

## **MEMORANDUM**

From: Finance Committee Staff

Date: May 13, 2004

Re: Summary of amendments to the Senate-passed JOBS Act (S.1637)

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### **SA 2645, SA 2646 (3/3/04)**

A package of minor technical edits to the bill.

#### **SA 2646 (3/3/04)**

- Provides a 20-year class life for electric utility grading costs and a 15-year class life for gas utility grading costs.
- Provides that up to \$5,000 of organizational and start-up costs under sections 195, 248, and 709 may be deducted and provides a 15-year amortization period for costs in excess of deductible amounts.
- Limits section 179 expensing to \$25,000 for certain passenger vehicles.
- Provides that all tax-exempt use property subject to a lease have a recovery period of at least 125% of the lease term (including related service contracts).
- Defers deductions on foreign LILOs and SILOs until the taxpayer has income, effective for taxable years after 2004.

### **SA 2647, SA 2651 (3/3/04)**

The amendment would extend the R&E credit, increase the alternative incremental research credit rates, and establish a simplified credit for qualified research expenses. The proposal sunsets on 12/31/05.

#### **SA 2651 (3/3/04)**

The Bingaman amendment would change the treatment of expenses paid to research consortia under the regular credit.

### **SA 2660, SA 2680, SA 2685 (3/4/04)**

Title V amends the Office of Federal Procurement Policy Act to create a general limitation on the ability of executive agencies to contract for any activities or functions currently performed by Federal Government employees or otherwise contract for the provision of goods or services.

Such contracts may not be performed by a contractor or a subcontractor outside the United States unless Federal Government employees previously performed the activity or function outside the United States, or unless it is necessary to meet a requirement of the executive agency that the contract be performed specifically at a location outside the United States.

This general limitation may be waived if the President determines in writing that it is in the national security interests of the United States that the contract be performed outside the United States, or if the head of the executive agency determines and reports to the Director of the Office of Management and Budget that the property or services needed by the executive agency are available only by means of performance of the contract outside the United States and that no property or services available by means of performance of the contract inside the United States would satisfy the executive agency's need.

Title V attaches similar limitations on funds appropriated for financial assistance to a State, but not for the fiscal year of enactment or the fiscal year following the year of enactment.

Title V exempts certain contracts from the foregoing limitations. Specifically, the limitations shall not apply to procurement covered by the World Trade Organization Government Procurement Agreement. In addition, the limitation with respect to Federal contracts shall not apply to any procurement for national security purposes entered into by the Department of Defense or any agency or entity thereof, the Department of the Army, the Department of the Navy, the Department of the Air Force, or any agency or entity of the military departments, the Department of Homeland Security, the Department of Energy or any entity thereof (with respect to the national security programs of that Department), or any element of the intelligence community.

In addition, none of the limitations in Title V shall apply to the extent they may be inconsistent with obligations of the United States under international agreements.

Title V also imposes quarterly and annual reporting requirements on the Director of the Office of Management and Budget and the Comptroller General with respect to the administration of Title V.

**SA 2686, SA 2687, SA 2882 (3/22/04)**

Accelerates the phase-in of the manufacturing deduction percentage by increasing the percentage rate from 1% to 5% in 2004, from 2% to 5% in 2005, from 3% to 5% in 2006, maintaining the percentage at 6% in 2007, increasing the percentage rate from 6% to 7% in 2008, and maintaining the percentage at 9% in 2009 and going forward.

## SA 2687 (3/22/04)

Except as otherwise provided (*e.g.*, certain energy provisions), the following provisions are extended through December 31, 2005.

### Provisions That Expired in 2002 and 2003

- **Combined employment tax reporting demonstration project (STAWRS).** Added in the Taxpayer Relief Act of 1997, STAWRS allows business taxpayers to file one form for purposes of federal and state tax reporting. The amendment makes STARWS available for all states and makes the program permanent.
- **Tax on failure to comply with mental health parity requirements applicable to group health plans.** The Mental Health Parity Act of 1996 requires health plans to provide the same lifetime or annual dollar limits for mental health benefits as for medical services. The Taxpayer Relief Act of 1997 imposes an excise tax of \$100 per day on an employer sponsor whose plan fails to meet the requirements. Maximum penalty cannot exceed 10 percent of the health plan's expenses or \$500,000. The provision reinstates the Code's excise tax from the date of enactment to 2005 and related ERISA and PHSa provisions from 2004 to 2005.
- **Extension and modification of the Work Opportunity Tax Credit (WOTC) and Welfare to Work (WTW).** Present-law provisions for WOTC and WTW are extended through 12/31/04. A modified combined credit, as proposed in S. 1180, is provided beginning on 1/1/2005. Key modifications include: expanding eligibility for the WOTC by raising the age ceiling of food stamp recipients from 25 to 40; re-determining eligibility of qualified ex-felons without regard to family income; and permitting a second-year of employment for individuals who have family members on welfare. (*Note: See additional changes made regarding WOTC permanence below*)
- **Qualified zone academy bonds (QZABs).** QZABs are tax credit bonds issued by states or localities principally for school renovation. The bonds allow the holder to claim a tax credit in lieu of earning interest. The amendment authorizes states to issue up to \$400 million of QZABs in 2004 and 2005.
- **Extension of increased cover over of rum excise tax.** All distilled spirits produced in or imported into the U.S. are subject to a tax at the rate of \$13.50 per proof gallon. The extension ensures that \$13.25 of the \$13.50 collected on rum imported into the U.S. is "covered over" (sent back to) the treasuries of Puerto Rico and the Virgin Islands (only \$10.50 would be required without the extension).

- **Enhanced deduction for corporate contributions of computer equipment for educational purposes.** The amendment extends a provision that encourages businesses to contribute computer equipment and software to elementary, secondary, and post-secondary schools. As provided in the CARE Act of 2003, the amendment clarifies that property “assembled by” or “constructed by” the taxpayer is eligible for an enhanced deduction.
- **Deduction for certain expenses of elementary and secondary school teachers.** Extends the \$250 above-the-line deduction to teachers and other school professionals for expenses paid or incurred for books, supplies (other than non-athletic supplies for courses of instruction in health or physical education), computer equipment (including related software and services), other equipment, and supplementary materials used by the educator in the classroom.
- **Expensing of “Brownfields Environmental Remediation Costs.”** The amendment extends the current provision allowing full deductibility of brownfield remediation expenses in the year incurred.
- **Temporary special rules for taxation of life insurance companies.** Current law requires a mutual life insurance company to reduce its deductions for policyholder dividends by the company’s differential earnings amount. The amendment extends the current suspension of those reduced deductions.
- **Tax incentives for investment in the District of Columbia.** The amendment extends four provisions intended to encourage redevelopment, capital investment, and homeownership in financially distressed areas of D.C.: (1) designation of D.C. enterprise zone; employment tax credit; additional expensing; (2) tax-exempt D.C. empowerment zone bonds; (3) zero-percent capital gains rate for investment in D.C. for property acquired by 12/31/03; for gains through 1/1/06; and (4) tax credit for first-time D.C. homebuyers.
- **Nonrefundable personal credits against regular and minimum tax liability.** Certain credits (including dependent care, elderly and disabled, home mortgages, Hope Scholarship and Lifetime Learning, and DC home-buyer’s credit) are allowed only to the extent that the individual’s regular income tax liability exceeds the individual’s AMT. EGTRRA provided that the adoption credit, child credit, and the EITC are allowed to the full extent of an individual’s regular tax and AMT. The proposal would extend the provision to 12/31/04.

- **Credit for electricity produced from certain renewable resources.** Provides a tax credit for electricity produced from renewable resources, including wind, closed-loop biomass and poultry waste. Extends the placed-in-service date for qualified facilities by one year to include those facilities placed in service prior to January 1, 2005. Note: This is a one-year extension of present law.
- **Taxable income limit on percentage depletion for oil and natural gas produced from marginal properties.** Extends the deduction for the depletion of oil and gas wells which is currently limited to 100% of the net income from the property in any year. Note: This is a one-year extension of present law.
- **Elimination of phaseout of credit for qualified electric vehicles.** A 10-percent nonrefundable tax credit (maximum credit is \$4,000) is available to buyers of qualified electric vehicles. The credit was scheduled to phase out between 2004 and 2006. The amendment eliminates the scheduled phaseout.
- **Elimination of phaseout for deduction for clean-fuel vehicle property.** Certain costs of qualified clean-fuel vehicle property and clean-fuel vehicle refueling property may be expensed when such property is placed in service. The deduction for clean-fuel vehicle property was scheduled to phase out between 2004 and 2006. This amendment eliminates the scheduled phaseout.

