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REPORT
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ALTERNATIVE MINIMUM TAX RELIEF ACT OF 2008

JUNE 20, 2008.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. RANGEL, from the Committee on Ways and Means, submitted the following

R E P O R T

together with

DISSENTING VIEWS

[To accompany H.R. 6275]

[Including cost estimate of the Congressional Budget Office]

The Committee on Ways and Means, to whom was referred the bill (H.R. 6275) to amend the Internal Revenue Code of 1986 to provide individuals temporary relief from the alternative minimum tax, and for other purposes, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

The amendment is as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE, ETC.

(a) SHORT TITLE.—This Act may be cited as the "Alternative Minimum Tax Relief Act of 2008".

(b) REFERENCE.—Except as otherwise expressly provided, whenever in this Act an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of the Internal Revenue Code of 1986.

(c) TABLE OF CONTENTS.—The table of contents for this Act is as follows:

Sec. 1. Short title, etc.

TITLE I—INDIVIDUAL TAX RELIEF

Sec. 101. Extension of increased alternative minimum tax exemption amount.
Sec. 102. Extension of alternative minimum tax relief for nonrefundable personal credits.

TITLE II—REVENUE PROVISIONS

Sec. 201. Income of partners for performing investment management services treated as ordinary income received for performance of services.
Sec. 202. Limitation of deduction for income attributable to domestic production of oil, gas, or primary products thereof.

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Sec. 203. Limitation on treaty benefits for certain deductible payments.
Sec. 204. Returns relating to payments made in settlement of payment card and third party network transactions.
Sec. 205. Application of continuous levy to property sold or leased to the Federal Government.
Sec. 206. Time for payment of corporate estimated taxes.

TITLE I—INDIVIDUAL TAX RELIEF

SEC. 101. EXTENSION OF INCREASED ALTERNATIVE MINIMUM TAX EXEMPTION AMOUNT.

(a) IN GENERAL.—Paragraph (1) of section 55(d) is amended—

(1) by striking "($66,250 in the case of taxable years beginning in 2007)" in subparagraph (A) and inserting "($69,950 in the case of taxable years beginning in 2008)", and

(2) by striking "($44,350 in the case of taxable years beginning in 2007)" in subparagraph (B) and inserting "($46,200 in the case of taxable years beginning in 2008)".

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 2007.

SEC. 102. EXTENSION OF ALTERNATIVE MINIMUM TAX RELIEF FOR NONREFUNDABLE PERSONAL CREDITS.

(a) IN GENERAL.—Paragraph (2) of section 26(a) is amended—

(1) by striking "or 2007" and inserting "2007, or 2008", and

(2) by striking "2007" in the heading thereof and inserting "2008".

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 2007.

TITLE II—REVENUE PROVISIONS

SEC. 201. INCOME OF PARTNERS FOR PERFORMING INVESTMENT MANAGEMENT SERVICES TREATED AS ORDINARY INCOME RECEIVED FOR PERFORMANCE OF SERVICES.

(a) IN GENERAL.—Part I of subchapter K of chapter 1 is amended by adding at the end the following new section:

"SEC. 710. SPECIAL RULES FOR PARTNERS PROVIDING INVESTMENT MANAGEMENT SERVICES TO PARTNERSHIP.

"(a) TREATMENT OF DISTRIBUTIVE SHARE OF PARTNERSHIP ITEMS.—For purposes of this title, in the case of an investment services partnership interest—

"(1) IN GENERAL.—Notwithstanding section 702(b)—

"(A) any net income with respect to such interest for any partnership taxable year shall be treated as ordinary income for the performance of services, and

"(B) any net loss with respect to such interest for such year, to the extent not disallowed under paragraph (2) for such year, shall be treated as an ordinary loss.

All items of income, gain, deduction, and loss which are taken into account in computing net income or net loss shall be treated as ordinary income or ordinary loss (as the case may be).

"(2) TREATMENT OF LOSSES.—

"(A) LIMITATION.—Any net loss with respect to such interest shall be allowed for any partnership taxable year only to the extent that such loss does not exceed the excess (if any) of—

"(i) the aggregate net income with respect to such interest for all prior partnership taxable years, over

"(ii) the aggregate net loss with respect to such interest not disallowed under this subparagraph for all prior partnership taxable years.

"(B) CARRYFORWARD.—Any net loss for any partnership taxable year which is not allowed by reason of subparagraph (A) shall be treated as an item of loss with respect to such partnership interest for the succeeding partnership taxable year.

"(C) BASIS ADJUSTMENT.—No adjustment to the basis of a partnership interest shall be made on account of any net loss which is not allowed by reason of subparagraph (A).

"(D) EXCEPTION FOR BASIS ATTRIBUTABLE TO PURCHASE OF A PARTNERSHIP INTEREST.—In the case of an investment services partnership interest acquired by purchase, paragraph (1)(B) shall not apply to so much of any net

loss with respect to such interest for any taxable year as does not exceed the excess of—

"(i) the basis of such interest immediately after such purchase, over

"(ii) the aggregate net loss with respect to such interest to which paragraph (1)(B) did not apply by reason of this subparagraph for all prior taxable years.

Any net loss to which paragraph (1)(B) does not apply by reason of this subparagraph shall not be taken into account under subparagraph (A).

"(E) PRIOR PARTNERSHIP YEARS.—Any reference in this paragraph to prior partnership taxable years shall only include prior partnership taxable years to which this section applies.

"(3) NET INCOME AND LOSS.—For purposes of this section—

"(A) NET INCOME.—The term 'net income' means, with respect to any investment services partnership interest, for any partnership taxable year, the excess (if any) of—

"(i) all items of income and gain taken into account by the holder of such interest under section 702 with respect to such interest for such year, over

"(ii) all items of deduction and loss so taken into account.

"(B) NET LOSS.—The term 'net loss' means with respect to such interest for such year, the excess (if any) of the amount described in subparagraph (A)(ii) over the amount described in subparagraph (A)(i).

"(b) DISPOSITIONS OF PARTNERSHIP INTERESTS.—

"(1) GAIN.—Any gain on the disposition of an investment services partnership interest shall be treated as ordinary income for the performance of services.

"(2) LOSS.—Any loss on the disposition of an investment services partnership interest shall be treated as an ordinary loss to the extent of the excess (if any) of—

"(A) the aggregate net income with respect to such interest for all partnership taxable years, over

"(B) the aggregate net loss with respect to such interest allowed under subsection (a)(2) for all partnership taxable years.

"(3) DISPOSITION OF PORTION OF INTEREST.—In the case of any disposition of an investment services partnership interest, the amount of net loss which otherwise would have (but for subsection (a)(2)(C)) applied to reduce the basis of such interest shall be disregarded for purposes of this section for all succeeding partnership taxable years.

"(4) DISTRIBUTIONS OF PARTNERSHIP PROPERTY.—In the case of any distribution of property by a partnership with respect to any investment services partnership interest held by a partner—

"(A) the excess (if any) of—

"(i) the fair market value of such property at the time of such distribution, over

"(ii) the adjusted basis of such property in the hands of the partnership,

shall be taken into account as an increase in such partner's distributive share of the taxable income of the partnership (except to the extent such excess is otherwise taken into account in determining the taxable income of the partnership),

"(B) such property shall be treated for purposes of subpart B of part II as money distributed to such partner in an amount equal to such fair market value, and

"(C) the basis of such property in the hands of such partner shall be such fair market value.

Subsection (b) of section 734 shall be applied without regard to the preceding sentence.

"(5) APPLICATION OF SECTION 751.—In applying section 751(a), an investment services partnership interest shall be treated as an inventory item.

"(c) INVESTMENT SERVICES PARTNERSHIP INTEREST.—For purposes of this section—

"(1) IN GENERAL.—The term 'investment services partnership interest' means any interest in a partnership which is held by any person if such person provides (directly or indirectly) a substantial quantity of any of the following services with respect to the assets of the partnership in the conduct of the trade or business of providing such services:

"(A) Advising as to the advisability of investing in, purchasing, or selling any specified asset.

"(B) Managing, acquiring, or disposing of any specified asset.

"(C) Arranging financing with respect to acquiring specified assets.

"(D) Any activity in support of any service described in subparagraphs (A) through (C).

For purposes of this paragraph, the term 'specified asset' means securities (as defined in section 475(c)(2) without regard to the last sentence thereof), real estate, commodities (as defined in section 475(e)(2))), or options or derivative contracts with respect to securities (as so defined), real estate, or commodities (as so defined).

"(2) EXCEPTION FOR CERTAIN CAPITAL INTERESTS.—

"(A) IN GENERAL.—If—

"(i) a portion of an investment services partnership interest is acquired on account of a contribution of invested capital, and

"(ii) the partnership makes a reasonable allocation of partnership items between the portion of the distributive share that is with respect to invested capital and the portion of such distributive share that is not with respect to invested capital,

then subsection (a) shall not apply to the portion of the distributive share that is with respect to invested capital. An allocation will not be treated as reasonable for purposes of this subparagraph if such allocation would result in the partnership allocating a greater portion of income to invested capital than any other partner not providing services would have been allocated with respect to the same amount of invested capital.

"(B) SPECIAL RULE FOR DISPOSITIONS.—In any case to which subparagraph (A) applies, subsection (b) shall not apply to any gain or loss allocable to invested capital. The portion of any gain or loss attributable to invested capital is the proportion of such gain or loss which is based on the distributive share of gain or loss that would have been allocable to invested capital under subparagraph (A) if the partnership sold all of its assets immediately before the disposition.

"(C) INVESTED CAPITAL.—For purposes of this paragraph, the term 'invested capital' means, the fair market value at the time of contribution of any money or other property contributed to the partnership.

"(D) TREATMENT OF CERTAIN LOANS.—

"(i) PROCEEDS OF PARTNERSHIP LOANS NOT TREATED AS INVESTED CAPITAL OF SERVICE PROVIDING PARTNERS.—For purposes of this paragraph, an investment services partnership interest shall not be treated as acquired on account of a contribution of invested capital to the extent that such capital is attributable to the proceeds of any loan or other advance made or guaranteed, directly or indirectly, by any partner or the partnership.

