTITUTE AMENDMENT TO H.R. 6049 ALTERNATIVE MINIMUM TAX (AMT)

AMT Patch. Currently, a taxpayer receives an exemption of \$33,750 (individuals) and \$45,000 (married filing jointly) under the AMT. Current law also does not allow personal credits against the AMT. At the end of last year, H.R. 3996 increased the exemptions to \$44,350 and \$66,250, respectively, and allowed the personal credits against the AMT to hold the number of taxpayers subject to the AMT at bay. The provision expired December 31, 2007. The proposal increases the exemption amounts to \$46,200 (individuals) and \$69,950 (married filing jointly) for 2008. The proposal will also allow the personal credits against the AMT. *The estimated cost of this proposal is \$61.817 billion over ten years.*

Extension and Modification of AMT Credit Allowance Against Incentive Stock Options (ISOs). Many companies offer Incentive Stock Options (ISOs) as compensation. Under the regular tax, ISOs are not taxed upon exercise. Under the AMT, however, a taxpayer must pay tax on the stock value when the option is exercised. The economic downturn in 2000 resulted in many individuals having to pay tax on “phantom income” because the stock prices dropped dramatically since the date of exercise. In 2006, Congress provided relief for these situations, but additional relief is needed to correct this problem. Under current law, an individual is allowed a refundable AMT credit amount that is the greater of (1) the lesser of \$5,000 or the unused AMT credit amount or (2) 20 percent of the unused AMT tax credit. The AMT credit amount is reduced for those with adjusted gross income (AGI) above \$150,000 (joint filers) and \$100,000 (single

filers). The proposal would allow 50% of long-term unused minimum tax credits to be refunded over each of two years instead of 20% over each of five years, eliminate the income phase-out, and abate any underpayment of tax outstanding on the date of enactment related to ISOs and the AMT including interest. *The estimated cost of eliminating the income phase-out is \$966 million over ten years and for the incentive stock option proposal is \$1.325 billion over ten years. The total estimated cost of this proposal is \$2.291 billion over ten years.*

INDIVIDUAL EXTENDER PROVISIONS

Deduction of State and Local General Sales Taxes. The American Jobs Creation Act (AJCA) provided that a taxpayer may elect to take an itemized deduction for State and local general sales taxes in lieu of the itemized deduction. The provision expired on December 31, 2007. The proposal would extend the provision to the end of 2009. The proposal is effective for tax years beginning after December 31, 2007. *The estimated cost of this proposal is \$3.304 billion over ten years.*

Qualified Tuition Deduction. The Economic Growth and Tax Relief Reconciliation Act (EGTRRA) created an above-the-line tax deduction for qualified higher education expenses. The maximum deduction was \$4,000 for taxpayers with AGI of \$65,000 or less (\$130,000 for joint returns) or \$2,000 for taxpayers with AGI of \$80,000 or less (\$160,000 for joint returns). This deduction expired on December 31, 2007. The proposal would extend the deduction to the end of 2009. *The estimated cost of this proposal is \$5.333 billion over ten years.*

Teacher Expense Deduction. The bill extends the provision allowing teachers an above-the-line deduction for up to \$250 for educational expenses. The provision expired on December 31, 2007. The proposal extends the deduction to the end of 2009. The proposal is effective for taxable years beginning after December 31, 2007. *The estimated cost of this proposal is \$410 million over ten years.*

Additional Standard Deduction for Real Property Taxes. The Housing and Economic Recovery Act of 2008 added a real property tax calculation to the standard deduction for taxpayers who do not itemize. The real property tax deduction is the lesser of the amount allowable as a deduction of State and local and foreign real property taxes, or \$500 (\$1,000 in the case of a joint return). The provision expires at the end of 2008. The proposal extends the provision to the end of 2009. The proposal is effective on the date of enactment. *The estimated cost of the proposal is \$1.495 billion over ten years.*

IRA Rollover Provision. The Pension Protection Act of 2006 (PPA) created a provision allowing taxpayers to make tax-free contributions from their IRA plans to qualified charitable organizations. This tax benefit expired on December 31, 2007. The proposal would extend the provision through 2009. The proposal is effective for distributions after December 31, 2007. *The estimated cost of this proposal is \$795 million over ten years.*

Treatment of Certain Dividends of Regulated Investment Companies (RICs). The bill extends a provision allowing a RIC, under certain circumstances, to designate all or a portion of a dividend as an "interest-related dividend," by written notice mailed to its shareholders not later than 60 days after the close of its taxable year. In addition, an interest-related dividend received by a foreign person generally is exempt from U.S. gross-basis tax under sections 871(a), 881, 1441 and 1442 of the Code. The proposal extends the treatment of interest-related dividends and short-term capital gain dividends received by a RIC to taxable years of the RIC beginning before

January 1, 2010. The proposal is effective for dividends with respect to taxable years of RICs beginning after December 31, 2007. *The estimated cost of this proposal is \$134 million over ten years.*

Estate Tax Look-Through for Certain RIC Stock held by Nonresidents. Although stock issued by a domestic corporation generally is treated as property within the United States, stock of a RIC that was owned by a nonresident non-citizen is not deemed property within the United States in the proportion that, at the end of the quarter of the RIC's taxable year immediately before a decedent's date of death, the assets held by the RIC are debt obligations, deposits, or other property that would be treated as situated outside the United States if held directly by the estate (the "estate tax look-through rule for RIC stock"). This estate tax look-through rule for RIC stock does not apply to estates of decedents dying after December 31, 2007. The proposal permits the estate tax look-through rule for RIC stock to apply to estates of decedents dying before January 1, 2010. The proposal is effective for decedents dying after December 31, 2007. *This proposal has a negligible revenue effect.*

Extend the Treatment of RICs as "Qualified Investment Entities". The proposal would extend the inclusion of a RIC within the definition of a "qualified investment entity" under section 897 of the Code through December 31, 2009, for those situations in which that inclusion otherwise expired at the end of 2007. The proposal is effective on January 1, 2008. *The estimated cost of this proposal is \$20 million over ten years.*

BUSINESS EXTENDER PROVISIONS

Research and Development Credit. The bill would extend the research tax credit equal to 20 percent of the amount by which a taxpayer's qualified research expenses for a taxable year exceed its base amount for that year. The provision expired December 31, 2007. The proposal would extend current law to the end of 2009. In addition, the proposal would increase the alternative simplified credit from 12% to 14% for the 2009 tax year, and repeal the alternative incremental research credit for the 2009 tax year. The proposal is effective for amounts paid or incurred after December 31, 2007. *The estimated cost of this proposal is \$19.084 billion over ten years.*

New Markets Tax Credit. Current law provides a credit for taxpayers who hold a qualified equity investment on a credit allowance date. The provision expires December 31, 2008. The proposal would extend the provision through 2009. The proposal is effective for investments made after December 31, 2008. *The estimated cost of this proposal is \$1.315 billion over ten years.*

Exception under Subpart F for Active Financing Income. The U.S. parent of a foreign subsidiary engaged in a banking, financing, or similar business is eligible for deferral of tax on such subsidiary's earnings if the subsidiary is predominantly engaged in such business and conducts substantial activity with respect to such business. The subsidiary must pass an entity level income test to demonstrate that the income is active income and not passive income. The provision expires December 31, 2008. The proposal would extend the provision to the end of 2009. The proposal is effective for tax years beginning after December 31, 2008. *The estimated cost of this proposal is \$3.97 billion over ten years.*

Look-Through Treatment of Payments between Related CFCs under the Foreign Personal Holding Company Rules. The bill allows deferral for certain payments (interest, dividends, rents and royalties) between commonly controlled foreign corporations (CFC). This provision allows U.S. taxpayers to deploy capital from one CFC to another without triggering U.S. tax. The provision expires December 31, 2008. The proposal extends present law to the end of 2009. The proposal is effective for tax years beginning after December 31, 2008. *The estimated cost of this proposal is \$611 million over ten years.*