#### Provisions That Expire in 2004

- **Extension of New York Liberty Zone tax-exempt bond financing.** New York is authorized to issue up to \$4 billion of tax-exempt private activity bonds to finance construction and rehabilitation of real property in the “New York Liberty Zone” through 2004. The amendment extends the amount of time for issuing bonds through 2005. The amendment also makes two technical clarifications regarding agencies eligible to issue bonds and elections out of the provision.
- **Indian employment tax credit.** A business tax credit is available for an employer of qualified employees that work on an Indian reservation. The credit is insurance costs paid to qualified employees in the current year over the amount paid in 1993, up to a maximum of \$20,000. Wages for which the work opportunity credit is available are not qualified wages and are not eligible for the Indian employment credit.
- **Accelerated depreciation for business property on Indian reservations.** A special depreciation recovery period is available to qualified Indian reservation property placed in service before January 1,

2005. In general, qualified Indian reservation property is property used predominantly in the active conduct of a trade of business within an Indian reservation, which is not used outside the reservation on a regular basis and was not acquired from a related person.

- **Disclosure of return information relating to student loans.** Provides that consent may be granted by the student that allows the student's taxpayer information to be disclosed to government contractors in order to establish an income contingent repayment amount for a student loan. Each year the Department of Education and IRS process about 100,000 such consents. Extending this provision would remove an administrative burden and would benefit certain student loan programs from additional disclosure authority.

### Revenue Offsets

- **Car Donations.** Proposal limits charitable car donation deductions in excess of \$500 to the gross proceeds received by the charitable organization upon subsequent sale of the car. The proposal requires the charity to report to the donor the amount of the sale proceeds within 30 days of the date of sale. The proposal also requires the charity to furnish the following information to the IRS: (i) name and taxpayer identification number of donor, (ii) the vehicle identification number, (iii) certification that the vehicle was sold in an arm's length transaction between independent parties, and (iv) sales price. If the charity retains the vehicle for use, the taxpayer would be eligible to receive a FMV deduction provided that the charity and the donor provide the IRS with certifications regarding the proposed use. Charities are subject to a penalty equal to the greater of the tax benefit to the donor or gross sales receipts from the vehicle for fraudulent declarations to the donor.
- **Continuous Levy Provision.** Under present law, if any person is liable for any federal tax and does not pay it within 10 days of when the tax is assessed and a demand that payment be made, a continuous levy attaches up to 15 percent of any specified payment due the taxpayer. The Administration's proposal would permit a levy of up to 100 percent of a Federal payment to a vendor of goods or services to the government. JCT has scored this at \$185 million over 10 years.
- **Leasing Provisions Effective Date.** The proposal would make the leasing provisions included in S. 1637, as amended by the Grassley-Baucus amendment #2646, effective on November 19, 2003, as announced by Chairman Grassley on November 18, 2003.

- **Addition of vaccines against influenza to list of taxable vaccines (sec. 4132(a)(1).** Adds to list of current 12 vaccines (e.g., rubella, mumps, Hepatitis B, chicken pox) that are manufactured or produced in the U.S., or entered into the U.S. for use, and for the purposes of the vaccine injury compensation trust fund. Effective at beginning of first month at least 4 weeks after enactment through December 31, 2013.
- **Contingent payment convertible debt.** Contingent payment convertible debt instruments (called Co-Co-Puffs in industry parlance) is a financial instrument that manipulates the present tax rules in order to obtain an inflated interest deduction for the holder of the instrument. The provision requires taxpayers to calculate OID with respect to the yield of comparable debt instruments taking into account both the contingency and convertibility.

#### **SA 2882 (3/22/04)**

- **Five-year carryback of net operation losses.** Taxpayers who elect out of bonus depreciation are allowed to carryback any net operating losses for 2003 five years. Taxpayers whose taxable years end in January of 2004 are allowed to make a special election to apply this five-year carryback to either their taxable year ending in January 2003 or their taxable year ending in January 2004, provided they elect out of bonus depreciation for such taxable year. The provision also allows an NOL deduction attributable to NOL carrybacks arising in taxable years ending 2003 (or 2004 in the case of the special election) as well as NOL carryforwards to those taxable years, to offset 100 percent of a taxpayer's alternative minimum taxable income.

#### **SA 3011 (First and Second Manager's Amendments) (4/8/04)**

**Note: Amendments adopted above were incorporated into SA 3011**

- **Airplane Depreciation.** The proposal provides that noncommercial transportation aircraft are eligible for an extended placed in service date for bonus depreciation (until 12/31/05).
- **Naval Shipbuilding.** Under current law, small shipbuilders who enter into contracts to build ships are permitted to use a method of accounting that results in more favorable income tax treatment when reporting their income from these contracts. The proposal will provide comparable tax treatment to naval shipbuilders.
- **New Homestead.** Under current law, there is no special assistance for businesses in counties that are losing population. The proposed amendment would include scaled-back versions of sections 201 and 202 of S. 602. These sections provide a

credit with a present value of 70% of qualified expenditures on newly constructed rural investment buildings, and a 30% tax credit for expenditures on starting or expanding a business, provided that the building or business is in a rural high out-migration county (HOMC). An HOMC is defined as any county that has lost at least 10% of its population over the last 20 years.

- **Brownfield Revitalization.** Under current law, income produced from debt financed property generally produces UBIT to tax-exempt investors. The proposal waives UBIT for tax exempt investors that invest in the clean up and remediation of qualified brownfield sites. The proposal is effective beginning January 1, 2005.
- **Mortgage Revenue Bonds.** Under current law, mortgage revenue bond payments received after the bond has been outstanding for 10 years must be used to pay off the bond, rather than issue new mortgages. The proposal would repeal this “10-year rule” for all bonds issued prospectively. In addition, all bond payments received during the year following date of enactment would be exempt from the 10-year rule.
- **Private Mortgage Insurance.** Under current law, a deduction may be taken for mortgage interest, but not for mortgage insurance. The proposal would provide a deduction for private mortgage insurance payments. The deduction begins to phase-out for taxpayers with AGI above \$100,000. This provision was also included in the Senate passed Jobs and Growth package in 2003.
- **Tax Benefits for Reservist Employees.** Under current law, there is no special tax benefit for an employer who continues to pay an employee who is a reservist or National Guard member when they are called to active duty. The proposal would provide a 50% tax credit to employers for wages paid to reservists and National Guard members who have been called to active duty; maximum \$7,500 per employee credit.
- **IDB's.** Under current law the maximum small issue bond available for qualified projects is \$10,000,000. This was set into law in 1978. The ceiling is subject to a dollar for dollar reduction for other funding used in the project. Section 301 of the bill reported from Committee clarifies that capital expenditures not to exceed \$10,000,000 shall not be taken into account when determining whether or not a project is qualified to take advantage of small issue bonds. This language effectively raises the capital expenditure limit to \$20,000,000. The manager's amendment contains a provision that would modify the term “manufacturing facility” to include the manufacture of tangible personal property, software products, biobased products, and bioenergy production. Under the definition, small issue bonds could also be used for facilities “directly and functionally related to a manufacturing facility.”
- **Liberty Zone Bonds.** Liberty Zone bond extension / Advance refunding – The Job Creation and Worker Assistance Act of 2002 authorized issuance during years



2002, 2003 and 2004 of \$8 billion of tax-exempt private activity bonds to finance the construction and rehabilitation of nonresidential real property and residential rental real property in the Liberty Zone of New York City. That Act also permitted certain bonds for facilities located in New York City to be advance refunded one additional time prior to January 1, 2005. The proposal extends the Liberty Zone private activity bond period through 2009, and it extends the period for additional advance refunding for one year through 2005.

- **QZABs.** Under current law, QZABs can be used to fund reconstruction for school infrastructure. This amendment would broaden the provision to allow QZABs to be used for original construction and land acquisition, not just reconstruction.
- **Tribal Bonds.** The proposal applies the same rules to tribes issuing tax-exempt bonds to finance facilities on Indian reservations that apply to tax-exempt bonds for states and local governments. The proposal sunsets on December 31, 2005.
- **SBIC UBIT.** Under current law, most exempt organizations that invest in debenture SBIC's are subject to UBIT. The proposal amends the definition of UBIT to exclude income produced from investments in debenture SBIC's.
- **Civil Rights Tax Fairness Act.** Under current law, the entire amount of a discrimination award is subject to taxation. The proposal would allow an above-the-line deduction for attorney's fees associated with discrimination suit awards.
- **Section 815.** Under present law, distributions to shareholders from a policyholder's surplus account of a stock life insurance company are subject to tax at the corporate rate. The provision suspends the application of the rules imposing income tax on distributions to shareholders from the policyholder's surplus account of a life insurance company for taxable years beginning in 2004 or 2005.
- **Tax Reform Commission.** Under current law, there is no tax reform commission. The issue of tax law complexity is an ongoing concern for both taxpayers and tax professionals. The proposal will establish a bipartisan 15 member Commission to develop recommendations on how to comprehensively reform the Federal tax system in a manner that generates appropriate revenue for the Federal Government.
- **Dividend Allocation Rule.** Treasury regulations provide that net earnings of a cooperative are reduced by dividends paid on capital stock or other proprietary capital interests. The effect of this rule is to reduce the amount of earnings that the cooperative can treat as patronage earnings, which further reduces the amount that the cooperative can deduct as patronage dividends. The provision would allow cooperatives to pay dividends on capital stock without those dividends reducing excludable patronage income to the extent that the cooperative

organization's documents direct that dividends do not reduce amount owed to patrons.