"(ii) LOANS FROM NONSERVICE PROVIDING PARTNERS TO THE PARTNERSHIP TREATED AS INVESTED CAPITAL.—For purposes of this paragraph, any loan or other advance to the partnership made or guaranteed, directly or indirectly, by a partner not providing services to the partnership shall be treated as invested capital of such partner and amounts of income and loss treated as allocable to invested capital shall be adjusted accordingly.

"(d) OTHER INCOME AND GAIN IN CONNECTION WITH INVESTMENT MANAGEMENT SERVICES.—

"(1) IN GENERAL.—If—

"(A) a person performs (directly or indirectly) investment management services for any entity,

"(B) such person holds a disqualified interest with respect to such entity, and

"(C) the value of such interest (or payments thereunder) is substantially related to the amount of income or gain (whether or not realized) from the assets with respect to which the investment management services are performed,

any income or gain with respect to such interest shall be treated as ordinary income for the performance of services. Rules similar to the rules of subsection (c)(2) shall apply where such interest was acquired on account of invested capital in such entity.

"(2) DEFINITIONS.—For purposes of this subsection—

"(A) DISQUALIFIED INTEREST.—The term 'disqualified interest' means, with respect to any entity—

"(i) any interest in such entity other than indebtedness,

"(ii) convertible or contingent debt of such entity,

"(iii) any option or other right to acquire property described in clause (i) or (ii), and

"(iv) any derivative instrument entered into (directly or indirectly) with such entity or any investor in such entity.

Such term shall not include a partnership interest and shall not include stock in a taxable corporation.

"(B) TAXABLE CORPORATION.—The term 'taxable corporation' means—

"(i) a domestic C corporation, or

"(ii) a foreign corporation subject to a comprehensive foreign income tax.

"(C) INVESTMENT MANAGEMENT SERVICES.—The term 'investment management services' means a substantial quantity of any of the services described in subsection (c)(1) which are provided in the conduct of the trade or business of providing such services.

"(D) COMPREHENSIVE FOREIGN INCOME TAX.—The term 'comprehensive foreign income tax' means, with respect to any foreign corporation, the income tax of a foreign country if—

"(i) such corporation is eligible for the benefits of a comprehensive income tax treaty between such foreign country and the United States, or

"(ii) such corporation demonstrates to the satisfaction of the Secretary that such foreign country has a comprehensive income tax.

"(e) REGULATIONS.—The Secretary shall prescribe such regulations as are necessary or appropriate to carry out the purposes of this section, including regulations to—

"(1) prevent the avoidance of the purposes of this section, and

"(2) coordinate this section with the other provisions of this subchapter.

"(f) CROSS REFERENCE.—For 40 percent no fault penalty on certain underpayments due to the avoidance of this section, see section 6662.".

(b) APPLICATION TO REAL ESTATE INVESTMENT TRUSTS.—

(1) IN GENERAL.—Subsection (c) of section 856 is amended by adding at the end the following new paragraph:

"(9) EXCEPTION FROM RECHARACTERIZATION OF INCOME FROM INVESTMENT SERVICES PARTNERSHIP INTERESTS.—

"(A) IN GENERAL.—Paragraphs (2), (3), and (4) shall be applied without regard to section 710 (relating to special rules for partners providing investment management services to partnership).

"(B) SPECIAL RULE FOR PARTNERSHIPS OWNED BY REITS.—Section 7704 shall be applied without regard to section 710 in the case of a partnership which meets each of the following requirements:

"(i) Such partnership is treated as publicly traded under section 7704 solely by reason of interests in such partnership being convertible into interests in a real estate investment trust which is publicly traded.

"(ii) 50 percent or more of the capital and profits interests of such partnership are owned, directly or indirectly, at all times during the taxable year by such real estate investment trust (determined with the application of section 267(c)).

"(iii) Such partnership meets the requirements of paragraphs (2), (3), and (4) (applied without regard to section 710).".

(2) CONFORMING AMENDMENT.—Paragraph (4) of section 7704(d) is amended by inserting "(determined without regard to section 856(c)(8))" after "856(c)(2)".

(c) IMPOSITION OF PENALTY ON UNDERPAYMENTS.—

(1) IN GENERAL.—Subsection (b) of section 6662 is amended by inserting after paragraph (5) the following new paragraph:

"(6) The application of subsection (d) of section 710 or the regulations prescribed under section 710(e) to prevent the avoidance of the purposes of section 710.".

(2) AMOUNT OF PENALTY.—

(A) IN GENERAL.—Section 6662 is amended by adding at the end the following new subsection:

"(i) INCREASE IN PENALTY IN CASE OF PROPERTY TRANSFERRED FOR INVESTMENT MANAGEMENT SERVICES.—In the case of any portion of an underpayment to which this section applies by reason of subsection (b)(6), subsection (a) shall be applied with respect to such portion by substituting '40 percent' for '20 percent'.".

(B) CONFORMING AMENDMENTS.—Subparagraph (B) of section 6662A(e)(2) is amended—

(i) by striking "section 6662(h)" and inserting "subsection (h) or (i) of section 6662", and

(ii) by striking "GROSS VALUATION MISSTATEMENT PENALTY" in the heading and inserting "CERTAIN INCREASED UNDERPAYMENT PENALTIES".

(3) REASONABLE CAUSE EXCEPTION NOT APPLICABLE.—Subsection (c) of section 6664 is amended—

(A) by redesignating paragraphs (2) and (3) as paragraphs (3) and (4), respectively,

(B) by striking "paragraph (2)" in paragraph (4), as so redesignated, and inserting "paragraph (3)", and

(C) by inserting after paragraph (1) the following new paragraph:

"(2) EXCEPTION.—Paragraph (1) shall not apply to any portion of an underpayment to which this section applies by reason of subsection (b)(6).".

(d) CONFORMING AMENDMENTS.—

(1) Subsection (d) of section 731 is amended by inserting "section 710(b)(4) (relating to distributions of partnership property)," before "section 736".

(2) Section 741 is amended by inserting "or section 710 (relating to special rules for partners providing investment management services to partnership)" before the period at the end.

(3) Paragraph (13) of section 1402(a) is amended—

(A) by striking "other than guaranteed" and inserting "other than—

"(A) guaranteed",

(B) by striking the semicolon at the end and inserting ", and", and

(C) by adding at the end the following new subparagraph:

"(B) any income treated as ordinary income under section 710 received by an individual who provides investment management services (as defined in section 710(d)(2));".

(4) Paragraph (12) of section 211(a) of the Social Security Act is amended—

(A) by striking "other than guaranteed" and inserting "other than—

"(A) guaranteed",

(B) by striking the semicolon at the end and inserting ", and", and

(C) by adding at the end the following new subparagraph:

"(B) any income treated as ordinary income under section 710 of the Internal Revenue Code of 1986 received by an individual who provides investment management services (as defined in section 710(d)(2) of such Code);".

(5) The table of sections for part I of subchapter K of chapter 1 is amended by adding at the end the following new item:

"Sec. 710. Special rules for partners providing investment management services to partnership.".

(e) EFFECTIVE DATE.—

(1) IN GENERAL.—Except as otherwise provided in this subsection, the amendments made by this section shall apply to taxable years ending after June 18, 2008.

(2) PARTNERSHIP TAXABLE YEARS WHICH INCLUDE EFFECTIVE DATE.—In applying section 710(a) of the Internal Revenue Code of 1986 (as added by this section) in the case of any partnership taxable year which includes June 18, 2008, the amount of the net income referred to in such section shall be treated as being the lesser of the net income for the entire partnership taxable year or the net income determined by only taking into account items attributable to the portion of the partnership taxable year which is after such date.

(3) DISPOSITIONS OF PARTNERSHIP INTERESTS.—Section 710(b) of the Internal Revenue Code of 1986 (as added by this section) shall apply to dispositions and distributions after June 18, 2008.

(4) OTHER INCOME AND GAIN IN CONNECTION WITH INVESTMENT MANAGEMENT SERVICES.—Section 710(d) of such Code (as added by this section) shall take effect on June 18, 2008.

(5) PUBLICLY TRADED PARTNERSHIPS.—For purposes of applying section 7704, the amendments made by this section shall apply to taxable years beginning after December 31, 2010.

SEC. 202. LIMITATION OF DEDUCTION FOR INCOME ATTRIBUTABLE TO DOMESTIC PRODUCTION OF OIL, GAS, OR PRIMARY PRODUCTS THEREOF.

(a) DENIAL OF DEDUCTION FOR MAJOR INTEGRATED OIL COMPANIES FOR INCOME ATTRIBUTABLE TO DOMESTIC PRODUCTION OF OIL, GAS, OR PRIMARY PRODUCTS THEREOF.—

(1) IN GENERAL.—Subparagraph (B) of section 199(c)(4) (relating to exceptions) is amended by striking "or" at the end of clause (ii), by striking the period at the end of clause (iii) and inserting ", or", and by inserting after clause (iii) the following new clause:

"(iv) in the case of any major integrated oil company (as defined in section 167(h)(5)(B)), the production, refining, processing, transportation, or distribution of oil, gas, or any primary product thereof during any taxable year described in section 167(h)(5)(B).".

(2) PRIMARY PRODUCT.—Section 199(c)(4)(B) is amended by adding at the end the following flush sentence:

"For purposes of clause (iv), the term 'primary product' has the same meaning as when used in section 927(a)(2)(C), as in effect before its repeal.".

(b) LIMITATION ON OIL RELATED QUALIFIED PRODUCTION ACTIVITIES INCOME FOR TAXPAYERS OTHER THAN MAJOR INTEGRATED OIL COMPANIES.—

(1) IN GENERAL.—Section 199(d) is amended by redesignating paragraph (9) as paragraph (10) and by inserting after paragraph (8) the following new paragraph:

"(9) SPECIAL RULE FOR TAXPAYERS WITH OIL RELATED QUALIFIED PRODUCTION ACTIVITIES INCOME.—

"(A) IN GENERAL.—If a taxpayer (other than a major integrated oil company (as defined in section 167(h)(5)(B))) has oil related qualified production activities income for any taxable year beginning after 2009, the amount of the deduction under subsection (a) shall be reduced by 3 percent of the least of—

"(i) the oil related qualified production activities income of the taxpayer for the taxable year,

"(ii) the qualified production activities income of the taxpayer for the taxable year, or

"(iii) taxable income (determined without regard to this section).