15-Year Straight-Line Cost Recovery for Qualified Leasehold, Restaurant, and Retail Improvements. In AJCA, Congress shortened the cost recovery of certain leasehold improvements and restaurant property from 39 to 15 years. The proposal would extend the provision to the end of 2009 and allows retail owners and new restaurants to receive the shortened recovery period for 2009 only. The extension is effective for property placed in service after December 31, 2007. The allowance of the 15 year depreciation to retail and new restaurants is effective for property placed in service after December 31, 2008. *The estimated cost of this proposal is \$8.721 billion over ten years.*

Modification of Tax Treatment of Certain Payments to Controlling Exempt Organizations. In general, interest, rent, royalties, and annuities paid to a tax-exempt organization from a controlled entity are treated as unrelated business income of the tax-exempt organization. The PPA provided that if a payment to a tax-exempt organization by a controlled entity is less than fair market value, then the payment is excludable from the tax-exempt organization's unrelated business income. The provision expired on December 31, 2007. The proposal would extend the provision to the end of 2009. The proposal is effective for payments received or accrued after December 31, 2007. *The estimated cost of this proposal is \$47 million over ten years.*

Basis Adjustment to Stock of an S Corporation Making Charitable Contributions of Property. Prior to the PPA, if an S corporation made a contribution to a charity, shareholders reduced the basis in their stock by their pro rata share of the fair market value of the contribution. The PPA provided the amount of a shareholder's basis reduction in the S corporation stock will be equal to the shareholder's pro rata share of the adjusted basis of the contributed property. The provision expired December 31, 2007. The proposal would extend the provision to the end of 2009. The proposal would also make a technical correction clarifying the application of this provision. The proposal is effective for tax years beginning after December 31, 2007. *The estimated cost of this proposal is \$132 million over ten years.*

Temporary Increase in Limit on Cover over of Rum Excise Tax Revenues to Puerto Rico and the Virgin Islands. The present law imposes a \$13.50 per proof gallon excise tax on distilled spirits produced in or imported into the United States. The Code provides a payment to Puerto Rico and the Virgin Islands of the excise tax on rum imported into the United States. The payment is limited to \$10.50 per proof gallon. This was increased to \$13.25 per proof gallon during the period July 1, 1999 through December 31, 2007. The proposal would extend the provision to the end of 2009. The proposal is effective for articles brought into the United States after December 31, 2007. *The estimated cost of this proposal is \$192 million over ten years.*

American Samoa Economic Development Credit. Certain domestic corporations operating in American Samoa were eligible for a possessions tax credit, which offsets their U.S. tax liability on income earned in American Samoa from active business operations, sales of assets used in a business, or certain investments in American Samoa. Further, the credit was held to an economic activity-based limit, measuring the credit against wages, depreciation, and American Samoa income taxes. The provision expired December 31, 2007. The proposal extends the provision to

the end of 2009. The proposal is effective for tax years beginning after December 31, 2007. *The estimated cost of this proposal is \$33 million over ten years.*

Mine Rescue Team Training Credit. Present law provides a credit of up to \$10,000 for the training of mine rescue team members. The provision expires on December 31, 2008. The proposal extends present law to the end of 2009. *The estimated cost of the proposal is \$4 million over ten years.*

Election to Expense Advanced Mine Safety Equipment. Present law provides 50% immediate expensing for qualified underground mine safety equipment (that goes above and beyond current safety equipment requirements), including: (1) communications technology enabling miners to remain in constant contact with an individual above ground; (2) electronic tracking devices that enable an individual above ground to locate miners in the mine at all times; (3) self-contained self-rescue emergency breathing apparatuses carried by the miners and additional oxygen supplies stored in the mine; and (4) mine atmospheric monitoring equipment to measure levels of carbon monoxide, methane, and oxygen in the mine. This provision will encourage mining companies to invest in safety equipment that goes above and beyond current safety equipment requirements. The provision expires December 31, 2008. The proposal would extend present law to the end of 2009. *The proposal is estimated to be revenue neutral over ten years.*

Deduction Allowable with Respect to Income Attributable to Domestic Production Activities in Puerto Rico. The bill extends a provision allowing a section 199 domestic production activities deduction for activities in Puerto Rico. This provision expired on December 31, 2007. The proposal would extend the provision to the end of 2009. The proposal is effective for tax years beginning after December 31, 2007. *The estimated cost of this proposal is \$243 million over ten years.*

Qualified Zone Academy Bonds (QZABs). QZABs help school districts with low-income populations save on interest costs associated with public financing school (below the post-secondary level) renovations and repairs. QZABs cannot be used for new construction but can be used for the following activities: renovating and repairing buildings, investing in equipment and up-to-date technology, developing challenging curricula, and training quality teachers. The QZABs offer the holder a federal tax credit instead of interest (there has been an allocation of \$400 million of QZABs each year since 1998). The QZAB provision expired on December 31, 2007. This proposal allows another \$400 million of issuing authority to state and local governments for 2008 and 2009 for qualified zone academy bonds. The proposal also modifies the provision. The proposal is effective for obligations issued after December 31, 2007. *The estimated cost of this proposal is \$379 million over ten years.*

Indian Employment Credit. The proposal allows a business tax credit for employers of qualified employees that work and live on or near an Indian reservation. The credit is for wages and health insurance costs paid to qualified employees (up to \$20,000) in the current year over the amount paid in 1993. Wages for which the Work Opportunity Tax Credit is available are not qualified wages for the Indian employment tax credit. This provision expired on December 31, 2007. The proposal would extend the provision to the end of 2009. The proposal is effective for taxable years beginning after December 31, 2007. *The estimated cost of this proposal is \$119 million over ten years.*

Accelerated Depreciation for Business Property on Indian Reservation. A special depreciation recovery period applies to qualified Indian reservation property placed in service before January 1, 2008. In general, qualified Indian reservation property is property used predominantly in the active conduct of a trade or business within an Indian reservation, which is not used outside the reservation on a regular basis and was not acquired from a related person. This proposal would extend the placed-in-service date for the special depreciation recovery period for qualified Indian reservation property to the end of 2009. The proposal is effective for property placed in service after December 31, 2007. *The estimated cost of this proposal is \$295 million over ten years.*

Extend and Expand 50% Tax Credit for Certain Expenditures for Maintaining Railroad Tracks. The railroad maintenance credit provides Class II and Class III railroads (short-line railroads) with a tax credit equal to 50% of gross expenditures for maintaining railroad tracks that they own or lease. The credit expired on December 31, 2007. The proposal extends the provision to the end of 2009, and allows the credit against the AMT. The proposal is effective for expenses paid or incurred during the taxable years beginning after December 31, 2007. *The estimated cost of this proposal is \$331 million over ten years.*

7-Year Recovery Period for Certain Motorsports Racetrack Property. The bill extends a special 7-year cost recovery period for property used for land improvement and support facilities at motorsports entertainment complexes. The provision expired on December 31, 2007. This proposal extends the provision to the end of 2009. The proposal is effective for property placed in service after December 31, 2007. *The estimated cost of this proposal is \$100 million over ten years.*

Expensing of "Brownfields" Environmental Remediation Costs. The bill extends a provision allowing for the expensing of costs associated with cleaning up contaminated sites. The provision expired on December 31, 2007. This proposal extends present law to the end of 2009. The proposal is effective for property placed in service after December 31, 2007. *The estimated cost of this proposal is \$357 million over ten years.*

Extend Work Opportunity Tax Credit (WOTC) for Hurricane Katrina Employees. The proposal extends through August 28, 2009 the work opportunity tax credit for those employed within the Hurricane Katrina core disaster area. The proposal is effective on August 28, 2007. *The estimated cost of this proposal is \$29 million over ten years.*

Extension of Increased Rehabilitation Credit for Structures in the Gulf Opportunity Zone. The Gulf Opportunity Zone Act of 2005 increased the rehabilitation credit, within the Gulf Opportunity Zone, from 10 percent to 13 percent of qualified expenditures for any qualified rehabilitated building other than a certified historic structure. It also increased the credit from 20 percent to 26 percent of qualified expenditures for any certified historic structure. This provision expires at the end of 2008. This proposal would extend the provision through December 31, 2009. *The estimated cost of this proposal is \$50 million over ten years.*