- **Livestock Involuntary Conversion.** Under current law, cattlemen receive tax-free treatment under section 1033 if they replace livestock with other farm property where there has been drought, flood, or other weather-related conditions within two years from the date the livestock has been sold. There are situations where cattlemen have sold livestock as a result of weather-related conditions, but have been unable to purchase replacement property because the weather-related conditions have continued. The proposal will extend the period for a taxpayer to replace livestock sold on account of drought, flood, or other weather-related conditions from two years to four years.
- **National Health Service Corps.** Under current law, payments under the National Health Service Corps loan repayment program are taxable as income for the recipient. The proposal would exempt these payments from tax.
- **Rural Letter Carriers.** Under current law, the deduction allowed to rural letter carriers for vehicle use is limited to the amount of qualified reimbursement for the use of a vehicle. The proposal would allow an itemized deduction for unreimbursed vehicle use expenses incurred in performance of duties.
- **Bonus Depreciation for Railcars.** Under current law, bonus depreciation is available only to the initial user of eligible property. The purchaser of an interest in a pool of leases is treated as the initial user of the underlying property provided that (1) the property was sold in a sale-leaseback within 3 months of the date the property was originally placed in service and (2) the interest in the pool of leases were sold within 3 months of the sale-leaseback. This provision liberalizes the rules for pooled leasing interests where multiple units of property are subject to the same lease by providing that the sale of the pooled leasing interests must take place within 3 months of the sale-leaseback of the final unit (provided the period of time between the sale-leaseback of the first unit and the final unit does not exceed one year).
- **Tribal New Markets Tax Credit.** Currently, New Market Tax Credits (NMTC) are available to Community Development Entities (CDEs) that serve census tracts with poverty rates over 20% or median incomes under 80% of the statewide average. The credits are distributed by Treasury through a competitive application process. This amendment would add \$50 million annually in NMTCs dedicated to CDEs serving Native American reservations with poverty rates over 40%.
- **Increase Historic Rehabilitation Credit for Certain Low-Income Housing for the Elderly.** This proposal expands the rehabilitation percentage from 20 to 25% when historic structures are rehabilitated to provide qualified low-income housing

to seniors over 65. It also allows certain property transitioned in the Tax Reform Act of 1986 and related property to qualify for the low-income housing credit.

- **Oldsmobile Involuntary Conversions.** Under current law, motor vehicle dealers are subject to income tax if they receive termination payments from an automobile manufacturer when the manufacturer eliminates a brand of vehicle they carry. The proposal will provide tax-free treatment to motor vehicle dealers for termination payments they receive from an automobile manufacturer when the manufacturer eliminates a brand of vehicle they carry if the motor vehicle dealer reinvests the proceeds in property used in a motor vehicle dealership within 2 years after the date on which the dealer transfers the vehicles in exchange for the termination payment.
- **Modify FSC/ETI Base Year.** The JOBS Act repeals FSC/ETI upon the date of enactment but provides three years of transition relief to beneficiaries of FSC/ETI. The amount of the transition relief a taxpayer can receive is based on that taxpayer's FSC/ETI benefit in the taxable year beginning in 2002. Taxpayers are allowed 80% of that 2002 base year amount in 2004 and 2005, and 60% of that amount in 2006. This provision replaces the 2002 base year with a three-year average. Thus, a taxpayer's transition relief will now be based on the average FSC/ETI benefits received by the taxpayer in its taxable years beginning in 2000, 2001, and 2002. The three-year 80/80/60 phase-out and the years of the phase-out are unchanged.
- **Renewal Communities.** Under current law, the boundaries for Renewal Communities are based on 1990 census data. The proposal would allow RCs to use 2000 census data to define boundaries.
- **Definition of Manufacturer Modifications.** Companies are eligible for the manufacturing deduction in the JOBS Act based on their total manufacturing income. This provision allows the manufacturing deduction with respect to film and video production income to be calculated on a "product line-by-product line" basis. Thus a separate deduction is calculated with respect to this type of income in each of the following three categories: (1) theatrical releases, (2) television, and (3) home video. The deduction for other manufacturing income would be calculated without respect to the gross income and expenses in these three categories.
- **Rail Infrastructure Tax Credits.** The provision has two components: (1) it provides \$500 million over 3 years in Federal tax credits (50%) to states to allocate for intercity passenger rail capital projects. Credits are apportioned to states by a formula to fund projects that provide public benefits and are on a state rail plan. Eligible intercity passenger rail projects include planning, track rehabilitation, upgrade, development and relocation, security and safety projects, passenger equipment acquisition, station improvement and intermodal facilities

development, and environmental review and impact mitigation. Voluntary “arm’s length” agreements between states and railroads for eligible projects are required before tax credits can be used to improve a property. States may transfer credits to entities with federal tax liability to fund eligible projects; and (2) the proposal provides \$500 million in federal tax credits (50%) directly to shortline and regional railroads for qualified railroad rehabilitation costs. Helps to preserve rural, local and regional freight rail service across America. Finally, the proposal makes \$100 million in tax credits available to New York to be used on rail infrastructure projects in the New York Liberty Zone. All three provisions are effective from January 1, 2005 to December 31, 2007.

- **Corporate AMT Relief in Lieu of Bonus and Liberalization of the Use of General Business Credits.** Under present law, if a corporation is subject to the AMT in any year, the amount of tax exceeding the corporation’s regular tax liability is allowed as a credit in any subsequent taxable year to the extent the corporation’s regular tax liability exceeds its tentative minimum tax. Taxpayers are also allowed to claim certain general business credits to the extent the corporation’s regular tax liability exceeds its tentative minimum tax (the use of general business credits is also subject to a further limitation not relevant to this proposal). Unused general business credits can be carried back one year and forward 20 years. The proposal would allow a corporate taxpayer: (1) to elect to claim a certain amount of accumulated AMT credits it could not otherwise use in lieu of claiming bonus depreciation, and (2) to use a certain amount of general business credits generated in a taxable year beginning in 2004 to offset income tax liability without regard to the tentative minimum tax limitation.
- **Accumulated Earnings Tax.** Under current law, corporations, particularly closely-held corporations, are not permitted to accumulate cash or cash equivalents in excess of their business needs in order to avoid distributing dividends. This provision creates a temporary safeharbor by clarifying that business needs includes cost of goods, taxes, interest, and operating expenses incurred in the preceding year.
- **Broadband Modification.** The proposal makes two modifications to the broadband expensing proposal in the JOBS bill: (1) the proposal allows exempt entities to take expensing deductions against UBIT; and (2) the proposal moves the date of enactment from December 31, 2003 to date of enactment.
- **Conservation Bonds.** The provision creates a new category of tax-exempt bonds, the “qualified forest conservation bond,” that permits certain nonprofit organizations to use tax-exempt bond financing to acquire forest and forest land. The maximum aggregate face amount of bonds that may be issued under the pilot program is \$1.5 billion. The bond must be issued for a qualified organization before December 31, 2006.

- **Equestrian Trade or Business Property.** Under current law, horses used in a trade or business qualify as section 1231 property and receive favorable capital gains treatment when they are sold if the horses are held for 24 months from the date of their acquisition. The amendment will reduce the holding period to 12 months from the date of acquisition and will apply to taxable years beginning after December 31, 2004.
- **Corporate Inversions Notification.** The provision would require U.S. corporations to provide a separate document to shareholders 5 days before any shareholder vote on a corporate inversion (i.e., a transaction governed by section 441 of the JOBS Act). This document would disclose: (1) the number of employees that would be located in the foreign jurisdiction of re-incorporation, (2) how the rights of shareholders would be impacted, and (3) that shareholders would be subject to tax on their shares upon the inversion.
- **Depreciation of Certain Track Facilities.** Track facilities would like to be treated similarly to theme and amusement park facilities for purposes of categorical asset depreciation. The proposal will provide that these facilities can be depreciated over 7-years on a prospective basis only.
- **Freeze of Provision Regarding Suspension of Interest.** Under current law, if the Secretary fails to notify a taxpayer of an understatement on a timely-filed tax return within a specified period of time, interest on the understatement is suspended until notice is given. For taxable years beginning before 2004, the specified period is 18 months from the earlier of the date of filing and the due date. This period is scheduled to be reduced to 12 months for taxable years beginning in 2004. The provision eliminates the 12-month rule and makes the 18-month rule permanent.
- **Grant Treasury Authority to Address Certain Foreign Tax Credit Transactions.** This provision gives regulatory authority for the Treasury Department to address certain transactions that involve the inappropriate separation of foreign taxes from the related foreign income. The provision is designed to address certain foreign tax credit structures that allow taxpayers to manipulate the foreign tax credit rules in a manner inconsistent with the provision of relief from double taxation. It was included in the President's 2005 budget proposal.
- **First Responders.** Under current law, there is no additional tax benefit for employers who continue to pay reservists called to active duty. The proposal would allow employers to take a 50% tax credit against their FICA taxes for wages paid to first responders who are called up to duty.
- **Water conservation tax credit.** Under current law, farmers and ranchers can deduct water conservation equipment as an ordinary business expense. The

proposal would allow farmers and ranchers to take a 30% credit for the installation of irrigation equipment which reduces water use by five percent compared to the original equipment. The credit would be limited to land that has received drought assistance during the past three years. The credit is limited to \$500 per acre, and is effective for 2005 and 2006.