"(B) OIL RELATED QUALIFIED PRODUCTION ACTIVITIES INCOME.—The term 'oil related qualified production activities income' means for any taxable year the qualified production activities income which is attributable to the production, refining, processing, transportation, or distribution of oil, gas, or any primary product thereof during such taxable year.".

(2) CONFORMING AMENDMENT.—Section 199(d)(2) (relating to application to individuals) is amended by striking "subsection (a)(1)(B)" and inserting "subsections (a)(1)(B) and (d)(9)(A)(iii)".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 2008.

SEC. 203. LIMITATION ON TREATY BENEFITS FOR CERTAIN DEDUCTIBLE PAYMENTS.

(a) IN GENERAL.—Section 894 (relating to income affected by treaty) is amended by adding at the end the following new subsection:

"(d) LIMITATION ON TREATY BENEFITS FOR CERTAIN DEDUCTIBLE PAYMENTS.—

"(1) IN GENERAL.—In the case of any deductible related-party payment, any withholding tax imposed under chapter 3 (and any tax imposed under subpart A or B of this part) with respect to such payment may not be reduced under any treaty of the United States unless any such withholding tax would be reduced under a treaty of the United States if such payment were made directly to the foreign parent corporation.

"(2) DEDUCTIBLE RELATED-PARTY PAYMENT.—For purposes of this subsection, the term 'deductible related-party payment' means any payment made, directly or indirectly, by any person to any other person if the payment is allowable as a deduction under this chapter and both persons are members of the same foreign controlled group of entities.

"(3) FOREIGN CONTROLLED GROUP OF ENTITIES.—For purposes of this subsection—

"(A) IN GENERAL.—The term 'foreign controlled group of entities' means a controlled group of entities the common parent of which is a foreign corporation.

"(B) CONTROLLED GROUP OF ENTITIES.—The term 'controlled group of entities' means a controlled group of corporations as defined in section 1563(a)(1), except that—

"(i) 'more than 50 percent' shall be substituted for 'at least 80 percent' each place it appears therein, and

"(ii) the determination shall be made without regard to subsections (a)(4) and (b)(2) of section 1563.

A partnership or any other entity (other than a corporation) shall be treated as a member of a controlled group of entities if such entity is controlled (within the meaning of section 954(d)(3)) by members of such group (including any entity treated as a member of such group by reason of this sentence).

"(4) FOREIGN PARENT CORPORATION.—For purposes of this subsection, the term 'foreign parent corporation' means, with respect to any deductible related-party payment, the common parent of the foreign controlled group of entities referred to in paragraph (3)(A).

"(5) REGULATIONS.—The Secretary may prescribe such regulations or other guidance as are necessary or appropriate to carry out the purposes of this subsection, including regulations or other guidance which provide for—

"(A) the treatment of two or more persons as members of a foreign controlled group of entities if such persons would be the common parent of such group if treated as one corporation, and

"(B) the treatment of any member of a foreign controlled group of entities as the common parent of such group if such treatment is appropriate taking into account the economic relationships among such entities.".

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to payments made after the date of the enactment of this Act.

SEC. 204. RETURNS RELATING TO PAYMENTS MADE IN SETTLEMENT OF PAYMENT CARD AND THIRD PARTY NETWORK TRANSACTIONS.

(a) IN GENERAL.—Subpart B of part III of subchapter A of chapter 61 is amended by adding at the end the following new section:

"SEC. 6050W. RETURNS RELATING TO PAYMENTS MADE IN SETTLEMENT OF PAYMENT CARD AND THIRD PARTY NETWORK TRANSACTIONS.

"(a) IN GENERAL.—Each payment settlement entity shall make a return for each calendar year setting forth—

"(1) the name, address, and TIN of each participating payee to whom one or more payments in settlement of reportable payment transactions are made, and

"(2) the gross amount of the reportable payment transactions with respect to each such participating payee.

Such return shall be made at such time and in such form and manner as the Secretary may require by regulations.

"(b) PAYMENT SETTLEMENT ENTITY.—For purposes of this section—

"(1) IN GENERAL.—The term 'payment settlement entity' means—

"(A) in the case of a payment card transaction, the merchant acquiring bank, and

"(B) in the case of a third party network transaction, the third party settlement organization.

"(2) MERCHANT ACQUIRING BANK.—The term 'merchant acquiring bank' means the bank or other organization which has the contractual obligation to make payment to participating payees in settlement of payment card transactions.

"(3) THIRD PARTY SETTLEMENT ORGANIZATION.—The term 'third party settlement organization' means the central organization which has the contractual obligation to make payment to participating payees of third party network transactions.

"(4) SPECIAL RULES RELATED TO INTERMEDIARIES.—For purposes of this section—

"(A) AGGREGATED PAYEES.—In any case where reportable payment transactions of more than one participating payee are settled through an intermediary—

"(i) such intermediary shall be treated as the participating payee for purposes of determining the reporting obligations of the payment settlement entity with respect to such transactions, and

"(ii) such intermediary shall be treated as the payment settlement entity with respect to the settlement of such transactions with the participating payees.

"(B) ELECTRONIC PAYMENT FACILITATORS.—In any case where an electronic payment facilitator or other third party makes payments in settlement of reportable payment transactions on behalf of the payment settlement entity, the return under subsection (a) shall be made by such electronic payment facilitator or other third party in lieu of the payment settlement entity.

"(c) REPORTABLE PAYMENT TRANSACTION.—For purposes of this section—

"(1) IN GENERAL.—The term 'reportable payment transaction' means any payment card transaction and any third party network transaction.

"(2) PAYMENT CARD TRANSACTION.—The term 'payment card transaction' means any transaction in which a payment card is accepted as payment.

"(3) THIRD PARTY NETWORK TRANSACTION.—The term 'third party network transaction' means any transaction which is settled through a third party payment network.

"(d) OTHER DEFINITIONS.—For purposes of this section—

"(1) PARTICIPATING PAYEE.—

"(A) IN GENERAL.—The term 'participating payee' means—

"(i) in the case of a payment card transaction, any person who accepts a payment card as payment, and

"(ii) in the case of a third party network transaction, any person who accepts payment from a third party settlement organization in settlement of such transaction.

"(B) EXCLUSION OF FOREIGN PERSONS.—Except as provided by the Secretary in regulations or other guidance, such term shall not include any person with a foreign address.

"(C) INCLUSION OF GOVERNMENTAL UNITS.—The term 'person' includes any governmental unit (and any agency or instrumentality thereof).

"(2) PAYMENT CARD.—The term 'payment card' means any card which is issued pursuant to an agreement or arrangement which provides for—

"(A) one or more issuers of such cards,

"(B) a network of persons unrelated to each other, and to the issuer, who agree to accept such cards as payment, and

"(C) standards and mechanisms for settling the transactions between the merchant acquiring banks and the persons who agree to accept such cards as payment.

The acceptance as payment of any account number or other indicia associated with a payment card shall be treated for purposes of this section in the same manner as accepting such payment card as payment.

"(3) THIRD PARTY PAYMENT NETWORK.—The term 'third party payment network' means any agreement or arrangement—

"(A) which involves the establishment of accounts with a central organization for the purpose of settling transactions between persons who establish such accounts,

"(B) which provides for standards and mechanisms for settling such transactions,

"(C) which involves a substantial number of persons unrelated to such central organization who provide goods or services and who have agreed to settle transactions for the provision of such goods or services pursuant to such agreement or arrangement, and

"(D) which guarantees persons providing goods or services pursuant to such agreement or arrangement that such persons will be paid for providing such goods or services.

Such term shall not include any agreement or arrangement which provides for the issuance of payment cards.

"(e) EXCEPTION FOR DE MINIMIS PAYMENTS BY THIRD PARTY SETTLEMENT ORGANIZATIONS.—A third party settlement organization shall be required to report any information under subsection (a) with respect to third party network transactions of any participating payee only if—

"(1) the amount which would otherwise be reported under subsection (a)(2) with respect to such transactions exceeds $10,000, and

"(2) the aggregate number of such transactions exceeds 200.

"(f) STATEMENTS TO BE FURNISHED TO PERSONS WITH RESPECT TO WHOM INFORMATION IS REQUIRED.—Every person required to make a return under subsection (a) shall furnish to each person with respect to whom such a return is required a written statement showing—

"(1) the name, address, and phone number of the information contact of the person required to make such return, and

"(2) the gross amount of the reportable payment transactions with respect to the person required to be shown on the return.

The written statement required under the preceding sentence shall be furnished to the person on or before January 31 of the year following the calendar year for which the return under subsection (a) was required to be made. Such statement may be furnished electronically.

"(g) REGULATIONS.—The Secretary may prescribe such regulations or other guidance as may be necessary or appropriate to carry out this section, including rules to prevent the reporting of the same transaction more than once.".

(b) PENALTY FOR FAILURE TO FILE.—

(1) RETURN.—Subparagraph (B) of section 6724(d)(1) is amended—

(A) by striking "and" at the end of clause (xx),

(B) by redesignating the clause (xix) that follows clause (xx) as clause (xxi),

(C) by striking "and" at the end of clause (xxi), as redesignated by subparagraph (B) and inserting "or", and

(D) by adding at the end the following:

"(xxii) section 6050W (relating to returns to payments made in settlement of payment card transactions), and".

(2) STATEMENT.—Paragraph (2) of section 6724(d) is amended by inserting a comma at the end of subparagraph (BB), by striking the period at the end of

the subparagraph (CC) and inserting ", or", and by inserting after subparagraph (CC) the following:

"(DD) section 6050W(c) (relating to returns relating to payments made in settlement of payment card transactions).".

(c) APPLICATION OF BACKUP WITHHOLDING.—Paragraph (3) of section 3406(b) is amended by striking "or" at the end of subparagraph (D), by striking the period at the end of subparagraph (E) and inserting ", or", and by adding at the end the following new subparagraph:

"(F) section 6050W (relating to returns relating to payments made in settlement of payment card transactions).".

(d) CLERICAL AMENDMENT.—The table of sections for subpart B of part III of subchapter A of chapter 61 is amended by inserting after the item relating to section 6050V the following:

"Sec. 6050W. Returns relating to payments made in settlement of payment card and third party network transactions.".

(e) EFFECTIVE DATE.—

(1) IN GENERAL.—Except as otherwise provided in this subsection, the amendments made by this section shall apply to returns for calendar years beginning after December 31, 2010.