Enhanced Charitable Deduction for Qualified Computer Contributions. The bill would extend for two years, through 2009, a provision that encourages businesses to contribute computer equipment and software to elementary, secondary, and postsecondary schools by allowing an enhanced deduction for such contributions. The proposal is effective for contributions made during taxable years beginning after December 31, 2007. *The estimated cost of this proposal is \$356 million over ten years.*

Tax Incentives for Investments in the District of Columbia. The bill provides for the designation of certain economically depressed census tracts within the District as the DC Enterprise Zone. Businesses and individual residents within this enterprise zone are eligible for special tax incentives. First time home buyers receive a \$5,000 credit for DC. The bill extends the provision through the end of 2009. The proposal is effective for tax years beginning after December 31, 2007. *The estimated cost of this proposal is \$179 million over ten years.*

Enhanced Charitable Deduction for Food Inventory. The bill would extend for two years, through 2009, the provision allowing businesses to claim an enhanced deduction for the contribution of food inventory. The proposal is effective for contributions made after December 31, 2007. The proposal also eliminates the percentage limitation for contributions made by certain farmers and ranchers after December 31, 2007, but before January 1, 2009. *The estimated cost of this proposal is \$149 million over ten years.*

Enhanced Charitable Deduction for Contributions of Book Inventory to Schools. The bill would extend a provision that allowing C corporations an enhanced charitable deduction for donations of books to schools, public libraries and literacy programs. This provision expired after December 31, 2007. The proposal extends the provision to the end of 2009. The proposal is effective for contributions made after December 31, 2007. *The estimated cost of this proposal is \$49 million over ten years.*

Wool Trust Fund. The bill would extend a provision that reduces import duties on a limited quantity of imported wool fabrics and places duties otherwise collected on the import of certain wool products into the Wool Trust Fund, which promotes the competitiveness of American wool. The provision is extended for five years. *The estimated cost of the proposal is \$148 million over ten years.*

Special Expensing Rules for Certain Film and Television Productions. Under current law, a producer can elect to take a single-year deduction of up to \$15 million in production costs incurred in the U.S. If the production costs are over \$15 million, this deduction does not apply. The maximum deduction is increased to \$20 million if the costs are significantly incurred in economically depressed areas. No other depreciation or amortization is allowed for a production for which this deduction is taken. The provision expires December 31, 2008. The proposal would extend the provision to the end of 2009. The proposal would also allow expensing of the first \$15 million (\$20 million if the costs are significantly incurred in economically depressed areas), regardless of the ultimate cost of the film. The proposal is effective for taxable years beginning after December 31, 2007. *The estimated cost of this proposal is \$81 million over ten years.*

TAX ADMINISTRATION EXTENDER PROVISIONS

Permanent Authority for Undercover Operations. IRS's authorization to use proceeds it receives from undercover operations to offset necessary expenses incurred in such operations expired on December 31, 2007. Undercover operations are an integral part of IRS efforts to detect and prove noncompliance. The temporary status of this provision creates uncertainty as the IRS plans its undercover efforts from year to year. The proposal permanently authorizes the IRS to return funds collected through undercover operations back into the IRS undercover program. The proposal is effective on the date of enactment. *The proposal raises less than \$500,000 over ten years.*

Permanent Authority to Disclose Information Related to Terrorist Activities. The bill would permanently extend the current-law terrorist activity provisions. The proposal is effective for disclosures after December 31, 2007. *This proposal is estimated to have no revenue effect.*

ADDITIONAL TAX RELIEF AND OTHER TAX PROVISIONS

Child Tax Credit. Currently, a taxpayer receives \$1,000 tax credit for each qualifying child under the age of 17. If the amount of a taxpayer's child tax credit is greater than the amount of the taxpayer's income tax, the taxpayer may receive a refund if the income threshold is met. EGTRRA set the income threshold for child tax credit refundability at \$10,000 (indexed). The threshold for 2008 is \$12,050. The proposal lowers the refundable threshold for the child tax credit to \$8,500 for the 2008 tax year. The proposal is effective for tax years beginning after December 31, 2007. *The estimated cost of the proposal is \$3.129 billion over ten years.*

Provisions Related to Film and Television Productions. Under current law, many film and television show production companies are unable to take advantage of the domestic production deduction. The proposal allows more film and television show production companies to use the domestic production deduction, which will encourage more production of films and television productions. *This estimated cost of the proposal is \$397 million over ten years.*

Excise Tax Exemption for Wooden Practice Arrows Used by Children. Current law imposes an excise tax of 39 cents, adjusted for inflation, on the first sale by the manufacturer, producer, or importer of any shaft of a type used to produce certain types of arrows. This proposal would exempt from the excise tax any shaft consisting of all natural wood with no laminations or artificial means to enhance the spine of the shaft used in the manufacture of an arrow that measures 5/16 of an inch or less and is unsuited for use with a bow with a peak draw weight of 30 pounds or more. The proposal is effective for shafts first sold after the date of enactment. *The estimated cost of the proposal is \$2 million over ten years.*

Paul Wellstone and Pete Domenici Mental Health Parity and Addiction Equity Act of 2008. This bill would require private insurance plans that offer mental health benefits as part of the coverage to offer such benefits on par with the medical-surgical benefits. Any cost-sharing or benefit limits imposed on mental health services must not be any more restrictive than those imposed on med-surg services. The proposal is effective January 1, 2009. *The proposal is estimated to cost \$3.9 billion over 10 years.*

Income Averaging for Exxon Valdez Litigation Amounts. The bill would allow commercial fishermen and other individuals whose livelihoods were negatively impacted by the 1989 Exxon Valdez oil spill to average any settlement or judgment-related income that they receive in connection with pending litigation in the federal courts over three years for federal tax purposes. The bill would also allow these individuals to use these funds to make contributions to retirement accounts. The proposal is effective on the date of enactment. *The estimated cost of the proposal is \$49 million over ten years.*

Certain Farming Business Machinery and Equipment Treated as 5-year Property. The proposal provides a five year recovery period for any machinery or equipment (other than any grain bin, cotton ginning asset, fence, or other land improvement) which is used in a farming business, the original use of which commences with the taxpayer, and placed in service before January 1, 2010. For these purposes, the term "farming business" means a trade or business involving the cultivation of land or the raising or harvesting of any agricultural or horticultural

commodity. A farming business includes processing activities that are normally incident to the growing, raising, or harvesting of agricultural or horticultural products. The proposal is effective for property placed in service after the December 31, 2008. *The estimated cost of the proposal is less than \$500,000.*

Modification of Penalty on Understatement of Taxpayer's Liability by Tax Return

Preparer. The proposal changes the standards for imposition of the tax return preparer penalty. The preparer standard for undisclosed positions is reduced to "substantial authority." The preparer standard for disclosed positions is "reasonable basis." For tax shelters and reportable transactions to which section 6662A applies (i.e., listed transactions and reportable transactions with significant avoidance or evasion purposes), a tax return preparer is required to have a reasonable belief that such a transaction was more likely than not to be sustained on the merits. The proposal is effective for returns prepared after May 25, 2007. *The estimated cost of the proposal is \$22 million over ten years.*

OTHER PROVISIONS

Reauthorization of the Secure Rural Schools and Community Self-Determination Act of 2000 and Payment in Lieu of Taxes. The bill would reauthorize the Secure Rural Schools program through 2011. It also adjusts the funding distribution formula to make it more equitable by taking into account historic payment levels to counties, average income levels in counties and acreage of federal land. Finally, the provision increases existing funding for the Payments in Lieu of Taxes program in the current fiscal year and fully-funds the program during FY2009-FY2012. *The estimated cost of the proposal is \$3.3 billion over ten years.*