- **New Markets Tax Credits Targeting:** New Markets Tax Credits (NMTC) are awarded through a competitive application process to Community Development Entities (CDEs) that do economic development activities in low-income areas. The CDEs then sell the credits to investors to raise capital for their program activities. Under current law, a CDE is qualified to apply for NMTC if it primarily serves a census tract with poverty rate of 20%, or serves a census tract with median income below 80% of the statewide average. This provision would make eligible applications from CDEs that target a defined high-poverty population that is not in a census tract that meets these requirements. This provision does not change the cap on the total amount of NMTCs available.
- **New Markets Tax Credits for High Out-Migration Counties:** New Markets Tax Credits (NMTC) are awarded through a competitive application process to Community Development Entities (CDEs) that do economic development activities in low-income areas. The CDEs then sell the credits to investors to raise capital for their program activities. Under current law, a CDE is qualified to apply for NMTC if it primarily serves a census tract with poverty rate of 20%, or serves a census tract with median income below 80% of the statewide average. This provision would make eligible applications from CDEs that target census tracts in rural counties that have lost over 10 percent of their population in the last 20 years, and that have median income below 85% of the statewide average, rather than 80%. This provision does not change the cap on the total amount of NMTCs available.
- **Section 501(c)(15).** The proposal modifies the 501(c)(15) provision in the bill to establish a special rule for small mutual insurance companies. For a mutual insurance company with fewer than \$150,000 in gross receipts, premiums must make up at least 35% of gross receipts instead of 50% required under the proposal in the bill.
- **Tribal School Bonds.** Under current law, there is no class of bonds designated for the purpose of encouraging school construction on Indian reservations. The proposal creates a new class of bonds- “Qualified Tribal Modernization Bonds”- that produce tax credits to the holders in an amount equal to the applicable credit rate multiplied by the outstanding face amount of the bond. In order for the bond to qualify as a Qualified Tribal Modernization Bond, 95% of the net proceeds must be used for the construction, rehabilitation, or repair of a tribal school facility funded by the Bureau of Indian Affairs.
- **Rail Infrastructure Tax Credits.** The proposal decreases the amount of 50%

federal tax credits available to New York to be used on rail infrastructure projects in the New York Liberty Zone between January 1, 2005 and December 31, 2007 from \$300 million to \$200 million.

- **Permanence of the Work Opportunity Tax Credit (WOTC) and Welfare-to-Work (WTW).** The proposal would make permanent a modified combined credit, as proposed in S. 1180.
- **Permanent Special Rules for Tax of Life Insurance Companies.** Permanent repeal of rules requiring reduction of deductions for mutual life insurance companies. The proposal repeals the present-law provision requiring a mutual life insurance company to reduce its deductions by the differential earnings amount (sec. 809).
- **CIAC.** The amendment would clarify that water and sewerage service laterals were intended to be included in earlier legislation passed by Congress that restored the historical exclusion of contributions in aid of construction (CIAC) from gross income. Specifically, the bill clarifies current law by specifically stating that “customer service fees” are CIAC. It maintains the position that service charges for stopping and starting service are not CIAC (and therefore are included in gross income). The effective date for the amendment would be for contributions made after the date of enactment.
- **Civil Rights Tax Fairness.** The provision clarifies that the change in tax treatment applies to federal employment cases in addition to state cases.
- **Whistleblowers.** The proposal provides greater certainty and independent review for whistleblowers who are seeking a cash award for providing assistance to the IRS. In addition, the proposal creates a Whistleblower Office at the IRS that will be dedicated to working with whistleblowers providing valuable information about tax violations.
- **Railroad REIT.** This measure allows a state-owned and operated railroad that is held inside a real estate investment trust (REIT) to be converted into a state owned tax-exempt corporation, with the conversion being treated as a tax-free reorganization.
- **Built-In Loss Modification.** Sec. 431 of the bill limits the transfer and importation of built in losses. This provision modifies that section’s effective date to apply to transactions after December 31, 2003.
- **Subpart F Exception for Active Aircraft and Vessel Leasing.** The proposal moves the effective date for this provision up one year. Thus, the exception for active aircraft and vessel leasing would be effective for taxable years beginning after December 31, 2005.

- **Postponement of Treasury Regulation 1.883-1.** On August 26, 2003, the Internal Revenue Service issued final regulations under section 883 of the Internal Revenue Code to provide an exemption for United States source income earned by qualified foreign corporations from the international operation of ships and aircraft. The exemption is allowed only if that corporation's country of incorporation grants a similar exemption for U.S. owned ships and aircraft. Treasury Regulation 1.883-1 through 1.883-5 identifies items of income that constitute income from the international operation of a ship or aircraft and other income incidental to such operations. The regulations also establish new standards for reporting and documentation. These regulations became effective in August and are applicable to taxable years beginning on or after September 25, 2003. The proposal delays the effective date for Treasury Regulation 1.883-1 through 1.883-5 for taxable years beginning after September 24, 2004.

**Energy tax Package**

- **Section 45 Credits for Renewable Electricity Production.** The amendment mirrors the section 45 provision in the Finance Committee bill from 2003. It varies from the conference report to H.R. 6 in several respects: (1) no inflation adjustment; (2) no credit for electricity produced from landfill gas; and (3) credit rates and durations were scaled back for several fuel types in the conference report. It does include AMT relief for section 45. Certain tax-exempt organizations (e.g., municipal power authorities, electric cooperatives, and the Tennessee Valley Authority) would be eligible to obtain certifications for these credits and sell, trade, or assign them, or use them to offset certain debt payments.

<b>Resource</b>	<b>Placed in service window</b>	<b>Amount of credit</b>	<b>Duration of credit (years of production)</b>
Wind	Before Jan. 1, 2007	1.8 cents/kWh	10 years
Biomass (other than agricultural waste)	Jan. 1, 2005 through December 31, 2006 (Prior to Jan. 1, 2005 for open-loop and closed-loop co-fire)	1.8 cents/kWh (1.2 cent for open-loop biomass facilities placed in service prior to DOE*)	10 years (5 years for biomass facilities placed in service prior to DOE)
Agricultural waste nutrients	Jan. 1, 2005 through December 31, 2006	1.8 cents/kWh	10 years
Geothermal	Jan. 1, 2005 through December 31, 2006	1.8 cents/kWh	10 years



Solar	Jan. 1, 2005 through December 31, 2006	1.8 cents/kWh	10 years
Municipal biosolids and recycled sludge	Jan. 1, 2005 through December 31, 2006	1.8 cents/kWh	10 years
Municipal solid waste	Jan. 1, 2005 through December 31, 2006	1.8 cents/kWh	5 years
Small irrigation hydro	Jan. 1, 2005 through December 31, 2006	1.8 cents/kWh	10 years

\* Date of enactment

- **Alternative Motor Vehicles and Fuel Incentives**

The alternative vehicles and fuels provisions are similar to the Finance Committee package. The package includes several provisions that were dropped in conference, including the new tax credits for electric vehicles, the retail credit for alternative fuels, and the credit for investments in alternative fuel equipment.