(2) APPLICATION OF BACKUP WITHHOLDING.—

(A) IN GENERAL.—The amendment made by subsection (c) shall apply to amounts paid after December 31, 2011.

(B) ELIGIBILITY FOR TIN MATCHING PROGRAM.—Solely for purposes of carrying out any TIN matching program established by the Secretary under section 3406(i) of the Internal Revenue Code of 1986—

(i) the amendments made this section shall be treated as taking effect on the date of the enactment of this Act, and

(ii) each person responsible for setting the standards and mechanisms referred to in section 6050W(d)(2)(C) of such Code, as added by this section, for settling transactions involving payment cards shall be treated in the same manner as a payment settlement entity.

SEC. 205. APPLICATION OF CONTINUOUS LEVY TO PROPERTY SOLD OR LEASED TO THE FEDERAL GOVERNMENT.

(a) IN GENERAL.—Paragraph (3) of section 6331(h) is amended by striking "goods" and inserting "property".

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to levies approved after the date of the enactment of this Act.

SEC. 206. TIME FOR PAYMENT OF CORPORATE ESTIMATED TAXES.

(a) REPEAL OF ADJUSTMENT FOR 2012.—Subparagraph (B) of section 401(1) of the Tax Increase Prevention and Reconciliation Act of 2005 is amended by striking the percentage contained therein and inserting "100 percent".

(b) MODIFICATION OF ADJUSTMENT FOR 2013.—The percentage under subparagraph (C) of section 401(1) of the Tax Increase Prevention and Reconciliation Act of 2005 in effect on the date of the enactment of this Act is increased by 59.5 percentage points.

I. SUMMARY AND BACKGROUND

A. PURPOSE AND SUMMARY

The bill, H.R. 6275, as amended, (1) provides alternative minimum tax relief to individuals for taxable years beginning in 2008, (2) treats the income of partners performing investment management services as ordinary income received for the performance of services to the extent such income is not allowable to invested capital, (3) limits the section 199 deduction for certain income attributable to the domestic production of oil, gas, or the primary products thereof for certain taxpayers, (4) limits the tax treaty benefits with respect to certain deductible payments, (5) requires information reporting on payment card and third party payment transactions, (6) expands the types of Federal payments subject to present-law continuous levy rules (i.e., vendor payments for all property and services), (7) adjusts the time for payment of corporate estimated taxes for certain large corporations.

B. Background and Need for Legislation

The provisions approved by the Committee reflect the need to protect more than 25 million families from the burden of the alternative minimum tax without increasing the national debt, as well as other purposes.

C. Legislative History

The Committee on Ways and Means marked up the Alternative Minimum Tax Relief Act of 2008 on June 18, 2008, and ordered the bill, as amended, favorably reported.

II. EXPLANATION OF THE BILL

TITLE I—INDIVIDUAL TAX RELIEF

A. Extend Alternative Minimum Tax Relief for Individuals (Secs. 101 and 102 of the Bill and Secs. 26 and 55 of the Code)

PRESENT LAW

Present law imposes an alternative minimum tax ("AMT") on individuals. The AMT is the amount by which the tentative minimum tax exceeds the regular income tax. An individual's tentative minimum tax is the sum of (1) 26 percent of so much of the taxable excess as does not exceed $175,000 ($87,500 in the case of a married individual filing a separate return) and (2) 28 percent of the remaining taxable excess. The taxable excess is so much of the alternative minimum taxable income ("AMTI") as exceeds the exemption amount. The maximum tax rates on net capital gain and dividends used in computing the regular tax are used in computing the tentative minimum tax. AMTI is the individual's taxable income adjusted to take account of specified preferences and adjustments.

The present exemption amount is: (1) $66,250 ($45,000 in taxable years beginning after 2007) in the case of married individuals filing a joint return and surviving spouses; (2) $44,350 ($33,750 in taxable years beginning after 2007) in the case of other unmarried individuals; (3) $33,125 ($22,500 in taxable years beginning after 2007) in the case of married individuals filing separate returns; and (4) $22,500 in the case of an estate or trust. The exemption amount is phased out by an amount equal to 25 percent of the amount by which the individual's AMTI exceeds (1) $150,000 in the case of married individuals filing a joint return and surviving spouses, (2) $112,500 in the case of other unmarried individuals, and (3) $75,000 in the case of married individuals filing separate returns or an estate or a trust. These amounts are not indexed for inflation.

Present law provides for certain nonrefundable personal tax credits (i.e., the dependent care credit, the credit for the elderly and disabled, the adoption credit, the child credit,[1] the credit for interest on certain home mortgages, the HOPE Scholarship and Lifetime Learning credits, the credit for savers, the credit for certain

[1] The child credit may be refundable in whole or in part to a taxpayer.

nonbusiness energy property, the credit for residential energy efficient property, and the D.C. first-time homebuyer credit).

For taxable years beginning before 2008, the nonrefundable personal credits are allowed to the extent of the full amount of the individual's regular tax and alternative minimum tax.

For taxable years beginning after 2007, the nonrefundable personal credits (other than the adoption credit, child credit and saver's credit) are allowed only to the extent that the individual's regular income tax liability exceeds the individual's tentative minimum tax, determined without regard to the minimum tax foreign tax credit. The adoption credit, child credit, and saver's credit are allowed to the full extent of the individual's regular tax and alternative minimum tax.[2]

REASONS FOR CHANGE

The Committee is concerned about the projected increase in the number of individuals who will be affected by the individual alternative minimum tax and the projected increase in tax liability for those who are affected by the tax for 2008. The provision will reduce the number of individuals who would otherwise be affected by the alternative minimum tax and will reduce the tax liability of the families that continue to be affected by the alternative minimum tax.

EXPLANATION OF PROVISION

The bill provides that the individual AMT exemption amount for taxable years beginning in 2008 is $69,950, in the case of married individuals filing a joint return and surviving spouses; (2) $46,200 in the case of other unmarried individuals; and (3) $34,975 in the case of married individuals filing separate returns.

For taxable years beginning in 2008, the bill allows an individual to offset the entire regular tax liability and alternative minimum tax liability by the nonrefundable personal credits.

EFFECTIVE DATE

The provision is effective for taxable years beginning in 2008.

TITLE II—REVENUE PROVISIONS

A. Income of Partners for Performing Investment Management Services Treated as Ordinary Income Received for Performance of Services (Sec. 201 of the Bill and Secs. 710, 856, 1402, 6662, 6662A, 6664, and 7704 of the Code)

PRESENT LAW

Partnership profits interest for services

A profits interest in a partnership is the right to receive future profits in the partnership but does not generally include any right to receive money or other property upon the immediate liquidation of the partnership. The treatment of the receipt of a profits interest in a partnership in exchange for the performance of services has been the subject of controversy. Though courts have differed, in

[2] The rule applicable to the adoption credit and child credit is subject to the EGTRRA sunset.

some instances, a taxpayer receiving a profits interest for performing services has not been taxable upon the receipt of the partnership interest.[3]

In 1993, the Internal Revenue Service, referring to the results of cases, issued administrative guidance that the IRS generally would treat the receipt of a partnership profit interest for services as not a taxable event for the partnership or the partner.[4] Under this guidance, this treatment does not apply, however, if: (1) The profits interest relates to a substantially certain and predictable stream of income from partnership assets, such as income from high-quality debt securities or a high quality net lease; (2) within two years of receipt, the partner disposes of the profits interest; or (3) the profits interest is a limited partnership interest in a publicly traded partnership. More recent administrative guidance[5] clarifies that this treatment applies provided the service partner takes into income his distributive share of partnership income, and the partnership does not deduct any amount, either on grant or on vesting of the profits interest.[6]

By contrast, a partnership capital interest received for services is includable in the partner's income under generally applicable rules relating the receipt of property for the performance of services.[7] A partnership capital interest for this purpose is an interest that would entitle the receiving partner to a share of the proceeds if the partnership's assets were sold at fair market value and the proceeds were distributed in liquidation.[8]

Passthrough tax treatment of partnerships

The character of partnership items passes through to the partners, as if the items were realized directly by the partners.[9] Thus, for example, long-term capital gain of the partnership is treated as long-term capital gain in the hands of the partners—

A partner holding a partnership interest includes in income its distributive share (whether or not actually distributed) of partnership items of income and gain, including capital gain eligible for the lower income tax rates. A partner's basis in the partnership interest is increased by any amount of gain thus included and is decreased by losses. These basis adjustments prevent double taxation of partnership income to the partner, preserving the partnership's tax status as a passthrough entity. Amounts distributed to the partner by the partnership are taxed, to the extent the amount exceeds the partner's basis in the partnership interest.

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[3] Only a handful of cases have ruled on this issue. Though one case required the value to be included currently, where value was easily determined by a sale of the profits interest soon after receipt (*Diamond* v. *Commissioner,* 56 T. C. (1971), aff'd 492 F. 2.2d 286 (7th Cir, 1974)), a more recent case concluded that partnership profits interests were not includable on receipt, because the profits interests were speculative and without fair market value (*Campbell* v. *Commissioner,* 943 F. 2d. 815 (8th Cir. 1991)).

[4] Rev. Proc. 93–27, 1993–2 C.B. 343, citing the *Diamond* and *Campbell* cases, supra.

[5] Rev. Proc. 2001–43 (2001–2 C.B. 191).

[6] A similar result would occur under the "safe harbor" election of proposed regulations regarding the application of section 83 to the compensatory transfer of a partnership interest. REG–105346–03, 70 Fed. Reg. 29675 (May 24, 2005).

[7] Secs. 61 and 83; Treas. Reg. sec. 1.721–1(b)(1); *see U.S.* v. *Frazell*, 335 F.2d 487 (5th Cir. 1964), cert denied, 380 U.S. 961 (1965).

[8] Rev. Proc. 93–27, 1993–2 C.B. 343.

[9] Sec. 702.