Transfer of Interest Earned by Abandoned Mine Reclamation Fund. The Coal Act Fairness Alliance is composed of Super Reach-back Companies that fully paid Coal Act premiums. As a result of the decision in *Eastern Enterprises v. Apfel*, 524 U.S. 498 (1998), these companies sought a refund of monies paid to the United Mine Workers of America - Combined Fund. In 2006, the Super Reach-back Companies received a refund in the amount of \$27 million (see 30 U.S.C. 1232(i)(C)). The Super Reach-back Companies, however, did not receive any interest payments on the premiums that the Companies paid to the Combined Fund. In *Mary Helen Coal Corp. v. Hudson*, 235 F.3d 207 (4th Cir. 2000), the Fourth Circuit examined whether interest on the premium payments that were refunded as a result of the Supreme Court's decision in *Eastern Enterprises* was appropriate. The court held that a refund of the interest on the premium payments was appropriate for the final judgment companies as an element of their complete compensation and to give full effect to the *Eastern Enterprises* decision. In the case of the Super Reach-back Companies, the lost interest on the premiums amount to \$9 million. The provision would refund the lost interest to these Super Reach-back Companies. *The estimated revenue loss of the proposal is \$9 million over ten years.*

MIDWESTERN DISASTER TAX RELIEF

Midwestern Disaster Area Tax Relief. The proposal provides tax relief for victims of the Midwestern disaster in Arkansas, Illinois, Indiana, Iowa, Kansas, Michigan, Minnesota, Missouri, Nebraska and Wisconsin. The proposals are applicable to floods, severe storms, and tornadoes that are declared by FEMA on or after May 20, 2008, and before August 1, 2008.

A. RELIEF FOR ALL COUNTIES DECLARED ELIGIBLE FOR ASSISTANCE

The proposals immediately below benefit taxpayers located in all counties in the ten states mentioned above that are presidentially-declared (FEMA) major disaster areas determined to warrant individual assistance, individual and public assistance, or public only assistance due to flooding, tornadoes, or severe storms.

Qualified Disaster Recovery Assistance Distributions. The proposal waives the 10 percent penalty tax if a distribution from an individual retirement account (“IRA”) or tax-favored retirement plan (e.g., Code sections 401(k), 403(b), or 457(b) plans) is considered a qualified Disaster Recovery Assistance distribution (“qualified distribution”). A distribution is considered a qualified distribution if it is made on or after the presidentially-declared disaster date (“applicable declaration date”) and before January 1, 2010 and is made to an individual whose principal residence on the applicable declaration date is located in a Midwestern disaster area and who sustained an economic loss by reason of the disaster. Other principal features include the following: (i) the waiver is limited to amounts up to \$100,000; (ii) the mandatory withholding rules applicable to eligible rollover distributions would not apply; (iii) participants receiving a qualified distribution would be permitted to spread the income tax resulting from receipt of the distribution ratably over three years; and (iv) amounts distributed may be re-contributed to the plan over a three-year period following the distribution and such re-contributed amounts would not be includible in income (e.g., if a participant received a qualified distribution in 2008 and subsequently re-contributed the distribution amount in 2009, the participant may file an amended return requesting a refund for the amount taxable in 2008). *The estimated revenue loss of this proposal is \$42 million over ten years.*

Recontribution of Withdrawals for Home Purchases. The proposal allows distributions for home purchases that were made from a Code section 401(k) or 403(b) plan or IRA after the date which is 6 months before the applicable declaration date and before the day after the applicable declaration date and that were not finalized because of the tornadoes and floods giving rise to the designation of the area as a disaster area to be re-contributed to the plan or IRA tax-free (i.e., the re-contributions would be treated as rollovers). Amounts must be re-contributed within 5 months from the date of enactment of this bill in order to receive favorable tax treatment. *The proposal is estimated to have a negligible revenue effect over ten years.*

Loans from Qualified Plans. The proposal effectively doubles the limitation on loans from a 401(k), 403(b), or a governmental 457(b) plan by allowing participants located in a Midwestern disaster area and who sustained economic loss by reason of the tornadoes and floods giving rise to the designation of the area as a disaster area to receive loans up to the lesser of \$100,000, or 100 percent of the vested accrued benefit for loans made after the date of enactment and before January 1, 2010. In addition, outstanding loan payments due on or after the applicable declaration date and before January 1, 2010 may be deferred an additional 12 months, with appropriate adjustments for interest. *The proposal is estimated to have a negligible revenue effect over ten years.*

Suspension of Casualty Loss Limitations. Under present law, non-business casualty losses are deductible by taxpayers who itemize only to the extent they exceed ten percent of adjusted gross income and a one-hundred dollar floor. In some circumstances, taxpayers are permitted to include a current-year casualty loss on an amended prior year return. The proposal eliminates the ten percent and one-hundred dollar floor for casualty losses resulting from the Midwestern disaster

and incurred in the disaster area, including those claimed on amended returns. *The estimated revenue loss of this proposal is \$61 million over ten years.*

Special Look-Back Rule for EIC and Refundable Child Credit. To deal with the situation where 2008 records are lost or destroyed in a disaster, this proposal allows low-income working families an election to use their 2007 income amount for purposes of determining their eligibility for the refundable earned income credit and the refundable child tax credit. *The estimated revenue loss of this proposal is \$89 million over ten years.*

Additional Personal Exemption for Housing Victims. Current law provides a personal exemption for taxpayers, their spouses, and dependents. The proposal allows taxpayers who house up to four dislocated persons from the Midwestern disaster for a minimum of sixty days in their principal residences an additional personal exemption of \$500 per dislocated person (maximum additional personal exemption increase of \$2,000). Family members (other than spouses and dependents) staying with the taxpayer may qualify, and the housing must be provided rent-free. This proposal would not affect any deductions or exemptions for the dislocated person on the dislocated person's tax return. The deduction can be claimed in 2008 and 2009, but cannot be claimed in both years with respect to the same person. *The estimated revenue loss of this proposal is \$10 million over ten years.*

Exclusion for Certain Cancellations of Indebtedness. Under current law, gross income generally includes any amount realized from the discharge of indebtedness. The proposal ensures that individuals are not taxed on personal debt that is discharged in response to damage suffered from the Midwestern disaster. For example, if a house is damaged or destroyed and the mortgage lender discharges all or part of this mortgage debt, the amount discharged is not treated as income as a result of the proposal. *The estimated revenue loss of this proposal is \$6 million over ten years.*

Extension of Replacement Period for Property Lost Due to Floods or Tornadoes in the Midwestern Disaster Zone. Present law allows taxpayers not to recognize gain with respect to homes that are damaged or destroyed as a result of a presidentially-declared disaster if the taxpayer replaces the property within a four-year period. Business property that is destroyed must be replaced within a two-year period to avoid gain recognition. The proposal extends the replacement period to five years for principal residences and business property that was damaged or destroyed within any presidentially-declared disaster area for the Midwestern disaster, and the replacement property must be located in the same county. *The estimated revenue loss of this proposal is \$65 million over ten years.*

B. RELIEF FOR ALL COUNTIES DECLARED ELIGIBLE FOR INDIVIDUAL ASSISTANCE OR INDIVIDUAL AND PUBLIC ASSISTANCE

The proposals immediately below benefit individuals and businesses located in all counties in the ten states above presidentially-declared (FEMA) major disaster areas determined to warrant individual assistance, or individual and public assistance, due to flooding, tornadoes, or severe storms.