- **Vehicles Credits.** The amendment provides tax credits for the purchase of three different types of advanced technology vehicles: hybrid motor vehicles, alternative fuel motor vehicles, and fuel cell motor vehicles, and it modifies the current-law credit for electric motor vehicles. In general, the credit amount is determined by calculation of a base credit for attainment of a particular technology and an additional credit if the vehicle attains certain improvements in fuel economy. In addition, all vehicles would need to meet minimum emissions standards to qualify.
- **Hybrid vehicles.** Hybrid vehicles run partially on a rechargeable energy storage system (current hybrids use electricity) and partially on an internal combustion engine (gasoline or diesel). The base credit for purchase of a light duty or passenger hybrid vehicle ranges from \$100 to \$400, depending on the amount of power the vehicle derives from the rechargeable energy source. The credit would be increased by an amount between \$500 and \$3,000 if the vehicle meets certain fuel economy increases. For passenger and light duty vehicles, the credit would be determined as follows:

**Passenger and Light Duty Hybrid Motor Vehicles**

<b>Base Credit</b>		<b>Additional Credit</b>	
<b>Credit Amount</b>	<b>Based on % of Power from Rechargeable Energy Source</b>	<b>Credit Amount</b>	<b>Based on % Fuel Economy Increase over 2002 City Economy</b>

\$250	More than 4% but less than 10%	\$500	More than 125% but less than 150%
\$500	More than 10% but less than 20%	\$1,000	More than 150% but less than 175%
\$750	More than 20% but less than 30%	\$1,500	More than 175% but less than 200%
\$1000	More than 30%	\$2,000	More than 200% but less than 225%
		\$2,500	More than 225% but less than 250%
		\$3,000	More than 250%

For medium- and heavy-duty trucks and buses, the amounts of the base credit and the additional credit are increased depending on the weight class of the vehicle. They are calculated in a similar manner. For each class of vehicle, the base and additional credit amounts are shown here:

#### Heavy Duty Hybrid Motor Vehicle Credits by Weight Class

Weight Class (lbs)	Base Credit		Additional Credit	
	Credit Amounts	Based on % of Power from Rechargeable Energy Source (range)	Credit Amounts	Based on Model Year in which Vehicle Achieves 2007 Emissions Standards
10,000 to 14,000 (city step-up van or minibus)	\$1,000	> 20% but < 30%	\$1,500	2006 2005 2004
	\$1,750	> 30% but < 40%	\$2,000	
	\$2,000	> 40% but < 50%	\$2,500	
	\$2,250	> 50% but < 60%		
	\$2,500	> 60%		
14,000 to 26,000 (school bus)	\$4,000	> 20% but < 30%	\$4,000	2006 2005 2004
	\$4,500	> 30% but < 40%	\$5,250	
	\$5,000	> 40% but < 50%	\$6,500	
	\$5,500	> 50% but < 60%		
	\$6,000	> 60%		
More than 26,000 (dump truck, city bus, large semi)	\$6,000	> 20% but < 30%	\$6,000	2006 2005 2004
	\$7,000	> 30% but < 40%	\$8,000	
	\$8,000	> 40% but < 50%	\$10,000	
	\$9,000	> 50% but < 60%		
	\$10,000	> 60%		

- **Dedicated alternative fuel vehicles.** Alternative fuel vehicles that run exclusively on natural gas, liquified natural gas, ethanol, methanol, and

liquified propane gas would qualify for a base credit of 40% of the incremental cost of the vehicle over the vehicle cost when fitted as a petroleum fuel vehicle. The additional credit equals 30% of the incremental cost of the vehicle but is only available if the vehicle meets the most stringent emissions standard classification (other than the zero emissions vehicle classification) under the Clean Air Act. The amount of the maximum incremental costs and maximum credit amounts for the alternative fuel vehicles are shown here:

**Maximum Credits for Dedicated Alternative Fuel Vehicles by Weight Class**

<b>Vehicle Weight Class (lbs)</b>	<b>Maximum Incremental Cost</b>	<b>Maximum Base Credit</b>	<b>Maximum Additional Credit</b>
Less than 8,500	\$5,000	\$2,000	\$1,500
More than 8,500 but less than 14,000	\$10,000	\$4,000	\$3,000
More than 14,000 but less than 26,000	\$25,000	\$10,000	\$7,500
More than 26,000	\$40,000	\$16,000	\$12,000

- **Fuel cell vehicles.** Fuel cell vehicles use hydrogen fuel to generate electricity. They are zero emissions vehicles and the only byproduct of the chemical electrical production process is water. It is anticipated that fuel cell vehicles will come to market later in the budget window. The proposal provides a base credit for fuel cell vehicles of \$4,000 for each qualified light duty vehicle (larger base credits ranging from \$10,000 to \$40,000 are available for purchase of large trucks and buses). The additional credit for passenger and light duty fuel cell vehicles equals between \$1,000 and \$4,000 if the vehicle meets certain fuel economy increases (of between 150% and 300+% of 2000 average). No additional credit is available for large trucks and buses.
- **Battery Electric Vehicles.** Battery electric vehicles “plug in” rather than recharge on their own like hybrid vehicles. The provision would modify the current-law credit by extending from 2004 through 2006 and making it a \$3,500 base credit. The credit allowable for low-speed electric vehicles equal to the lesser of 10% of the purchase price or \$1,500. The provision also allows an additional credit if the vehicle is capable of driving over 100 miles on a single charge of the vehicle’s rechargeable energy storage system.

- **Alternative Fuel and Infrastructure Incentives.** The package includes incentives for alternative fuels and alternative fuel refueling infrastructure.
  - **Infrastructure.** The provision allows an installation credit for alternative fuel property, not to exceed \$1,000 for residential property and \$30,000 for retail.
  - **Alternative fuel incentives.** “Alternative fuel” means compressed natural gas, liquefied natural gas, liquefied petroleum gas, hydrogen, and any liquid at least 85 percent of the volume of which consists of methanol or ethanol. The provision provides retailers with a credit per gallon of alternative fuel sold by the retailer in 2005 or 2006. The credit amount is 50 cents.
  - **Small ethanol producer credit.** The provision clarifies that the small producers tax credit flows through to members of a cooperative. It also changes the definition of a small producer from a producer whose capacity is 30 million gallons to a producer whose capacity is 60 million gallons. It also allows the small producer credit to be claimed against the AMT.
  
- **Conservation and Energy Efficiency.** The efficiency provisions in the bill track what was in the Senate Finance Committee bill, which is generally broader than what was in the conference report. The package includes (as did the Finance package) the credit for energy-efficient heating and cooling equipment, the credit for microturbines, and the deduction for water submeters, which were all dropped in conference. It also includes the full deduction for commercial buildings, the full credit for residential 30% credit for wind and fuel cells, and the full credit for appliances, which were carved back in the conference report. The one provision that is smaller in this bill is the credit for existing energy efficient homes, which was expanded during conference negotiations.

**Conservation and Efficiency Provisions**

<b>Provision</b>	<b>Amount of Credit/Deduction</b>	<b>Placed in Service Window</b>
Energy Efficient New Homes	Credit equal to amount of energy-efficient improvements installed, up to a maximum of \$1,000 for homes that achieve 30% energy savings and \$2000 for homes that achieve 50% savings	1/1/05 - 12/31/05 (\$1,000) and 12/31/07 (\$2,000)
Energy Efficient Existing Homes	10% credit, capped at \$300	1/1/05 - 12/31/06

Energy Efficient Water Heaters and Heat Pumps	Credits for (electric heat pump and natural gas water heaters), geothermal and electric heat pumps, natural gas furnaces	1/1/05 - 12/31/07
Energy Efficient Commercial Buildings	Deduction for energy-efficient property expenditures, capped at \$2.25 per square foot of the building	1/1/05 - 12/31/09
Residential Solar, Wind, and Fuel Cell Property	Solar - 15% credit, capped at \$2,000 Wind - 30% credit, capped at \$2,000 Fuel cell - 30% credit, capped at \$1,000 per kw of capacity.	1/1/05 - 12/31/07
Business Fuel Cells and microturbines	30% credit, capped at \$500 per 0.5 kw capacity for fuel cells; 10% credit, capped at \$200 per kw for microturbines	1/1/05 - 12/31/07
“Smart Meters” and Water Submeters	3 year recovery period	1/1/05 -12/31/07
Combined Heat and Power (CHP)	10% credit on facilities no larger than 15 MW	1/1/05 - 12/31/07
Energy Efficient Appliances	Washers & refrigerators - \$50, \$100 or \$150 credit, depending on efficiency standard reached	1/1/05 - 12/31/07

- **Clean Coal Incentives.** The amendment mirrors the Finance Committee tax package. The package includes the production and investment tax credits for clean coal facilities and advanced clean coal facilities. It does not include the shorter amortization period for pollution control equipment, which was added after the clean coal incentives were scaled back in conference.

The clean coal tax incentives include three tax credits available to taxpayers receiving a certificate from the Secretary of the Treasury. The credits apply to electricity generating facilities totaling no more than 7,500 MW of generating capacity nationwide.

- **Clean coal production tax credit.** The first incentive is a production credit for electricity generated from facilities retrofitted, repowered or replaced with clean coal technology (currently available technology) within 10 years of the date of enactment. The credit is available for 10 years to facilities with a capacity of 300 MW or less. Total capacity of qualifying units is limited to 4,000 MW. Qualifying facilities must

improve efficiency by 5% and achieve specific emission requirements. The qualifying design heat rate is adjusted for the heat content of the coal.

- **Advanced clean coal investment tax credit.** The second incentive is a 10% investment tax credit for advanced clean coal technology. Qualifying facilities must meet certain capacity standards, thermal efficiency standards, and emissions standards. To qualify for the investment tax credit, the same facilities must also qualify for the production tax credit for advanced clean coal technology (described below).
  