Employment tax treatment of partners

As part of the financing for Social Security and Medicare benefits, a tax is imposed on the wages of an individual received with respect to his or her employment under the Federal Insurance Contributions Act ("FICA").[10] A similar tax is imposed on the net earnings from self-employment of an individual under the Self Employment Contributions Act ("SECA").[11]

The FICA tax has two components. Under the old-age, survivors, and disability insurance component ("OASDI"), the rate of tax is 12.40 percent, half of which is imposed on the employer, and the other half of which is imposed on the employee.[12] The amount of wages subject to this component is capped at $102,000 for 2008. Under the hospital insurance component ("HI"), the rate is 2.90 percent, also split equally between the employer and the employee. The amount of wages subject to the HI component of the tax is not capped. The wages of individuals employed by a business in any form (for example, a C corporation generally are subject to the FICA tax.[13]

The SECA tax rate is the combined employer and employee rate for FICA taxes. Under the OASDI component, the rate of tax is 12.40 percent and the amount of earnings subject to this component is capped at $102,000 for 2008. Under the HI component, the rate is 2.90 percent, and the amount of self-employment income subject to the HI component is not capped.

For SECA tax purposes, net earnings from self-employment means the gross income derived by an individual from any trade or business carried on by the individual, less the deductions attributable to the trade or business that are allowed under the self-employment tax rules.[14] Specified types of income or loss are excluded, such as rentals from real estate in certain circumstances, dividends and interest, and gains or loss from the sale or exchange of a capital asset or from timber, certain minerals, or other property that is neither inventory nor held primarily for sale to customers.

For an individual who is a partner in a partnership, the net earnings from self-employment generally include the partner's distributive share (whether or not distributed) of income or loss from any trade or business carried on by the partnership (excluding specified types of income, such as rents and dividends, as described above). This rule applies to individuals who are general partners. A special rule applies for limited partners of a partnership.[15] In de-

[10] See Chapter 21 of the Code.

[11] Sec. 1401.

[12] Secs. 3101 and 3111.

[13] S corporation shareholders who are employees of the S corporation are subject to FICA taxes. A considerable body of case law has addressed the issue of whether amounts paid to S corporation shareholder-employees are reasonable compensation for services and therefore are wages subject to FICA tax or are properly characterized as another type of income (typically, dividends) and therefore not subject to FICA tax.

[14] For purposes of determining net earnings from self-employment, taxpayers are permitted a deduction from net earnings from self-employment equal to the product of the taxpayer's net earnings (determined without regard to this deduction) and one-half of the sum of the rates for OASDI (12.4 percent) and HI (2.9 percent), i.e., 7.65 percent of net earnings. This deduction reflects the fact that the FICA rates apply to an employee's wages, which do not include FICA taxes paid by the employer, whereas a self-employed individual's net earnings are economically the equivalent of an employee's wages plus the employer share of FICA taxes. The deduction is intended to provide parity between FICA and SECA taxes. In addition, self-employed individuals may deduct one-half of self-employment taxes for income tax purposes (sec. 164(f)).

[15] 15 Sec. 1402(a)(13).

termining a limited partner's net earnings from self-employment, an exclusion is provided for his or her distributive share of partnership income or loss. The exclusion does not apply with respect to guaranteed payments to the limited partner for services actually rendered to or on behalf of the partnership to the extent that those payments are established to be in the nature of remuneration for those services.

Income tax treatment of publicly traded partnerships

Under present law, a publicly traded partnership generally is treated as a corporation for Federal tax purposes (sec. 7704(a)). For this purpose, a publicly traded partnership means any partnership if interests in the partnership are traded on an established securities market, or interests in the partnership are readily tradable on a secondary market (or the substantial equivalent thereof).

An exception from corporate treatment is provided for certain publicly traded partnerships, 90 percent or more of whose gross income is qualifying income (sec. 7704(c)(2)). However, this exception does not apply to any partnership that would be described in section 851(a) if it were a domestic corporation, which includes a corporation registered under the Investment Company Act of 1940 as a management company or unit investment trust.

Qualifying income includes interest, dividends, and gains from the disposition of a capital asset (or of property described in section 1231(b)) that is held for the production of income that is qualifying income. Qualifying income also includes rents from real property, gains from the sale or other disposition of real property, and income and gains from the exploration, development, mining or production, processing, refining, transportation (including pipelines transporting gas, oil, or products thereof), or the marketing of any mineral or natural resource (including fertilizer, geothermal energy, and timber). It also includes income and gains from commodities (not described in section 1221(a)(1)) or futures, options, or forward contracts with respect to such commodities (including foreign currency transactions of a commodity pool) in the case of partnership, a principal activity of which is the buying and selling of such commodities, futures, options or forward contracts.

The rules generally treating publicly traded partnerships as corporations were enacted in 1987 to address concern about long-term erosion of the corporate tax base. At that time, Congress stated, "[t]o the extent that activities would otherwise be conducted in corporate form, and earnings would be subject to two levels of tax (at the corporate and shareholder levels), the growth of publicly traded partnerships engaged in such activities tends to jeopardize the corporate tax base." (H.R. Rep. No. 100–391, 100th Cong., 1st Sess. 1065.) Referring to recent tax law changes affecting corporations, the Congress stated, "[t]hese changes reflect an intent to preserve the corporate level tax. The committee is concerned that the intent of these changes is being circumvented by the growth of publicly traded partnerships that are taking advantage of an unintended opportunity for disincorporation and elective integration of the corporate and shareholder levels of tax." (H.R. Rep. No. 100–391, 100th Cong., 1st Sess. 1066.)

Real estate investment trusts (REITs)

A real estate investment trust ("REIT") is an entity that derives most of its income from passive real-estate-related investments. A REIT must satisfy a number of tests on an annual basis that relate to the entity's organizational structure, the source of its income, and the nature of its assets. If an electing entity meets the requirements for REIT status, the portion of its income that is distributed to its investors each year generally is treated as a dividend deductible by the REIT and includible in income by its investors. In this manner, the distributed income of the REIT is not taxed at the entity level. The distributed income is taxed only at the investor level. A REIT generally is required to distribute 90 percent of its income (other than net capital gain) to its investors before the end of its taxable year.

In order for an entity to qualify as a REIT, at least 95 percent of its gross income generally must be derived from certain passive sources (the "95-percent income test"). In addition, at least 75 percent of its income generally must be from certain real estate sources (the "75-percent income test"), including rents from real property (as defined) and gain from the sale or other disposition of real property. Amounts received as impermissible "tenant services income" are not treated as rents from real property.[16] In general, such amounts are for services rendered to tenants that are not "customarily furnished" in connection with the rental of real property. In addition, at least 75 percent of the value of its total assets must be represented by real estate assets, cash and cash items (including receivables), and Government securities, and maximum percentages apply to ownership of other types of securities (the "asset test").

REASONS FOR CHANGE

The Committee has become aware that some types of service providers in the asset management business have been paying tax at capital gains rates on service income through the use of a partnership profits interest,[17] known as a "carried interest." Because the character of a partnership's income passes through to partners, income from a carried interest may take the form of long-term or short-term capital gain realized by the underlying investment fluid as the fund sells off investment assets. In 2008, for individuals generally, the top rate of tax on long-term capital gain is 15 percent, while the top income tax rate on ordinary labor income is 35 percent (plus the applicable employment tax rate).

The Committee held a hearing[18] covering Federal tax issues arising from the use of carried interests in asset management busi-

[16] A REIT is not treated as providing services that produce impermissible tenant services income if such services are provided by an independent contractor from whom the REIT does not derive or receive any income. An independent contractor is defined as a person who does not own, directly or indirectly, more than 35 percent of the shares of the REIT. Also, no more than 35 percent of the total shares of stock of an independent contractor (or of the interests in net assets or net profits, if not a corporation) can be owned directly or indirectly by persons owning 35 percent or more of the interests in the REIT.

[17] A partnership profits interest generally gives the partner a right to receive a percentage of a partnership's profits without an obligation to contribute to partnership capital and without a right to partnership assets on liquidation.

[18] The Ways and Means Committee hearing took place September 6, 2007. See Joint Committee on Taxation, "Present Law and Analysis Relating to Tax Treatment of Partnership Carried Interests and Related Issues, Part I," (JCX–62–07), September 4, 2007, and Joint Com-

nesses. In these arrangements, the investment fund typically is a partnership. The investors are limited partners that contribute capital to acquire fund assets, and the fund manager is the general partner of the investment fund partnership. The general partner is itself a partnership of individuals with investment management expertise. The fund manager receives management fees along with a carried interest.

The Committee believes that in the case of an investment services partnership interest the carried interest arrangement primarily involves the performance of services by individuals whose professional skill generates capital income for investors in the fund. While these individuals' economic interests are aligned with those of the fund investors to the extent their compensation is based on the positive investment yield of the fund, the individuals are nevertheless performing services: Therefore, the income should be taxed as ordinary compensation income for the performance of services.

The Committee believes this result is needed to protect the neutrality of the tax law with respect to income for different types of services, and is necessary to provide fairness in the tax law. The tax rules should not permit investment managers to structure their compensation so it is subject to preferential capital gains rates of 15 percent, and to pay no employment tax on these amounts, while wage-earners who have no such restructuring opportunities are subject to tax on ordinary income up to a top rate of 35 percent, plus employment tax.

The Committee understands that the Internal Revenue Service currently takes the position that the receipt of a partnership profits interest is not generally a taxable event to the partner or to the partnership unless unusual circumstances indicate the interest is easy to value and it is held for a relatively short time. As acknowledged by the Internal Revenue Service in taking this position, however, courts have reasoned that the value of the profits interest for services should be included in income on receipt, but valuation of these interests is often difficult due to factors such as the speculative nature of future business profits. Therefore, efforts to measure the amount of compensation for services by including in income the value of a partnership profits interest received for services at the time of receipt have not been successful.

The Committee bill consequently takes a different approach, the approach of treating net income and gain from an investment services partnership interest as ordinary income for the performance of services except to the extent it is attributable to the partner's invested capital, Capital gains tax treatment will still be available to the extent that gain is attributable to the partner's invested capital.

It is intended that the present-law employment tax rules apply to this income to the same extent they apply to other compensation income. To ensure that the substance of the provision applies regardless of the use of vehicles other than partnerships to seek reduction of tax on compensation income for investment services, the provision also recharacterizes as ordinary income for the performance of services the income or gain with respect to certain other in-

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mittee on Taxation, "Present Law and Analysis Relating to Tax Treatment of Partnership Carried Interests and Related Issues, Part 17;" (JCX–63–07), September 4, 2007.

terests, including interests in certain entities other than partnerships, that are held by a person who performs, directly or indirectly, investment management services for the entity. In addition, to strongly ensure compliance with the provision, a 40-percent strict liability penalty applies to underpayments attributable to such techniques to seek to avoid ordinary income tax rates under the provision. It is expected that in enforcement, in coordinating with present law rules relating to partners and partnerships, and in providing other guidance under the provision, the Treasury Department will consistently limit opportunities to avoid ordinary income tax on compensation within the scope of the provision.