Relief for Individuals and Families Employee Retention Credit. This proposal provides a 40 percent tax credit for wages paid up to \$6,000 if paid after the applicable disaster date, and before January 1, 2009, by employers with 200 or fewer employees located in the Midwestern disaster

area who continue to pay their employees while their business is inoperable. *The estimated revenue loss of this proposal is \$93 million over ten years.*

Expansion of Hope Scholarship and Lifetime Learning Credit. Current law allows a Hope Scholarship Credit in the first two years of post-secondary education equal to 100% 13 of the first \$1,200 of qualified tuition and related expenses, and 50% of the next \$1,200 for a maximum credit of \$1,800. There is also a Lifetime Learning Credit available to students enrolled in one or more courses at the undergraduate or graduate level (whether or not pursuing a degree), equal to 20% of the first \$10,000 in qualified tuition and related expenses. The proposal doubles the Hope Credit dollar amounts so the maximum credit would be \$3,000, and doubles the Lifetime Learning Credit percentage from 20% to 40%, for a maximum Lifetime Learning Credit of \$4,000 for students attending undergraduate or graduate institutions in the Midwestern disaster area. Room, board, books and fees would also be considered qualified expenses. This proposal applies to tax years 2008 and 2009. *The estimated revenue loss of this proposal is \$121 million over ten years.*

Secretarial Authority to Adjust Taxpayer and Dependency Status for Taxpayers. The Midwestern disaster has displaced thousands of individuals. Under present law, a prolonged change in a family's living situation could affect its eligibility for various tax benefits. The proposal gives the Treasury Department the authority to ensure taxpayers do not lose deductions, credits or filing status because of dislocations from the Midwestern disaster. *The proposal is estimated to have a negligible revenue effect over ten years.*

Mortgage Revenue Bonds. Section 143(d) requires that 95 percent of net proceeds of mortgage revenue bonds are used to finance residences of mortgagors who had no present ownership interest in their principal residences at any time during the 3-year period ending on the date their mortgage is executed. The proposal permits states to issue tax-exempt bonds to finance low-interest loans to taxpayers whose principal residence has been damaged as a result of a disaster. Disaster victims could use these low-interest loans to repair or reconstruct their homes. The provision is effective for qualified disasters occurring after December 31, 2007 and before January 1, 2010. *The proposal is included in the estimate below on Tax-exempt Bonds.*

Tax Relief for Businesses

Tax-exempt Bonds. Provides Iowa, Arkansas, Illinois, Indiana, Kansas, Michigan, Minnesota, Missouri and Wisconsin the authority to issue a special class of qualified private activity bonds, called Midwestern disaster area bonds, outside of the state volume caps. The maximum aggregate bond authority with respect to any state cannot exceed \$1,000 times the portion of the state population which is located in a Midwestern disaster area. Midwestern disaster area bonds can be issued by States and municipalities. Bond proceeds can be used to pay for acquisition, construction, and renovation of nonresidential real property, qualified low income residential rental housing, and public utility property (e.g., gas, water, electric and telecommunication lines) located in the Midwestern disaster area. The current low-income housing targeting rules are relaxed so that more bond proceeds can be used to rebuild housing in the Midwestern disaster area. Interest payments on the bonds are not subject to the AMT. The authority to issue Midwestern disaster area bonds expires after December 31, 2010. In the case of project involving a private business use, either the person using the property suffered a loss in a trade or business attributable to severe storms, tornadoes or flooding or is a person designated by the Governor of the State as a person carrying on a trade or business replacing a trade or business with respect to which another person suffered such loss. In the case of a project relating to public utility property, the project must involve the repair or reconstruction of public utility property damaged by sever

storms, tornados or flooding. The bonds can also be used to provide financing for mortgagors who suffered damages to their principal residences attributable to severe storms, tornadoes or flooding. *The total estimated revenue loss of this proposal and the proposal for mortgage revenue bonds is \$1.320 billion over ten years.*

Low Income Housing. Under current law, States receive allocations of low-income housing tax credits based on population. The proposal allows States to allocate volumes of additional housing credit amounts in years 2008, 2009, 2010 of \$8 per person in the Midwestern disaster area measured by population data issued before the earliest applicable disaster date for Midwestern disaster areas within the applicable state. *The total estimated revenue loss of this proposal and the proposal for representations regarding income eligibility is \$2.203 billion over ten years.*

Additional Depreciation. Permits businesses that suffered damages to claim an additional first-year depreciation deduction equal to 50 percent of the cost of new real and personal property investments made in the disaster area. The additional deduction applies to purchased computer software, leasehold improvements, certain commercial and residential real estate expenditures and equipment. All depreciation deductions (including bonus depreciation) would be exempt from the AMT. *The total estimated revenue loss of this proposal is reflected under the National Disaster Section.*

Expensing Property. The proposal would increase by \$100,000 (or the cost of qualified property, if less) the amount of expensing available for qualifying expenditures made in the disaster area through December 31, 2011. This proposal would also increase by \$600,000 (or the cost of qualified property, if less) the level of investment at which benefits phase-out, thus allowing more businesses to use this tax benefit in rebuilding. *The total estimated revenue loss of this proposal is reflected under the National Disaster Section.*

Expensing Demolition and Clean-up Costs. Under the proposal, 50 percent of the costs (that would otherwise be capitalized) related to site cleanup and demolition would be deductible by businesses. Effective for amounts paid or incurred beginning on the applicable disaster date and ending on December 31, 2010. *The estimated revenue loss of this proposal is \$3 million over ten years.*

Expensing Environmental Remediation Costs. The proposal extends the deductibility of costs of cleaning up a qualified contamination site, if the release (or threat of release) or disposal of a hazardous substance is attributable to the disaster described in the Presidential declaration in the Midwestern disaster area. Effective for expenditures paid or incurred beginning on the applicable disaster date and ending on December 31, 2010. *The estimated revenue loss of this proposal is less than \$500,000 over ten years.*

Increase in Rehabilitation Credit. For buildings that were damaged or destroyed in an applicable disaster, the rehabilitation credit is raised from 10 percent to 13 percent of qualified expenditures for any qualified rehabilitated building other than a certified historic structure, and the rehabilitation credit is raised from 20 percent to 26 percent of qualified expenditures for any certified historic structure. *The estimated revenue loss of this proposal is \$3 million over ten years.*

Five-year Net Operating Loss Carryback for Certain Amounts. The proposal extends the net operating loss carryback period from 2 to 5 years for net operating losses attributable to (i) new investment and repairing existing investment in the areas damaged by the Midwestern disaster; (ii) business casualty losses caused by the Midwestern disaster; and (iii) moving expenses and

temporary housing expenses for employees working in areas damaged by the Midwestern disaster. The proposal is effective on the date of enactment. *The estimated revenue loss of this proposal is \$37 million over ten years.*

Tax Credit Bonds. Authorizes Midwestern disaster States to issue debt service tax credit bonds providing credits against Federal income tax instead of interest payments, so that these States can provide assistance to communities unable to meet their debt service requirements as a result of the flooding, tornadoes, and severe storms. The maturity of the bonds cannot exceed 2 years. At least 95 percent of bond proceeds must be used to redeem or to pay principal, interest or premiums on an outstanding bond, and such proceeds so used must be matched by an equal amount of State funds. The maximum amount of tax credit bonds shall not exceed \$100 million for any state with an aggregate population located in the Midwestern disaster areas within such state of at least 2 million; \$50 million for states with such populations of at least 1 million but less than 2 million; and zero for any other state. *The estimated revenue loss of this proposal is \$152 million over ten years.*

Tax Incentives for Charitable Giving

Temporary Suspension of Limitations on Charitable Contributions. The amount allowed as a charitable deduction in any taxable year may not exceed ten percent of the corporation's taxable income or fifty percent of an individual's adjusted gross income. The proposal temporarily waives these limits regarding charitable cash contributions dedicated to Midwestern disaster relief efforts. The proposal is effective for contributions paid during the period beginning on the earliest applicable disaster date for all States and ending on December 31, 2008. *The estimated revenue loss of this proposal is \$433 million over ten years.*

Increase in Standard Mileage Rate for Charitable Use of Vehicles. The mileage rate individuals may use to compute a tax deduction for personal vehicle expenses associated with charitable work is statutory and has not been increased since 1997 and is currently at 14 cents per mile. For a taxpayer assisting in relief efforts related to the Midwestern disaster, the proposal sets the charitable mileage rate at seventy percent of the current standard business mileage rate, beginning on the applicable disaster date and ending on December 31, 2008. *The estimated revenue loss of this proposal is \$9 million over ten years.*

Exclusion from Income of Mileage Reimbursements for Charitable Volunteers. In general, reimbursements received for operating expenses of a personal vehicle used in connection with charitable work in excess of the statutory charitable mileage rate are taxable income to the recipient. However, reimbursements for charitable mileage attributable to the Midwestern disaster up to the amount of the standard business mileage rate will not be considered taxable income through December 31, 2008. *The estimated revenue loss of this proposal is \$1 million over ten years.*

Tax Benefits Not Available with Respect to Certain Property. The proposals relating to additional first-year depreciation, increased expensing, and the five-year carryback of NOLs do not apply with respect to certain property. Specifically, as was done in the tax relief package for the Katrina disaster, the tax relief provisions do not apply with respect to golf courses, country clubs, massage parlors, hot tub facilities, suntan facilities, or liquor stores. The proposals also do not apply with respect to any property used directly in connection with gambling, animal racing, or the on-site viewing of such racing, and with respect to buildings or portions of buildings dedicated to such activities (except if the portion so dedicated is less than 100 square feet).