- **Advanced clean coal production tax credit.** The third incentive is a production tax credit for electricity generated from advanced clean coal technology units. The credit amount varies depending upon the year the facility was placed in service, whether the facility produces solely electricity or electricity and fuels or chemicals, and the rated thermal efficiency of the facility. The credit would be claimed for a 10-year period commencing with the date the facility is placed in service and would be reduced for the second 5 years of eligible production. The investment tax credit and production tax credit for advanced clean coal technologies are capped together at 4,000 MW nationwide. As noted, a facility must qualify for both credits to receive either credit.
  
- Certain tax-exempt organizations (e.g., municipal power authorities, electric cooperatives, and the Tennessee Valley Authority) would be eligible to obtain certifications for these credits and sell, trade, or assign them, or use them to offset certain debt payments.

**Clean Coal Incentives**

<b>Technology</b>	<b>Type of credit</b>	<b>Amount of credit</b>	<b>Placed in service window</b>	<b>Duration of credit</b>
Clean coal technology	Production credit	0.34 cents/kWh	Within 10 years of 1/1/05	10 years
Advanced clean coal technology	Investment credit	10% of investment	1/1/05 through Dec. 31, 2016 (Dec. 31, 2012 for certain technologies)	N/A
Advanced clean coal technology	Production credit	0.1 cents to 1.4 cents/kWh*	Same as investment credit	10 years

\* The amount of the credit varies depending upon the year the unit is placed in service (or

repowered), whether the unit produces solely electricity or electricity and fuels, and the efficiency of the unit.

- **Oil & Gas Provisions.** The oil and gas provisions are substantially similar to the Finance Committee bill from 2003 and to the conference report to H.R. 6. The major differences from the conference report are as follows: (1) no AMT relief for intangible drilling costs; (2) more limited section 29 credits for existing facilities; (3) no AMT relief for gas gathering lines and distribution lines; (4) no suspension of the 65% of taxable income limitation for purposes of percentage depletion; and (5) includes Alaska natural gas production tax credit.
  - **Tax credit for oil and gas production from marginal wells.** This is a \$3 per barrel credit for the production of oil and \$0.50 per 1,000 cubic feet of natural gas. The credit is only available if the price of oil is below \$18 (\$2 for natural gas). A “qualified marginal well” must satisfy several requirements relating to the amount of production and effluent.
  - **Natural gas gathering lines treated as seven-year property.** The provision establishes a 7-year recovery period and a class life of 14 years for gathering lines.
  - **Natural gas distribution lines treated as fifteen-year property.** The provision establishes a 15-year recovery period and a class life of 35 years for distribution lines.
  - **Expensing of capital costs incurred and credit for production in complying with EPA sulfur regulations.** These provisions permit small business refiners to claim an immediate deduction (i.e., expensing) for up to 75 percent of the costs paid to comply with the EPA sulfur regulations. In addition, a small business refiner may claim a credit equal to 5 cents per gallon. The total production credit is limited to 25 percent of the capital costs incurred to come into compliance with the EPA requirements. A small business refiner employs not more than 1,500 employees directly in refining and has average daily refinery runs less than 205,000 barrels. The allowable deduction and production credit are both phased out on a pro rata basis from 155,000 barrels. In addition, the production credit may be passed through to members of a cooperative. The provision is effective for expenses paid after December 31, 2002 and before January 1, 2006.
  - **Determination of small refiner exception to oil depletion deduction.** The provision modifies the definition of small refiners for purposes of determining whether they are eligible for percentage depletion to be refiners with an *average* daily run less than 60,000 barrels (under current

law small refiners are limited to those with daily maximum runs less than 50,000 barrels).

- **Percentage depletion.** The provision extends through 2006 a suspension of the 100% of net income limit on percentage depletion deduction with respect to marginal production. Under current law, the amount deducted generally may not exceed 100% of the net income from that property in any year. The 100% net-income limitation for marginal wells was suspended for 1998 through 2003.
- **Delay rental payments.** This provision allows taxpayers to amortize over 2 years “delay rental payments” (payments made by oil and gas producers under production contracts with mineral owners when the producer delays mineral production, thus delaying payments of royalties under the contract).
- **Geological and geophysical expenditures (G&G costs).** G&G costs are incurred for the purpose of obtaining data when exploring for minerals. The provision allows taxpayers to amortize over 2 years G&G costs incurred in connection with oil and gas exploration in the U.S.
- **Section 29.** The amendment provides a three-year placed in service window for new wells, at a credit of \$3 per barrel (or Btu equivalent) for production from all section 29 sources except synthetic fuels from coal (synthetic fuels from coal must meet new requirements). The credit is not adjusted for inflation. All production is subject to a 200,000 cubic feet daily average cap. The provision also adds viscous oil, refined coal, coalmine gas, and agricultural waste as new nonconventional sources. For coalmine methane, the gas may be captured from an existing mine, but the methane capture has to be new. The provision also allows taxpayers to claim a tax credit on qualifying liquid, gaseous, or solid synthetic fuels produced from coal (including lignite) for facilities placed in service after December 31, 2004 and before January 1, 2007. A qualifying fuel must emit 20% less NOX and either SO2 or mercury than the feedstock, and it must sell at a price that is 50% higher than the feedstock. The credit is available for 5 years of production. Fuel produced from high carbon fly ash is included as a qualifying fuel derived from coal. The proposal also extends the time period for which the credit may be claimed for certain fuels. Facilities placed in service after December 31, 1979 and before January 1, 1993, which produce coke, coke gas, or natural gas and byproducts produced by coal gasification from lignite, are eligible for the credit on qualified fuels produced and sold before January 1, 2006, and the 200,000 cubic feet limit does not apply to this production. Section 29 is



also added to the list of general business credits, allowing the credit to be carried forward.

- **Alaska natural gas.** The amendment provides a credit for production of Alaska natural gas. The proposal provides a credit per million Btu of natural gas for Alaska natural gas entering a pipeline during the 15-year period beginning the later of January 1, 2010, or the initial date for the interstate transportation of Alaska natural gas. Taxpayers may claim the credit against both the regular and minimum tax. The maximum credit amount for any month is 52-cents (indexed for inflation) per million Btu of natural gas. The credit phases out as the price at the wellhead rises above 83-cents per million Btu. The credit is not available if the price at the wellhead rises above \$1.35 (indexed for inflation) per million Btu. The bill treats certain Alaska pipeline property as seven-year property, establishing a 7-year recovery period and a class life of 22 years for gathering lines. The bill also adds an investment tax credit for a gas treatment facility in Alaska.
- **Safe harbor for natural gas prepayments.** The provision creates a safe harbor exception to the general rule that tax-exempt bond-financed prepayments violate the arbitrage restrictions. Certain prepayments for natural gas are exempt from arbitrage rules and are not treated as private loans for purposes of the private business tests.
- **Electric Utility Restructuring Provisions.** The energy tax package does not include the provision in the conference agreement to reduce the depreciation period for electricity transmission lines.
  - **Transco.** The provision permits a taxpayer to elect to recognize gain from an electric transmission transaction ratably over an 8-year period beginning in the year of sale. An electric transmission transaction is the sale or other disposition of property used in the trade or business of providing electric transmission services, or an ownership interest in such an entity, to a FERC approved transmission company prior to January 1, 2008.
  - **Cooperatives.** The provision modifies the 85/15 test to ensure that cooperatives do not lose their tax exempt status because they receive income from non-members or participate in “open access” as a result of deregulation.
  - **Modify treatment of nuclear decommissioning funds.** The proposal modifies the rules for qualified nuclear decommissioning funds, which are

funds created by a taxpayer, restricted to certain kinds of investments, and used exclusively for payment of decommissioning costs. The proposal repeals the cost of service requirement for contributions to a qualified fund. It clarifies that no gain or loss is recognized upon the transfer of qualified funds if it is in connection with the transfer of the related power plant. Finally, the proposal permits the transfer of pre-1984 decommissioning costs to a qualified fund.

- **Additional Provisions**

- **GAO study.** The provision directs GAO to study annually the effectiveness of the alternative vehicles and fuel incentives and the conservation and energy efficiency provisions. Specifically, it would report on the beneficiaries, the foregone revenue, the energy savings, and the tangible environmental benefits resulting from the provisions.
- **Motor fuel excise tax on railroads and inland waterway transportation.** The provision amends the Internal Revenue Code of 1986 to repeal the 4.3-cent motor fuel excise tax on railroads and inland waterway transportation, which remain in the general fund of the Treasury.
- **Distributions from publicly-traded partnerships.** The provision treats distributions as qualifying income of regulated investment companies.