The income recharacterized as ordinary compensation income under the provision is not treated as qualifying income of a publicly traded partnership, because it is in the nature of compensation (rather than the types of income listed as qualifying income). The effective date of the provision as it applies with respect to the qualifying income of publicly traded partnerships is deferred until taxable years beginning after December 31, 2010, to permit compliance with the provision.

EXPLANATION OF PROVISION

Recharacterization as ordinary income for performance of services

The provision generally treats net income from an investment services partnership interest as ordinary income for the performance of services except to the extent it is attributable to the partner's invested capital. Thus, the provision recharacterizes the partner's distributive share of income from the partnership, regardless of whether such income would otherwise be treated as capital gain, dividend income, or any other type of income in the hands of the partner. Such income is taxed at ordinary income rates and is subject to self-employment tax.

Net income means, with respect to an investment services partnership interest, the excess (if any) of (1) all items of income and gain taken into account by the partner with respect to the partnership interest for the partnership taxable year, over (2) all items of deduction and loss taken into account by the partner with respect to the partnership interest for the partnership taxable year. All items of income, gain, deduction, and loss that are taken into account in computing net income (or net loss) are treated as ordinary income (or ordinary loss, as the case may be). Net income from an investment services partnership interest is included in net earnings from self-employment.

The provision provides that an investment services partnership interest is a partnership interest held by any person who provides (directly or indirectly) a substantial quantity of certain services to the partnership in the conduct of the trade or business of providing such services. The services are: (1) Advising the partnership as to the advisability of investing in, purchasing, or selling any specified asset; (2) managing, acquiring, or disposing of any specified asset; (3) arranging financing with respect to acquiring specified assets; (4) any activity in support of any of the foregoing services.

For this purpose, specified assets means securities (as defined in section 475(c)(2)), real estate, commodities (as defined in section 475(e)(2)), or options or derivative contracts with respect to such

securities, real estate, or commodities. A security for this purpose means any (1) share of corporate stock, (2) partnership interest or beneficial ownership interest in a widely held or publicly traded partnership or trust, (3) note, bond, debenture, or other evidence of indebtedness, (4) interest rate, currency, or equity notional principal contract, (5) interest in, or derivative financial instrument in, any such security or any currency (regardless of whether section 1256 applies to the contract), and (6) position that is not such a security and is a hedge with respect to such a security and is clearly identified. A commodity for this purpose means a (1) commodity that is actively traded, (2) notional principal contract with respect to such a commodity, (3) interest in, or derivative financial instrument in, such a commodity, or (4) position that is not such a commodity and is a hedge with respect to such a commodity and is clearly identified.

For example, assume that three individuals form a partnership to operate a biotechnology business; two each contribute $1 million in cash, and the third contributes his personal services as a research scientist. In the following year, the business profits of the partnership are $300,000, and the partnership agreement provides that each of the three partners' distributive share is $100,000. The profits are ordinary income to the partners under present law, so the provision does not affect the income tax rate applicable to the partners.[19] In the following year, the third partner sells his partnership interest. Because the third partner's services do not consist of the services described above, the gain on sale of the partnership interest is not subject to recharacterization under the provision. As another example, assume instead that a partnership of three individuals is formed to manage investments in specified assets. The first two individuals contribute $1 million each and the third contributes his personal services advising the partnership as to the advisability of investing in particular specified assets, and managing, acquiring, arranging financing for, and disposing of such assets. In the following year, the profits of the partnership are $300,000, and the partnership agreement provides that each of the three partners' distributive share is $100,000. Because the third partner's services consist of the services described above with respect to specified assets, the third partner's share of profits is subject to recharacterization under the provision. When the third partner sells his partnership interest in the following year, the gain is recharacterized as ordinary compensation income under the provision.[20]

Exception for invested capital

The provision provides an exception to recharacterization as ordinary income for performance of services in the case of the portion of the partner's distributive share of partnership items with respect to the partner's invested capital. Invested capital means the fair market value at the time of contribution of any money or other property contributed to the partnership. The exception applies provided that the partnership makes a reasonable allocation of partnership items between the portion of the partner's distributive

[19] The income generally is subject to self-employment tax under present law, without regard to the provision.

[20] The rule providing that gain is treated as ordinary income for the performance of services on the disposition of an investment services partnership interest is described below.

share attributable to invested capital and the remaining portion. The exception to recharacterization also applies to gain or loss attributable to invested capital on disposition of the partnership interest, which is the portion that would have been allocable to invested capital if the partnership had sold all its assets immediately before the disposition.

An allocation is not treated as reasonable if it would result in the allocation of a greater portion of income to invested capital than any other partner not providing services would have been allocated with respect to the same amount of invested capital. In applying this rule, it is intended that the return to the service-providing partner's invested capital (if any) be at no greater a rate than the return to that non-service-providing partner who has the lowest rate of return on his invested capital. For example, assume two partners each contribute $1 million to a partnership they form, and a third partner who performs services that make his interest an investment services partnership interest also contributes $500,000 to the partnership. Partnership earnings the following year are $900,000, and the partnership agreement provides that the earnings are divided equally among the three partners ($300,000 each). Under the provision, an allocation to the third partner is not treated as reasonable if the amount allocated to his invested capital exceeds $150,000. The two non-service-providing partners' rate of return on invested capital is 30 percent ($300,000 earnings on $1 million), so 30 percent of the service provider's $500,000 of invested capital is $150,000.

It is intended that Treasury Department guidance provide that an allocation of income on invested capital does not fail to be treated as reasonable solely because of appreciation or depreciation in the value of partnership capital prior to the admission of new partners (provided service providers do not thereby convert their compensation to income on invested capital). For example, assume two partners, one of whom is a service provider, each contribute $1 million to a partnership they form, and the partnership assets appreciate to $6 million, at which time a third partner is admitted for a capital' investment of $3 million. Earnings at the end of the following year are $900,000, divided equally among the three partners. An allocation of earnings on invested capital to the service-providing partner of $300,000 should not fail to be treated as reasonable solely because it reflects appreciation in the value of the partnership assets as of the time of admission of the third partner. Such an allocation may fail to be treated as reasonable based on other factors identified in Treasury guidance. In particular, it is not intended that the partner that provides services be permitted to treat any amount as income on invested capital to the extent it otherwise would be treated as compensation under the provision.

For purposes of the exception for invested capital, an investment services partnership interest is not treated as acquired by contribution of invested capital to the extent of any loan or other advance made or guaranteed, directly or indirectly, by any partner or the partnership. For example, if partner A loans partner B funds that partner B contributes to the partnership, the loaned amount is not invested capital of partner B.

In addition, for this purpose, any loan or other advance to the partnership made or guaranteed, directly or indirectly by a partner

not providing services to the partnership is treated as invested capital of that partner. Income and loss treated as allocable to invested capital are adjusted accordingly. For example, if investors in a private equity fund that is a partnership contribute capital as debt rather than as equity, while the manager of the fund contributes only equity so that his invested capital appears to be a large percentage of the total equity contributed, the provision treats the partnership debt to the investors as the investors' invested capital. The percentage of total invested capital that is attributable to the fund manager in this example is determined taking into account this debt as well as the equity contributed to the fund, so the manager's invested capital is a smaller percentage of total invested capital than if only equity contributions were taken into account.

Losses, dispositions, and partnership distributions

The provision provides rules for the treatment of losses with respect to an investment services partnership interest, as well as for disposition of all or a portion of such a partnership interest, and distributions of partnership property with respect to such a partnership interest.

Consistently with the general rule providing that net income with respect to such a partnership interest is ordinary income for the performance of services, the provision provides that net loss with respect to such a partnership interest (to the extent not disallowed) generally is treated as ordinary loss. For this purpose, net loss means, with respect to an investment services partnership interest, the excess (if any) of (1) all items of deduction and loss taken into account by the partner with respect to the partnership interest for the partnership taxable year, over (2) all items of income and gain taken into account by the partner with respect to the partnership interest for the partnership taxable year. The net loss is allowed for a partnership taxable year, however, only to the extent that the loss does not exceed the excess (if any) of (1) aggregate net income with respect to the partnership interest for prior partnership taxable years, over (2) the aggregate net loss with respect to the partnership interest not disallowed for prior partnership years. Any net loss that is not allowed for the partnership taxable year is carried forward to the next partnership taxable year. Notwithstanding the present-law rule that the basis of a partnership interest generally is reduced by the partner's distributive share of partnership losses and deductions (sec. 705(a)(2)), the provision provides that no adjustment is made to the basis of a partnership interest on account of a net loss that is not allowed for the partnership taxable year. When any such net loss that is carried forward is allowed in a subsequent year, the adjustment is made to the basis of the partnership interest.

For purposes of determining self-employment tax, a net loss from an investment services partnership interest (to the extent it is allowed in computing taxable income) is taken into account in determining net earnings from self-employment for the taxable year. Thus, for example, if an individual has three investment services partnership interests, two of which generate net income for the taxable year and the third of which generates a net loss that is allowable under the provision as an ordinary loss for the taxable year, then the entire net income and net loss are taken into account in

determining the individual's net earnings from self-employment for the taxable year. However, to the extent a loss is disallowed under this provision for a taxable year, that loss does not reduce the taxpayer's net earnings from self-employment for that taxable year, but is taken into account in the carryover year for which it is allowed in determining the amount of ordinary compensation under this provision. To the same extent as under present law, the provision does not permit net operating loss deductions in calculating net earnings from self-employment (sec. 1402(a)(4)).

Net loss with respect to an investment services partnership interest that was acquired by purchase, however, is not treated as ordinary, to the extent of net loss not exceeding the excess of (1) the basis of the interest immediately after the purchase, over (2) the aggregate net loss not treated as ordinary under this rule in prior taxable years. Such net loss is not taken into account in determining the amount of net income that is treated as ordinary under the provision.