HURRICANE IKE DISASTER TAX RELIEF

Low Income Housing. Under current law, States receive allocations of low-income housing tax credits based on population. The proposal allows Texas and Louisiana to allocate volumes of additional housing credit amounts in years 2008, 2009, 2010 of \$16 per person based on the populations of Brazoria, Chambers, Galveston, Jefferson and Orange counties in Texas and Calcasieu and Cameron parishes in Louisiana. *The total estimated revenue loss of this proposal is included in the Tax-exempt Bonds proposal immediately below.*

Tax-exempt Bonds. Provides Texas and Louisiana the authority to issue a special class of qualified private activity bonds outside of the state volume caps. The maximum aggregate bond authority with respect to any state cannot exceed \$2,000 times the portion of the population of Brazoria, Chambers, Galveston, Jefferson and Orange counties in Texas and Calcasieu and Cameron parishes in Louisiana. The bonds can be issued by States and municipalities, but must be allocated to areas based in the order in which relief is most needed. Bond proceeds can be used to pay for acquisition, construction, and renovation of nonresidential real property, qualified low income residential rental housing, and public utility property (e.g., gas, water, electric and telecommunication lines) located in the Hurricane Ike disaster area. The current low-income housing targeting rules are relaxed so that more bond proceeds can be used to rebuild housing in the Hurricane Ike disaster area. Interest payments on the bonds are not subject to the AMT. The authority to issue the bonds expires after December 31, 2010. In the case of project involving a private business use, either the person using the property suffered a loss in a trade or business attributable to severe storms, tornadoes or flooding or is a person designated by the Governor of the State as a person carrying on a trade or business replacing a trade or business with respect to which another person suffered such loss. In the case of a project relating to public utility property, the project must involve the repair or reconstruction of public utility property damaged by severe storms, tornadoes or flooding. *The total estimated revenue loss of this proposal and the Low Income Housing proposal immediately above is \$638 million over ten years.*

NATIONAL DISASTER RELIEF

The proposal provides tax relief for victims of all Federally-declared disasters occurring after December 31, 2007 and before January 1, 2010. The same limitations with respect to certain property apply to this relief.

Individual Loss Provision. Individual casualty losses are itemized deductions to the extent they exceed \$100 per casualty floor and 10 percent of AGI under section 165(h)(1) and (2). The proposal reforms casualty loss rules to allow more disaster victims to claim individual property losses. Under current law, taxpayers can only claim a loss that exceeds \$100 and 10 percent of the taxpayer's adjusted gross income. This bill would waive the restrictive 10 percent rule, raise the \$100 floor to \$500, and allow non-itemizers to use these losses as a standard deduction. The provision is effective for qualified disasters occurring after December 31, 2007 and before January 1, 2010. *The proposal is estimated to cost \$934 million over ten years.*

Qualified Disaster Expenses. Environment remediation expenditures incurred after December 31, 2007 are capitalized (expired section 198 allowed current expensing). Demolition costs of buildings are capitalized under section 280B. Debris removal and repairs costs are either currently expensed or capitalized depending on a facts and circumstances test under section 263(a). The proposal allows disaster victims to write off and immediately recover demolition, deductible clean up and repair (regardless of whether costs are incurred due to a casualty event), and

environmental remediation expenses. The provision is effective for qualified disasters occurring after December 31, 2007 and before January 1, 2010. *The proposal is estimated to cost \$32 million over ten years.*

Treatment of Net Operating Losses Attributable to Qualified Disaster Casualty Expenses.

Net operating losses may be carried back two years under section 172(b)(1). The proposal extends from two to five years the time period taxpayers can claim casualty losses or qualified disaster expenses. When taxpayers carry losses back to prior years, they receive a refund of the taxes that they paid in the earlier year. This prompt refund can help them reinvest in their businesses or make ends meet in the aftermath of a disaster. The provision is effective for qualified disasters occurring after December 31, 2007 and before January 1, 2010. *The proposal is estimated to cost \$162 million over ten years.*

Mortgage Revenue Bonds. Section 143(d) requires that 95 percent of net proceeds of mortgage revenue bonds are used to finance residences of mortgagors who had no present ownership interest in their principal residences at any time during the 3-year period ending on the date their mortgage is executed. The proposal permits states to issue tax-exempt bonds to finance low-interest loans to taxpayers whose principal residence has been damaged as a result of a disaster. Disaster victims could use these low-interest loans to repair or reconstruct their homes. The provision is effective for qualified disasters occurring after December 31, 2007 and before January 1, 2010. *The proposal is estimated to cost \$45 million over ten years.*

Additional Depreciation. Permits businesses that suffered damage as a result of the Presidentially-declared disasters to claim an additional first-year depreciation deduction equal to 50 percent of the cost of new real and personal property investments made in the Presidentially-declared disaster area. The additional deduction applies to purchased computer software, leasehold improvements, certain commercial and residential real estate expenditures and equipment. All depreciation deductions (including bonus depreciation) would be exempt from the AMT. The proposal applies to property placed in service through December 31, 2011 (December 31, 2012 for real property). *The total estimated revenue loss of this proposal is \$2.3 billion over ten years.*

Expensing Property. The proposal would increase by \$100,000 (or the cost of qualified property, if less) the amount of expensing available for qualifying expenditures made in the disaster area through December 31, 2011. This proposal would also increase by \$600,000 (or the cost of qualified property, if less) the level of investment at which benefits phase-out, thus allowing more businesses to use this tax benefit in rebuilding. The provision is effective for qualified disasters occurring after December 31, 2007 and before January 1, 2010. *The estimated revenue loss of this proposal is \$10 million over ten years.*

REVENUE PROPOSALS

Current Inclusion of Deferred Compensation Paid by Certain Tax Indifferent Parties. The bill would tax individuals on a current basis if such individuals receive deferred compensation from a tax indifferent party. Current law generally allows executives and other employees to defer paying tax on compensation until the compensation is paid. This deferral is made possible by rules that require the corporation paying the deferred compensation to defer the deduction that relates to this compensation until the compensation is paid. Matching the timing of the deduction with the income inclusion ensures that the executive is not able to achieve the tax benefits of deferred compensation at the expense of the Treasury. Instead, the corporation paying the

compensation bears the expense of paying deferred compensation as a result of the deferred deduction. Where an individual is paid deferred compensation by a tax indifferent party (such as an offshore corporation in a low or no-tax jurisdiction), there is no offsetting deduction that can be deferred. As a result, individuals receiving deferred compensation from a tax indifferent party are able to achieve the tax benefits of deferred compensation at the expense of the Treasury. The proposal is effective for services performed after December 31, 2008. *This proposal is estimated to raise \$25.161 billion over ten years.*

The Energy Improvement and Extension Act of 2008

I. RENEWABLE ENERGY INCENTIVES

Extension and Modification of Production Tax Credit. The bill extends the placed in-service date for the Section 45 credit through December 31, 2009 in the case of wind and refined coal, and through December 31, 2010 in the case of other sources. The bill expands the types of facilities qualifying for the credit to new biomass facilities and to those that generate electricity from marine renewables (e.g., waves and tides). The bill updates the definition of an open-loop biomass facility, the definition of a trash combustion facility, and the definition of a non-hydroelectric dam. The bill also increases emissions standards on the refined coal credit and removes its market value test. *The estimated cost of this proposal is \$5.817 billion over 10 years.*