#### Revenue Offsets

- **Modification to Leasing Provision.** The JOBS Act currently includes a provision limiting losses with respect to certain leases with tax-exempt entities. The original JOBS Act provision was replaced on the floor by Unanimous Consent with the version of the leasing provision developed by the Treasury Department. The Treasury version accepted by U.C. uses the same loss limitation to deny taxpayers the benefits of covered leases, but it also carves out non-abusive leases that meet certain criteria. To be carved-out, leases must meet the following four criteria: (1) the property may not be financed by tax-exempt bonds, (2) the tax exempt entity may not enter certain types of arrangements to "monetize" its lease obligations, (3) the lessor must make a "substantial" equity investment in the property, and (4) the lessee may not bear more than a minimal risk of loss. This provision adds a fifth requirement. In the case of property with more than a 7-year class life, any purchase option must be exercised at a fair market value price in addition to meeting the other four criteria.
- **No Contract Manufacturing for Foreign Base Company Sales.** Subpart F requires the domestic parent of a foreign subsidiary to pay tax currently on foreign base company sales income (FBCSI). FBCSI is, generally, sales income

received by a foreign subsidiary located in a country that is neither the origin nor the destination of the goods, where the goods are either purchased from or sold to a related party. Under current law, some companies use contract manufacturing arrangements to treat manufacturing that takes place outside the foreign sub's country as if it occurred inside the foreign sub's country, thereby avoiding the FBSCI rules. This provision prevents such use of contract manufacturing arrangements to circumvent the FBSCI rules.

- **NESTEG Deferred Comp Package.** Under current law, compensation deferred under a nonqualified deferred compensation plan is taxed when there is no longer a “substantial risk of forfeiture”. The proposal clarifies that a substantial risk of forfeiture does not exist if distributions can be made for any reason other than passage of a certain period of time, termination of employment, death, disability or unforeseen hardship, or change of control (subject to a 1 year deferral for section 16(a) individuals). There is also no substantial risk of forfeiture if funds are held in an off-shore rabbi trust, or if participants have investment options that are not comparable to qualified plan investment options. In addition, the gains on stock options or restricted stock cannot be deferred by electing future payment.
- **NESTEG Imported Pensions Basis Step Up.** Under current law, distributions from retirement plans are generally includible in income, except to the extent the amount received represents investment in the contract (i.e., the participant's basis). The proposal ensures that an amount distributed from a foreign pension plan is included in the calculation of the recipient’s basis only to the extent that the recipient previously has been subject to taxation on such amount, either in the United States or the foreign jurisdiction.
- **SILOs.** The proposal changes the effective date of the provision limiting the tax benefits of leases with tax-exempt entities. The new effective date would apply solely with respect to leases of foreign-use property. Thus, abusive leases of domestic-use property would continue to be subject to the loss limitation if the transaction was undertaken after November 18, 2003. The modification provides that losses with respect to foreign-use property SILOs would be limited starting in 2005, regardless of when the lease was entered into.
- **VEETC.** Under current law, the excise tax on gasoline is 18.4 cents per gallon. The tax is collected on a quarterly basis using the Form 720. The tax is deposited into the General Fund (GF). One-tenth of a cent is transferred to the LUST fund, and the rest is transferred to the Highway Trust Fund (HTF). After the transfer of revenue from the GF, the HTF transfers 2.86 cents to the Mass Transit Fund. Because of the partial excise tax exemption, ethanol blended gasoline only remits 13.1 cents to the HTF (18.3 – 5.2). An additional 2.5 cents are transferred from the HTF to the GF for deficit reduction purposes. Under the VEETC proposal, the tax collection system would change slightly, allowing all gasoline and ethanol-blended gasoline to contribute 18.4 cents per gallon to the GF, which would then be transferred to the HTF. The VEETC credit would come out of the GF, not

impacting the HTF at all. The proposal eliminates entirely the concern expressed by some that the use of ethanol reduces payments to the HTF. Because the new credit would be applicable to the volume of ethanol used, the current prescribed blend percentages in the tax code are eliminated (i.e., 5.7%, 7.7%, 10%). “At the rack” blenders using ethanol will claim the excise tax credit on the volume of ethanol used. “Below the rack” blenders will now have to pay the full tax on gasoline at the time of purchase and apply for a refund based on the amount of credit for alcohol used in a blend. The proposal also establishes income and excise tax credits for biodiesel. The value of the credit is \$1 per gallon for agri-biodiesel and \$0.50 per gallon for biodiesel using recycled feedstocks.

- **Fuel Fraud Prevention.** The bill includes several provisions aimed at addressing fuel fraud:
  - **Total Accountability.** Under current law, fuel excise taxpayers file a quarterly excise tax return. The return does not identify exempt fuel transactions. The taxpayer merely reports a net amount on which tax is owed. The proposal will require a monthly fuel excise tax return to be filed that identifies all gallons of all products that are removed from a terminal. Under the proposal, certain blendstocks, off-spec fuels and blendstocks will be taxed at the rack, unless a registered industrial user or terminal removes the products from the terminal.
  - **Aviation Fuel.** Aviation fuel is kerosene and other liquid suitable for use as a fuel in an aircraft. Under current law, a purchaser of aviation fuel at a terminal rack may remove the fuel from the terminal at a reduced rate if the buyer certifies it is to be used in an aircraft. The proposal requires tax to be imposed at 21.9 cents per gallon when aviation fuel leaves a terminal. Fuel may be removed tax-free or at 4.4 cents only if it goes directly into an airplane or if it is removed as part of a bulk transfer.
  - **Dyed fuel.** Excise taxes are not imposed upon diesel or kerosene if the fuel is for a nontaxable use and the fuel is dyed. The proposal requires that terminals install tamper resistant mechanical dye injectors. It also enhances penalties for violation of these requirements.
  - **Inspection of records.** Under current law, the IRS may inspect places where taxable fuel is produced or stored. The IRS may examine books and records kept to determine the excise tax liability for fuel. The proposal expands the inspection authority to books, records, or shipping papers pertaining to the sale and transportation of taxable fuel. It also enhances penalties for refusing entry to the IRS for inspections.
  - **Registration and reporting requirements.** The bill contains new registration and reporting requirements related to taxable fuels.

1. Bulk transfers. Present law does not require that every vessel or pipeline operator that transfers fuel as part of a bulk transfer be registered in order for the transfer to be exempt. The proposal requires that for a bulk transfer of fuel to be exempt from tax, any pipeline or vessel operator be registered.
  2. Modification of registration requirements. Under current law, blenders, importers, pipeline operators, position holders, refiners, terminal operators, and vessel operators (barges) are required to register with the IRS with respect to taxable fuels. The proposal increases the penalties for failing to register.
  3. Information reporting. The Excise Summary Terminal Activity Reporting System (ExSTARS) requires terminal operators and bulk transport carriers to report monthly on the movement of products into or out of an approved terminal. The proposal imposes a \$10,000 penalty for failure to report the required data with ExSTARS.
- **Imports.** Under current law, tax is imposed on the entry into the U.S. of any taxable fuel, unless (1) it is being transferred in bulk to a terminal or refiner and (2) the importer is registered. Jeopardy assessments to collect taxes on fuel at the border require approval of the IRS Chief Counsel. The proposal provides that taxes on fuel are immediately due and payable at the time of entry into the U.S. Customs is authorized to deny entry if the tax is not paid.

#### **SA 3108 (5/4/04)**

The amendment provides a tax credit for employment-related costs of manufacturers through 2005. The amount of the credit is determined by taking the lowest amount determined under the following computations: (i) 50% of the new wages paid by the employer (calculated as the difference in total wages paid from one year to the next), (ii) 50% of the wages paid to an employee who was TAA eligible at some point during the year, and (iii) 50% of 22.4% of the total wages paid during the year. The 22.4% is based on a NAM study that concluded that the costs of hiring U.S. workers exceeded the average cost of hiring workers in our competitor nations by 22.4%. They attribute these costs to health care, pensions, tort litigation, energy costs, and regulations. Since the credit is based on the lowest amount computed, the manufacturer would not get a tax credit if any of the amounts is zero. Thus, to get the credit, a company will need to increase their payroll (in total dollars) and hire TAA recipients. Only \$50,000 in wages per employee may be taken into account for purposes of determining the amount of the computation under each of the tests (thereby limiting the amount of credit that could be taken for wages attributable to highly compensated individuals).

**SA 3111 (5/4/04)**

To amend the Fair Labor Standards Act of 1938 to clarify provisions relating to overtime pay. (Gregg)

**SA 3107 (5/4/04)**

To amend the Fair Labor Standards Act of 1938 to clarify provisions relating to overtime pay. (Harkin)

**SA 3113 (5/4/04)**

To provide mortgage payment assistance for employees who are separated from employment.

**SA 3118 (5/5/04)**

The proposal would allow the Administrator of the Environmental Protection Agency (EPA) to designate green building and sustainable design projects, based on nominations submitted by state and local governments. The legislation would permit a local bond-issuing entity to issue tax-exempt facility bonds for a designated project, up to an amount set by the Administrator of the EPA. The total amount of bonds available for allocation by EPA under the demonstration program would be capped at \$2 billion. To be eligible, the project must (i) commit to register at least 50% of structures included in the project - for which the U.S. Green Building Council's Leadership in Energy and Environmental Design (LEED) certification standards are applicable - for LEED certification; (ii) include a brownfield site; (iii) identify other federal, state or local financial contributions that will be provided to support the project; (iv) include at least 1 million square feet of building or 20 acres of land; and (v) provide at least 1500 full time jobs when completed and at least 1000 full time jobs during construction (150 full time jobs and 100 construction jobs in projects located in rural states as defined in the legislation). No more than one project may be designated in a single state, and at least one designated project must be located in an empowerment zone. Two projects must be designated in rural states (as defined in the legislation).