On the disposition of an investment services partnership interest, gain is treated as ordinary income for the performance of services, notwithstanding the present-law rule that gain or loss from the disposition of a partnership interest generally is considered as capital gain or loss (sec. 741; except ordinary treatment applies to the extent attributable to inventory and unrealized receivables, sec. 751). Loss on. the disposition of an investment services partnership interest is treated as ordinary loss, but only to the extent of the amount by which aggregate net income previously treated as ordinary exceeds aggregate net loss previously allowed as ordinary under the provision. The amount of net loss that otherwise would have reduced the basis of the investment services partnership interest is disregarded for purposes of the provision, in the event of any disposition of the interest.

On the distribution of property by a partnership to a partner with respect to an investment services partnership interest, the provision provides generally that the partner recognizes ordinary compensation income to the extent of any appreciation in the property. Specifically, the provision provides that the excess (if any) of the fair market value of the property at the time of the distribution over the adjusted basis of the distributed property in the hands of the partnership is included in income by the partner, and is considered ordinary compensation income by reason of the general rule of the provision (new section 710(a)(1)). This amount is not so includable to the extent otherwise taken into account in computing the taxable income of the partnership, for example, by reason of section 751(b), treating certain distributions as sales or exchanges.

To the extent the fair market value of the property (which is treated as money) exceeds the partner's adjusted basis in its partnership interest, the partner has ordinary compensation (secs. 731(a)(1) and 710(a)(1)). The basis of the distributed property is its fair market value at the time of the distribution. The adjusted basis of the distributee partner's interest in the partnership is reduced (but not below zero) under section 733 by the amount of money upon the distribution.

For example, assume a partnership has an adjusted basis of 20 in a property whose fair market value is 50. The partnership distributes the property to a partner whose investment services part-

nership interest has an adjusted basis of 35. Under the provision, 30 (50 minus 20) is included in the partner's income as compensation. The partner's basis in his investment services partnership interest is increased from 35 to 65 by the 30 of income taken into account and then reduced to 15 by the 50 value, of the property distributed. If the partner sells the partnership interest at a gain, the gain is treated as compensation income under the general rule of the provision (new section 710(a)).

So that the other partners' shares of the basis of partnership property are not affected by the property distribution, the present-law rules providing for an adjustment to the basis of the partnership's property in the event of a section 754 election or a substantial basis reduction are applied without regard to the income inclusion rule for property distributions with respect to an investment services partnership interest.

In applying the present-law rules relating to ordinary income treatment of amounts attributable to unrealized receivables and inventory items on sale or exchange of a partnership interest (sec. 751(a)), an investment services partnership interest is treated as an inventory item of the partnership. Thus, for example, upon the sale or exchange of an interest in a partnership that in turn holds an investment services partnership interest, amounts received by the transferor partner that are attributable to the investment services partnership interest are considered as ordinary income.

Other entities

The provision also recharacterizes as ordinary income for the performance of services the income or gain with respect to certain other interests, including interests in certain entities other than partnerships, that are held by a person who performs, directly or indirectly, investment management services for the entity.

This rule applies if (1) a person performs (directly or indirectly) investment management services for any entity, (2) the person holds a disqualified interest with respect to the entity, and (3) the value of the interest (or payments thereunder) is substantially related to the amount of realized or unrealized income or gain from the assets with respect to which the investment management services are performed. In this case, any income or gain with respect to the interest is treated as ordinary income for the performance of services. Rules similar to the exception for a partner's invested capital apply for this purpose. For this purpose, a disqualified interest in an entity means (1) any interest other than debt, (2) convertible or contingent debt, (3) an option or other right to acquire. either of the foregoing, or (4) a derivative instrument entered into (directly or indirectly) with the entity or an investor in the entity. A disqualified interest does not include a partnership interest. A disqualified interest also does not include stock in a taxable corporation, which for this purpose means either a domestic C corporation or a foreign corporation that is subject to a comprehensive foreign income tax. Under this rule, a comprehensive income tax means the income tax of a foreign country if the foreign corporation is eligible for the benefits of a comprehensive income tax treaty between that country and the U.S., or if the corporation demonstrates to the satisfaction of the Treasury Secretary that the foreign country has a comprehensive income tax.

For example, if a hedge fund manager holds stock of a Cayman Islands corporation that in turn is a partner in a hedge fund partnership, the manager performs investment management services for the hedge fund, and the value of the stock (or dividends) is substantially related to the growth and income in hedge fund assets for which the manager provides investment management services, then gain in the value of the stock, and dividends, are treated as ordinary income for the performance of services. The fact that the services are performed for the hedge fund, rather than directly for the Cayman Islands corporation in which the manager has a disqualified interest, does not change this result under the provision. Thus, the gain is not eligible for the capital gain tax rate, the dividend is not eligible for the special rate on qualified dividends, but rather, are subject to tax at ordinary rates as income from the performance of services. The income is treated as net earnings from self-employment for purposes of the self-employment tax of the individual who performs the services. Though the amounts received may exceed the cap (imposed by reason of section 1402(b)) on the old-age, survivors, and disability insurance portion of the self-employment tax, the hospital insurance portion of the self-employment tax is not capped, and applies to the income.

Underpayment penalty

The provision provides that the accuracy-related penalty under section 6662 on underpayments applies to underpayments attributable the failure to comply with section 710(d) (relating to the treatment of income in connection with investment management services unrelated to partnership interests) or the regulations under section 710 preventing the avoidance of the purposes of section 710. The penalty rate is 40 percent. The present-law reasonable cause exception of section 6664 does not apply with respect to these underpayments, resulting in an automatic penalty.

Self-employment tax treatment

Under the provision, net income from an investment services partnership interest is subject to self-employment tax. Net income from an investment services partnership interest is derived from the performance by a person of a substantial quantity of services to the partnership in the course of the active conduct of a trade or business. This income falls within the definition of net earnings from self-employment, which generally includes a partner's distributive share (whether or not distributed) of income or loss from any trade or business carried on by the partnership (sec. 1402(a)), with certain exclusions. Because net income from an investment services partnership is treated as ordinary income for the performance of services, the present-law exception for gain or loss from the sale or exchange of a capital asset does not apply, even though the net income from the investment service partnership interest might otherwise be characterized as capital gain. The provision also provides that, in the case of a limited partner, the present law exclusion for limited partners does not apply to any income treated as ordinary income from an investment services partnership interest that is received by an individual who provides a substantial quantity of the specified services.

Rules relating to REITs and publicly traded partnerships

In the case of a REIT to which income and asset limitations apply under present law (sec. 856(c)(2), (3) and (4)), these income and asset tests are applied without regard to the provision. Thus, a REIT may continue to satisfy the income and asset limitations without regard to the provision.

Under the provision, a publicly traded partnership, more than 10 percent of whose gross income consists of net income from an investment services partnership interest, generally is treated as a corporation for Federal tax purposes under section 7704. The present-law exception to corporate treatment for a publicly traded partnership, 90 percent or more of whose gross income is qualifying income within the meaning of section 7704(c)(2), does not apply, because net income from an investment services partnership interest is not qualifying income within the meaning of section 7704(c)(2).

The provision provides a special rule for certain partnerships that are owned by publicly traded REITs and that meet specific requirements, however. Under the special rule, the recharacterization of partnership income as ordinary income for the performance of services does not apply, provided the following requirements are met. The requirements are: (1) The partnership is treated as publicly traded (under section 7704) solely because interests in the partnership are convertible into interests in a publicly traded REIT; (2) 50 percent or more of the capital and profits interests of the partnership are owned, directly or indirectly, at all times during the taxable year, by the REIT (taking into account attribution rules under section 267(c)); and (3) the partnership itself satisfies the REIT income and asset limitations (secs. 856(c)(2), (3), and (4), applied without regard to this provision). Thus, for example, this special rule provides that a partnership is not treated as a corporation under section 7704, in an "upreit" structure in which a publicly traded REIT owns more than 50 percent of the capital and profits interests of the partnership, partnership interests held by persons other than the REIT are convertible into publicly traded REIT stock, and the partnership itself meets the income and asset limitations of the REIT rules (secs. 856(c)(2), (3) and (4)). For this purpose, if the partnership interest may be put to the REIT or the partnership for REIT stock, it is considered convertible into interests of the publicly traded REIT. It is not intended that convertibility of partnership interests into a class of publicly traded REIT stock that tracks the performance of particular partnership assets (such as assets of a type that, if held in excess, would cause the REIT asset or income limitations not to be satisfied), or performance of the partnership assets generally, satisfies this special rule; rather, it is intended that such a partnership does not meet the requirements of this special rule.

Regulatory authority

The Treasury Department shall prescribe such regulations as are necessary or appropriate to carry out the purpose of the provision, including regulations to prevent the avoidance of the purposes of the provision and regulations to coordinate the provision with other rules of subchapter K of the Code (relating to partnerships). It is not intended that the provision be utilized to effect a recharacterization as untaxed foreign-source compensation income the amount

of any otherwise taxable (or withholdable) U.S.-source dividend, effectively connected income, U.S. real property gain, or similar income or of any otherwise taxable subpart F inclusion or passive foreign investment company inclusion; the Treasury Department is directed to provide guidance to carry out this intent.

EFFECTIVE DATE

The provision is effective generally for taxable years ending after June 18, 2008.

In the case of a partnership taxable year that includes that date, the amount of net income of a partner that is recharacterized as ordinary income for the performance of services under the provision is limited to the lesser of (1) net income for the entire partnership taxable year, or (2) net income determined by taking into account only items attributable to the part of the taxable year after that date.

The provision is effective for dispositions of partnership interests, and partnership distributions, after that date.

The provision relating to income or gain with respect-to interests in certain entities other than partnerships that are held by a person who performs, directly or indirectly, investment management services for the entity takes effect on June 18, 2008.

For purposes of applying the rules relating to publicly traded partnerships (section 7704), the provision applies to taxable years beginning after December 31, 2010.

B. Limitation of Deduction for Income Attributable to Domestic Production of Oil, Gas, Or Primary Products Thereof (Sec. 202 of the Bill and Sec. 199 of the Code)

PRESENT LAW

In general

Section 199 of the Code provides a deduction equal to a portion of the taxpayer's qualified production activities income. For taxable years beginning after 2009, the deduction is nine percent of such income. For taxable years beginning in 2008 and 2009, the deduction is six percent of income. However, the deduction for a taxable year is limited to 50 percent of the wages properly allocable to domestic production gross receipts paid by the taxpayer during the calendar year that ends in such taxable year.[21]

Qualified production activities income

In general, "qualified production activities income" is equal to domestic production gross receipts (defined by section 199(c)(4)), reduced by the sum of: (1) The costs of goods sold that are allocable to such receipts; (2) other expenses, losses, or deductions which are properly allocable to such receipts.