Long-term Extension of Energy Credit. The bill extends the 30% investment tax credit for solar energy property and qualified fuel cell property, as well as the 10% investment tax credit for microturbines, through 2016. The bill increases the \$500 per half kilowatt of capacity cap for qualified fuel cells to \$1,500 per half kilowatt of capacity, and adds small commercial wind as a category of qualified investment. The bill also provides a new 10% investment tax credit for combined heat and power systems and geothermal heat pumps. The bill allows these credits to be used to offset the alternative minimum tax (AMT). *The estimated cost of this proposal is \$1.942 billion over 10 years.*

Long-term Extension and Modification of the Residential Energy-Efficient Property Credit. The bill extends the credit for residential solar property for eight through 2016, and removes the credit cap (currently \$2,000) for solar electric investments. The bill adds residential small wind investment, capped at \$4,000, and geothermal heat pumps, capped at \$2,000, as qualifying property. The bill allows the credit to be used to offset the AMT. *The estimated cost of this proposal is \$1.294 billion over 10 years.*

Sales of Electric Transmission Property. The bill extends the present-law deferral of gain on sales of transmission property by vertically integrated electric utilities to FERC-approved independent transmission companies. Rather than recognizing the full amount of gain in the year of sale, this provision allows gain on such sales to be recognized ratably over an 8-year period. The rule applies to sales before January 1, 2010. *This proposal is estimated to be revenue-neutral over 10 years.*

New Clean Renewable Energy Bonds (“CREBs”). The bill authorizes \$800 million of new clean renewable energy bonds to finance facilities that generate electricity from wind, closed-loop biomass, open-loop biomass, geothermal, small irrigation, qualified hydropower, landfill gas, marine renewable and trash combustion facilities. This \$800 million authorization is subdivided into thirds: 1/3 for qualifying projects of State/local/tribal governments; 1/3 for qualifying projects of public power providers; and 1/3 for qualifying projects of electric cooperatives. The bill also extends the termination date for existing CREBs by one year. *The estimated cost of this proposal is \$267 million over 10 years.*

II. CARBON MITIGATION AND COAL

Carbon Capture and Sequestration (CCS) Demonstration Projects. The bill provides \$1.5 billion in new tax credits for the creation of advanced coal electricity projects (Section 48A) and certain coal gasification projects (Section 48B) that demonstrate the greatest potential for carbon capture and sequestration (CCS) technology. Of these \$1.5 billion of incentives, \$1.25 billion will be awarded to advanced coal electricity projects, and \$250 million will be awarded to coal gasification projects. These tax credits will be awarded by Treasury through an application process, with applicants that demonstrate the greatest CO₂ sequestration percentage receiving the highest priority. Applications will not be considered unless they can demonstrate that either their advanced coal electricity project would capture and sequester at least 65% of the facility’s CO₂ emissions or that their coal gasification project would capture and sequester at least 75% of the facility’s CO₂ emissions. Once these credits are awarded, recipients failing to meet these minimum levels of carbon capture and sequestration would forfeit these tax credits. The bill also clarifies that gasification projects producing transportation grade liquid fuels are eligible under Section 48B. *The estimated cost of this proposal is \$1.424 billion over 10 years.*

Solvency for the Black Lung Disability Trust Fund. The bill would enact the President’s FY 2009 proposal to bring the Black Lung Disability Trust Fund out of debt. Under current law, an excise tax is imposed on coal at a rate of \$1.10 per ton for coal from underground mines and \$0.55 per ton for coal from surface mines (the aggregate tax per ton capped at 4.4% of the amount sold by the producer). Receipts from this tax are deposited in the Black Lung Disability Trust Fund, which is used to pay compensation, medical and survivor benefits to eligible miners and survivors and to cover costs of program administration. The Trust Fund is permitted to borrow from the General Fund any amounts necessary to make authorized expenditures if excise tax receipts do not provide sufficient funding. Reduced rates of excise tax apply after the earlier of December 31, 2013 or the date on which the Black Lung Disability Trust Fund has repaid, with interest, all amounts borrowed from the general fund of the Treasury. The President’s Budget proposes that the current excise tax rate should continue to apply beyond 2013 until all amounts borrowed from the general fund of the Treasury have been repaid with interest. After repayment, the reduced excise tax rates of \$0.50 per ton for coal from underground mines and \$0.25 per ton for coal from surface mines would apply (aggregate tax per ton capped at 2 percent of the amount sold by the producer). The bill also includes the President’s proposal to restructure Black Lung Trust Fund debt. *The proposal is estimated to raise \$1.287 billion over 10 years.*

CO₂ Capture Credit. The bill provides a \$10 credit per ton for the first 75 million metric tons of CO₂ captured and transported from an industrial source for use in enhanced oil recovery and \$20 credit per ton for CO₂ captured and transported from an industrial source for permanent storage in a geologic formation. Qualifying facilities must capture at least 500,000 metric tons of CO₂ per year. The credit applies to CO₂ stored or used in the United States. *The estimated cost of this proposal is \$1.119 billion over ten years.*

Refund of Coal Excise Taxes Unconstitutionally Collected from Exporters. The Courts have determined that the Export Clause of the Constitution prevents the imposition of the coal excise tax on exported coal and, therefore, taxes collected on such exported coal are subject to a claim for refund. The bill creates a new procedure under which certain coal producers and exporters may claim a refund of these excise taxes that were imposed on coal exported from the U.S. Under this procedure, coal producers or exporters that exported coal during the period beginning on or after 1/1/90 and ending on or before the date of enactment of the bill, may obtain a refund from Treasury of excise taxes paid on such exported coal and any interest accrued from date of overpayment. *The estimated cost is \$199 million over 10 years.*

Steel Industry Fuel. The bill adds a credit for coal used in the manufacture of coke, a feedstock used in steel production. The credit amount is \$2 per barrel-equivalent of oil, available for facilities that place in service before January 1, 2010. *The estimated cost of this proposal is \$61 million over 10 years.*

Carbon Audit of the Tax Code. The bill directs Treasury to request that the National Academy of Sciences undertake a comprehensive review of the tax code to identify tax provisions with the largest effect on carbon and other greenhouse gas emissions, and to estimate the magnitude of those effects. *This proposal has no revenue effect.*

III. TRANSPORTATION & DOMESTIC FUEL SECURITY

Plug-in Electric Drive Vehicle Credit. The bill establishes a new credit for plug-in electric drive vehicles. The credit for passenger vehicles and light trucks ranges from \$2500 to \$7500. Taxpayers may claim the full amount of the allowable credit up to the end of the first calendar quarter after the quarter in which the total number of qualified plug-in electric drive vehicles sold in the U.S. exceeds 250,000. The credit is available against the alternative minimum tax (AMT). *The estimated cost of this proposal is \$758 million over 10 years.*

Incentives for Idling Reduction Units and Advanced Insulation for Heavy Trucks. The bill provides an exemption from the heavy vehicle excise tax for the cost of idling reduction units, such as auxiliary power units (APUs), which are designed to eliminate the need for truck engine idling (e.g., to provide heating, air conditioning, or electricity) at vehicle rest stops or other temporary parking locations. The bill also exempts the installation of advanced insulation, which can reduce the need for energy consumption by transportation vehicles carrying refrigerated cargo. Both exemptions are intended to reduce carbon emissions in the transportation sector. *The estimated cost of this proposal is \$95 million over 10 years.*

Bicycle Commuters. The bill allows employers to provide employees who commute to work by bicycle limited fringe benefits to offset the costs of such commuting (e.g., storage). *The estimated cost of this proposal is \$10 million over 10 years.*

Expansion of Allowance for Cellulosic Biofuels Property. Taxpayers are allowed to immediately write off 50% of the cost of facilities that produce cellulosic biofuels ethanol if such facilities are placed in service before January 1, 2013. The bill makes this benefit available for the production of other cellulosic biofuels in addition to cellulosic ethanol. *This proposal is estimated to be revenue neutral over 10 years.*