Requires U.S. citizens who become Virgin Islands residents to file information returns with the IRS for two years after they became Virgin Island residents, and strengthens the test for determining residency.

**SA 3123 (5/11/04)**

The amendment increases the cap on the reservist credit to \$15,000 per employee, removes the one year per employee limitation, and adds a credit for replacement employees in small business. The reservist credit is capped at \$6,000 per employee, except in the case of manufacturers in which the credit is capped at \$10,000 per employee.

### **SA 3138 (5/11/04)**

To make certain engineering and architectural services eligible for the deduction relating to income attributable to United States production activities and to limit an employer's deduction for entertainment expenses of covered employees to the amount which the employee includes in income. Counts employer-provided housing costs toward income exclusion cap for purposes of section 911.

### **SA 3120 (5/11/04)**

Levin-Coleman Amendment on Tax Shelters. This provision (as modified) increases penalties for promotion of abusive tax shelters from 50% of the promoters' gross income from the shelter to 100% of the promoters' gross income. This provision also increases penalties for knowingly aiding and abetting an understatement of tax liability from 50% of the gross income from the prohibited activity to 100% of the gross income, and expands the penalty to apply all persons who aide and abet. Current law limits the aiding and abetting penalty to tax return preparers.

### **SA 3133 (5/11/04)**

- **Section 163(j) Deductibility of Arm's length borrowing costs.** Under current law, if the U.S. subsidiary of a foreign parent corporation borrows money from an unrelated party and the foreign parent corporation guarantees the indebtedness, the subsidiary's overall debt levels are closely scrutinized and the interest deduction on its borrowing may be limited. This provision provides a limited carve-out for any U.S. subsidiary that proves it could have borrowed the money without its parent corporation's guarantee.
- **Private Debt Collection.** Amends the provision to require (i) that all service contracts expire within five years of the date of enactment, (ii) a biennial report to Congress which includes a complete cost benefit analysis, impact on collection enforcement staff levels; dollars collected, cost incurred (indirect and direct), evaluations of contractor performance, 6103 disclosure safeguard report, and a measurement plan, and (iii) that an amount not in excess of 25% of the private debt collector collections be used for purposes of increased IRS enforcement.
- **Section 501(c)(15).** Under current law, a property and casualty insurance company is eligible to be exempt from Federal income tax if (a) its gross receipts for the taxable year do not exceed \$600,000, and (b) the premiums received for the taxable year are greater than 50 percent of its gross receipts. The provision increases the 50 percent of gross receipts threshold to 60 percent of gross receipts. Also under current law, a property and casualty insurance company may elect to be taxed only on taxable investment income if its written premiums do not exceed \$1.2 million. The provision increases the \$1.2 million limit to \$1.89 million and indexes it for inflation after 2005.

- **Intellectual Property and Patents Donation Modification.** The proposal modifies the donation of intellectual property and patents provision in the underlying bill, so that a donor is able to claim the lesser of \$1 million or 5% of fair market value for donations of intellectual property or patents in the year the contribution is made. In subsequent years donors would be able to deduct additional contribution amounts based on a percentage of income received by the donee. Originally, the proposal limited a donor's deduction to basis. The proposal also directs the IRS to develop appraisal standards and requires donors to pay a processing fee equal to 1% of the deduction.
- **Rehabilitation Tax Credit.** Strikes the provision in the bill that repeals the 10% rehabilitation tax credit.
- **Captioning Credit.** The provision provides a 50% tax credit to businesses for costs incurred in captioning movies in order to make them accessible to the deaf and hard of hearing. The credit may be provided to producers or distributors of movies, as well as those in the business of showing movies (movie theaters).
- **Civil Rights Tax Fairness.** Proposal expands the Civil Rights Tax Fairness Act to ensure that attorneys fees related to suits under the Medicare as Secondary Payer statute (42 U.S.C. §1395y(b)(3)(A)) are deductible for purposes of computing gross income.
- **Below Market Interest on Loans.** Repeals the application of the below-market loan rules to loans that are made to any qualified continuing care facility pursuant to a continuing care contract. The provision also clarifies that the determination of whether a facility is a qualified continuing care facility is to be made on an annual basis. The provision would also provide Treasury with authority to issue limiting guidance on the definition of continuing care contracts.
- **Section 6404(g).** Repeals the suspension on the accrual of interest normally effective 18 months after filing and lasting until notice of assessment for certain tax-motivated transactions that are determined to be (i) listed transactions or (ii) reportable avoidance transactions, as those terms are defined for purposes of the tax shelter legislation included in the underlying bill.
- **Tradable credits.** The amendment clarifies that TVA is included in the class of tradeable credits in both section 45 and clean coal.
- **Credit for Qualifying Pollution Control Equipment.** This amendment allows a qualifying ethanol facility to claim an investment credit equal to 15% of basis of qualifying pollution control equipment. Among other things, pollution control equipment means technology installed to reduce air emissions regulated by the EPA to include thermal oxidizers, regenerative thermal oxidizers, scrubbers systems, evaporative control systems and vapor recovery systems.



### SA 3040 (5/11/04)

Temporary provision to treat electric transmission property as 15-year property.

### SA 3143 (Fourth Manager's Amendment) (5/11/04)

- **Films modifications.** Currently the bill provides that the manufacturing deduction with respect to films is to be calculated on a “product line-by-product line” basis. The amendment clarifies the rules for determining the manufacturing deduction on this basis. In addition, the bill makes two changes to the manufacturing deduction with respect to films. Currently, the bill provides that manufacturing gross receipts are receipts from the sale, exchange, disposition, lease, rental, or license of domestically manufactured property. The amendment adds to this definition receipts from the “use of” manufactured property with respect to films. Films subject to this “use of” clause are also excluded from the definition of topical or transitory property (which is generally not eligible for the manufacturing deduction).
- **Green Bonds.** The amendment modifies the building rating system in the Green Bonds proposal by revising the criteria used to award LEED certification points for the use of wood products, renewable wood products, and composite wood products. Specifically, points are awarded for wood products certified under the Sustainable Forestry Initiative Program and the American Tree Farm System, renewable wood products credited for LEED certification recycled content, and composite wood products certified under standards established by the American National Standards Institute or such other voluntary standards as published in the Federal Register by the Administrator of the Environmental Protection Agency.
- **Virgin Islands revenue raiser.** The Allard green bonds amendment included a revenue raiser requiring U.S. citizens who become Virgin Islands residents to file information returns with the IRS for two years after they became Virgin Islands residents. It also strengthened the test for determining residency. This amendment alters the information filing aspect of the provision, requiring Virgin Islands residents to file U.S. information returns indefinitely.
- **AMT Relief.** The provision allows taxpayers to increase their alternative minimum tax credit in lieu of claiming bonus depreciation. Certain taxpayers that are making extensive capital investments are not subject to regular income tax because of continuing net operating losses. These same taxpayers may be subject alternative minimum tax (AMT). AMT can be caused by depreciation claimed on new asset acquisitions. This provision allows taxpayers to increase their AMT limitation on credit for prior year minimum tax liabilities in lieu of claiming bonus depreciation. The present provision is capped for bonus depreciation up to \$10 million. This provision increases the depreciation cap to \$25 million.

- **Precious Metals.** Under current law, the net capital gain income attributable to the sale or exchange of collectibles is taxed at a maximum rate of 28 percent. The definition of collectibles includes any metal or coin. The amendment would remove gold, silver, platinum and palladium coin or bullion from the list of collectible items for cap gains. This would allow these precious metals to be taxed at the preferential maximum capital gain tax rates.
- **Sickle Cell.** The provision adds as an optional benefit to the Medicaid program primary and secondary medical strategies and treatment for individuals with sickle cell disease.
- **Contract Manufacturing.** Under current law, deferral of taxation is allowed for active offshore business activities. If, however, the offshore activity involves the purchase and resale of goods to or on behalf of a related party, then the foreign income is taxed currently. The issue presented is whether manufacturing conducted on behalf of a foreign subsidiary of a U.S. corporation constitutes an active business activity. The provision in the bill codifies a view announced by the IRS in 1997. Because the IRS position is under review and may not be sustained under current case law, this change accepts Sen. Kyl's amendment to strike the contract manufacturing provision in the underlying bill.
- **Buy America.** The proposal requires a report from the head of each executive agency to report on the articles purchased by those agencies which are manufactured outside the United States. The Commerce Department will report on the articles purchased by foreign governments which are made in the United States.