Extension of Biodiesel Production Tax Credit; Extension and Modification of Renewable Diesel Tax Credit. The bill extends the \$1.00 per gallon production tax credit for biodiesel and the 10¢/gallon credit for small biodiesel producers through 2009. The bill also extends the \$1.00 per gallon production tax credit for diesel fuel created from biomass. The bill eliminates the current-law disparity in credit for biodiesel and agri-biodiesel, and eliminates the requirement that renewable diesel fuel must be produced using a thermal depolymerization process. As a result, the credit will be available for any diesel fuel created from biomass without regard to the process used, so long as the fuel is usable as home heating oil, as a fuel in vehicles, or as aviation jet fuel. Diesel fuel created by co-processing biomass with other feedstocks (e.g., petroleum) will be eligible for the 50¢/gallon tax credit for alternative fuels. Biodiesel imported and sold for export will not be eligible for the credit effective May 15, 2008. *The estimated cost of this proposal is \$451 million over 10 years.*

Extension and Modification of Alternative Fuels Credit. The bill extends the alternative fuel excise tax credit under Section 6426 through December 31, 2009 for all fuels except hydrogen (which maintains its current-law expiration date of September 30, 2014). Beginning 10/1/09, qualified fuel derived from coal through the Fischer-Tropsch process must be produced at a facility that separates and sequesters at least 50% of its CO₂ emissions. This sequestration requirement increases to 75% on 12/31/09. The proposal further provides that biomass gas versions of liquefied petroleum gas and liquefied or compressed natural gas, and aviation fuels qualify for the credit. *The estimated cost of this proposal is \$61 million over 10 years.*

Extension and Expansion of the Alternative Refueling Stations Credit. The bill extends the 30% credit for alternative refueling property, such as natural gas or E85 pumps, through 2010. The bill also adds electric vehicle recharging property to the types of property eligible for the credit. The credit for hydrogen refueling property is unchanged. *The estimated cost of this proposal is \$87 million over 10 years.* Publicly Traded Partnership Income Treatment of Alternative Fuels. The proposal permits publicly traded partnerships to treat income derived from the transportation, or storage of certain alternative fuels, as well as anthropogenic CO₂, as qualifying income for purposes of the publicly traded partnership rules. *The estimated cost of this proposal is \$119 million over 10 years.*

Percentage Depletion for Marginal Wells. The proposal extends for 2009 the suspension on the taxable income limit for purposes of depreciating a marginal oil or gas well. *The estimated cost of this proposal is \$124 million over 10 years.*

Refinery Expensing. The Energy Policy Act of 2005 established a temporary expensing provision for refinery property which increases total capacity by 5% or which processes nonconventional feedstocks at a rate equal or greater to 25% of the total throughput of the refinery. This bill extends both the refinery expensing contract requirement and the placed-in-service requirement for this expensing provision for two years. The bill also qualifies refineries directly processing shale or tar sands for this provision. *The estimated cost of this proposal is \$894 million over 10 years.*

IV. ENERGY CONSERVATION AND EFFICIENCY

Qualified Energy Conservation Bonds. The bill creates a new category of tax credit bonds to finance State and local government initiatives designed to reduce greenhouse emissions. There is a national limitation of \$800 million, allocated to States, municipalities and tribal governments. *The estimated cost of this proposal is \$276 million over 10 years.*

Extension and Modification of Credit for Energy-Efficiency Improvements to Existing Homes. The bill extends the tax credit for energy-efficient existing homes for 2009, and includes energy-efficient biomass fuel stoves as a new class of energy efficient property eligible for a consumer tax credit of \$300. The proposal also clarifies the efficiency standard for water heaters. *The estimated cost of this proposal is \$827 million over 10 years.*

Extension of Energy-Efficient Buildings Deduction. Current law allows taxpayers to deduct the cost of energy-efficient property installed in commercial buildings. The amount deductible is up to \$1.80 per square foot of building floor area for buildings achieving a 50% energy savings target. The energy savings must be accomplished through energy and power cost reductions for the building's heating, cooling, ventilation, hot water, and interior lighting systems. This bill extends the energy efficient commercial buildings deduction for five years, through December 31, 2013.

The estimated cost of this proposal is \$891 million over 10 years.

Extension of Credit for Energy-Efficiency Improvements to New Homes. Under current law, contractors receive a credit for the construction of energy-efficient new homes that achieve a 30% or 50% reduction in heating and cooling energy consumption relative to a comparable dwelling. The credit equals \$1,000 for homes meeting a 30% efficiency standard, \$2,000 for homes meeting a 50% standard. The bill extends the new energy efficient home tax credit through 2009. *The estimated cost of this proposal is \$61 million over 10 years.*

Modification and Extension of Energy-Efficient Appliance Credit. Manufacturers receive a tax credit for the production of energy-efficient dishwashers, clothes washers and refrigerators. Credit is provided only for appliances that are U.S.-produced. The bill increases the credit's standards and amounts, and extends the credit for appliances manufactured through 2010. *The estimated cost of this proposal is \$322 million over 10 years.*

Accelerated Depreciation for Smart Meters and Smart Grid Systems. The bill provides accelerated depreciation for smart electric meters and smart electric grid equipment. Under current law, taxpayers are generally able to recover the cost of this property over a 20-year period. The bill allows taxpayers to recover the cost of this property over a 10-year period, unless the property already qualifies under a shorter recovery schedule. *The estimated cost of this proposal is \$915 million over 10 years.*

Extension and Modification of Qualified Green Building and Sustainable Design Project Bond. The bill extends the authority to issue qualified green building and sustainable design project bonds through the end of 2012. The bill also clarifies the application of the reserve account rules to multiple bond issuances. *The estimated cost of this proposal is \$45 million over 10 years.*

Investments in Recycling. The bill allows taxpayers to claim accelerated depreciation for purchase of equipment used to collect, distribute or recycle a variety of commodities. *The estimated cost of this proposal is \$162 million over 10 years.*

V. REVENUE PROVISIONS

Modification to Section 199. Section 199 provides a deduction – currently 6% - equal to a portion of the taxpayer's qualified production activities income. The Section 199 deduction is scheduled to increase to 9% in 2010. This bill would freeze the Section 199 deduction at 6% for

gross receipts derived from the sale, exchange or other disposition of oil, natural gas, or any primary product thereof. *This proposal is estimated to raise \$4.906 billion over 10 years.*

Basis Reporting by Brokers on Sales of Stock. This provision creates mandatory basis reporting measures to the IRS by brokers for transactions involving publicly traded securities, such as stock, debt, commodities, derivatives and other items as specified by Treasury. *The proposal is estimated to raise \$6.67 billion over 10 years.*

FUTA Surtax. The Federal Unemployment Tax Act ("FUTA") imposes a 6.2 percent gross tax rate on the first \$7,000 paid annually by covered employers to each employee. In 1976, Congress passed a temporary surtax of 0.2 percent of taxable wages to be added to the permanent FUTA tax rate. The temporary surtax subsequently has been extended through 2008. The President's FY 2009 Budget proposes extending the FUTA surtax. The Treasury Department states that "extending the surtax will support the continued solvency of the Federal unemployment trust funds and maintain the ability of the unemployment system to adjust to any economic downturns." The bill would enact the President's proposal for one year (through 2009). *This proposal is estimated to raise \$1.474 billion over 10 years.*

Modification of Section 907. The proposal eliminates the distinction between foreign oil and gas extraction income ("FOGEI") and foreign oil related income ("FORI"). FOGEI relates to upstream production to the point the oil leaves the wellhead. FORI is defined as all downstream processes once the oil leaves the wellhead (i.e. transportation, refining). Currently, FOGEI and FORI have separate foreign tax credit limitations. This proposal combines FOGEI and FORI into one foreign oil basket, and applies the existing FOGEI limitation. *This proposal is estimated to raise \$2.23 billion over ten years.*

Oil Spill Liability Trust Fund. The proposal extends the oil spill tax through December 31, 2017, increases the per barrel tax from 5 cents to 8 cents from 2009 through 2016, and to 9 cents in 2017. The bill also repeals the requirement that the tax be suspended when the unobligated balance exceeds \$2.7 billion. *This proposal is estimated to raise \$1.715 billion over 10 years.*

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