[21] For this purpose, "wages", include the sum of the amounts of wages as defined in section 3401(a) and elective deferrals that the taxpayer properly reports to the Social Security Administration with respect to the employment of employees of the taxpayer during the calendar year ending during the taxpayer's taxable year. Elective deferrals include elective deferrals as defined in section 402(g)(3), amounts deferred under section 457, and designated Roth contributions (as defined in section 402A).

Domestic production gross receipts

"Domestic production gross receipts" generally are gross receipts of a taxpayer that are derived from: (1) Any sale, exchange or other disposition, or any lease, rental or license, of qualifying production property ("QPP") that was manufactured, produced, grown or extracted ("MPGE") by the taxpayer in whole or in significant part within the United States; (2) any sale, exchange or other disposition, or any lease, rental or license, of qualified film produced by the taxpayer; (3) any sale, exchange or other disposition of electricity, natural gas, or potable water produced by the taxpayer in the United States; (4) construction activities performed in the United States; [22] or (5) engineering or architectural services performed in the United States for construction projects located in the United States.

Congress granted Treasury broad authority to "prescribe such regulations as are necessary to carry out the purposes" of section 199.[23] In defining MPGE for purposes of section 199, Treasury described the following as MPGE activities: Manufacturing, producing, growing, extracting; installing, developing, improving, and creating QPP; making QPP out of scrap, salvage, or junk material as well as from new or raw material by processing, manipulating, refining, or changing the form of an article, or by combining or assembling two or more articles; cultivating soil, raising livestock, fishing, and mining minerals.[24]

The regulations specifically cite an example of oil refining activities in describing the "in whole or in significant part" test in determining domestic production gross receipts. QPP is generally considered to be MPGE in significant part by the taxpayer within the United States if such activities are substantial in nature taking into account all of the facts and circumstances, including the relative value added by, and relative cost of, the taxpayer's MPGE activity within the United States, the nature of the QPP, and the nature of the MPGE activity that the taxpayer performs within the United States [25] The following example is provided in the regulations to illustrate this "substantial in nature" standard:

> X purchases from Y, an unrelated person, unrefined oil extracted outside the United States. X refines the oil in the United States. The refining of the oil by X is, an MPGE activity that is substantial in nature.[26]

Natural gas transmission or distribution

Domestic production gross receipts include gross receipts from the production in the United States of natural gas, but excludes gross receipts from the transmission or distribution of natural

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[22] For this purpose, construction activities include activities that are directly related to the 'erection or substantial renovation of residential and commercial buildings and infrastructure. Substantial renovation-would include structural improvements, but not mere cosmetic changes, such as painting, that is not performed in connection with activities that otherwise constitute substantial renovation.

[23] Sec.199(d)(9).

[24] Treas. Reg. sec. 1.199–3(e)(1).

[25] Treas. Reg. sec. 1.199–3(g)(2).

[26] Treas. Reg. sec. 1.199–3(g)(5), Example 1.

gas.[27] Production activities generally include all activities involved in extracting natural. gas from the ground and processing the gas into pipeline quality gas. However, gross receipts of a taxpayer attributable to transmission of pipeline quality gas from a natural gas field (or from a natural gas processing plant) to a local distribution-company's citygate (or to another customer) are not qualified domestic production gross receipts. Likewise, gas purchased by a local gas distribution company and distributed from the citygate to the local customers does not give rise to domestic production gross receipts.

Drilling oil or gas wells

The Treasury regulations provide that qualifying construction activities performed in the United States include activities relating to drilling an oil or gas well.[28] Under the regulations, activities the cost of which are intangible drilling and development costs within the meaning of Treas. Reg. sec. 1.612–4 are considered to be activities constituting construction for purposes of determining domestic production gross receipts.[29]

Qualifying in-kind partnerships

In general, an owner of a pass-thru entity is not treated as conducting the qualified production activities of the pass-thru entity, and vice versa. However, the Treasury regulations provide a special rule for "qualifying in-kind partnerships," which are defined as partnerships engaged solely in the extraction, refining, or processing of oil, natural gas, petrochemicals, or products derived from oil, natural gas, or petrochemicals in whole or in significant part within the United States, or the production or generation of electricity in the United States.[30] In the case of a qualifying in-kind partnership, each partner is treated as MPGE or producing the property MPGE or produced by the partnership that is distributed to that partner.[31] If a partner of a qualifying in-kind partnership derives gross receipts from the lease, rental, license, sale, exchange, or other disposition of the property that was MPGE or produced by the qualifying in-kind partnership, then, provided such partner is a partner of the qualifying in-kind partnership at the time the partner disposes of the property, the partner is treated as conducting the MPGE or production activities previously conducted by the qualifying in-kind partnership with respect to that property.[32]

Alternative minimum tax

The deduction for domestic production activities is allowed for purposes of computing alternative minimum taxable income (including adjusted current earnings). The deduction in computing alternative minimum taxable income is determined by reference to the lesser of the qualified production activities income (as determined for the regular tax) or the alternative minimum taxable in-

[27] H.R. Rep. No. 108–755 (conference report for the American Jobs Creation Act of 2004), footnote 28 at 272.
[28] Treas. Reg. sec. 1.199–3(m)(1)(i).
[29] Treas. Reg. sec. 1.199–3(m)(2)(iii).
[30] Treas. Reg. sec. 1.199–9(i)(2).
[31] Treas. Reg. sec. 1.199–9(i)(1).
[32] Id.

come (in the case of an individual, adjusted gross income as determined for the regular tax) without regard to this deduction.

REASONS FOR CHANGE

The Committee believes that section 199 was enacted to replace the extraterritorial income ("ETI") regime by providing new provisions to reduce the tax burden on those domestic manufacturers, including small businesses engaged in manufacturing. Taxpayers engaged in oil and gas activities were not permitted to claim ETI benefits. The Committee believes that these taxpayers should not be allowed to claim section 199 deductions, or in the case of smaller companies, the benefits should not exceed the present law level of six percent of qualified production activities income.

EXPLANATION OF PROVISION

The provision excludes gross receipts of any major integrated oil company (as defined in section 167(h)(5)(B)) derived from the production, refining, processing, transportation, or distribution of oil, gas, or any primary product thereof from the term "domestic production gross receipts" for purposes of section. The term "primary product" has the same meaning as when used in section 927(a)(2)(C), as in effect before its repeal. The Treasury regulations define the term "primary product from oil" to mean crude oil and all products derived from the destructive distillation of crude oil, including volatile products, light oils such as motor fuel and kerosene, distillates such as naphtha, lubricating oils, greases and waxes, and residues such as fuel oil.[33] Additionally, a product or commodity derived from oil which would be a primary product from oil if derived from crude oil is considered a primary product from oil.[34] The term "primary product from gas" is defined as all gas and associated hydrocarbon components from gas wells or oil wells, whether recovered at the lease or upon further processing, including natural gas, condensates, liquified petroleum gases such as ethane, propane, and butane, and liquid products such as natural gasoline.[35] These primary products and processes are not intended to represent either the only primary products from oil or gas or the only processes from which primary products may be derived under existing and future technologies.[36] Examples of nonprimary products include, but are not limited to, petrochemicals, medicinal products, insecticides, and alcohols.[37]

The provision also reduces the section 199 deduction for taxpayers, other than major integrated oil companies, that have oil related qualified production activities income for any taxable year beginning after 2009 by three percent of the least of: (1) Oil related qualified production activities income for the taxable year; (2) qualified production activities income for the taxable year; or (3) taxable income (determined without regard to the section 199 deduction).

The term "oil related qualified production activities income" is defined as the qualified production activities income which is at-

[33] Treas. Reg. sec. 1.927(a)–1T(g)(2)(i).
[34] Id.
[35] Treas. Reg. sec. 1.927(a)–1T(g)(2)(ii).
[36] Treas. Reg. sec. 1.927(a)–1T(g)(2)(iii).
[37] Treas. Reg. sec. 1.927(a)–1T(g)(2)(iv).

tributable to the production; refining, processing, transportation, or distribution of oil, gas, or any primary product thereof during such taxable year.

EFFECTIVE DATE

The provision is effective for taxable years beginning after December 31, 2008.

C. Limit Tax Treaty Benefits With Respect to Certain Deductible Payments (Sec. 203 of the Bill and Sec. 894 of the Code)

PRESENT LAW

In general

The United States taxes foreign corporations only on income that has a sufficient nexus to the United States. Thus, a foreign corporation is generally subject to net-basis U.S. tax only on income that is "effectively connected" with the conduct of a trade or business in the United States. Such "effectively connected income" generally is taxed in the same manner and at the same rates as the income of a U.S. corporation. An applicable tax treaty may limit the imposition of U.S. tax on business operations of a foreign corporation to cases in which the business is conducted through a "permanent establishment" in the United States.

In addition, foreign corporations generally are subject to a gross-basis U.S. tax at a flat 30-percent rate on the receipt of interest, dividends, rents, royalties, and certain similar types of income derived from U.S. sources, subject to certain exceptions. The tax ("U.S. withholding tax") generally is collected by means of withholding by the person making the payment. U.S. withholding tax may be reduced or eliminated under an applicable tax treaty, subject to the conditions discussed below.

Tax treaties

A foreign corporation may not benefit from a provision of a U.S. tax treaty with a foreign country that eliminates reduces U.S. withholding tax unless the foreign corporation is both a resident of such foreign country and qualifies under any limitation-of-benefits provision contained in the U.S. tax treaty with such foreign country. In general, a foreign corporation is a resident of a foreign country under a U.S. tax treaty with that foreign country if it is liable to tax in that country by reason of its domicile, residence, citizenship, place of management, place of incorporation, or other criterion of a similar nature.[38]

Limitation-on-benefits provisions

Limitation-on-benefits provisions in income tax treaties are intended to deny treaty benefits in certain cases of treaty shopping or income stripping engaged in by third-country residents. Treaty shopping is said to occur when an entity that is resident in a country with respect to which there is no relevant tax treaty in force (or there is such a treaty in force but the taxpayer desires better benefits than those offered under that treaty) becomes resident in

[38] United States Model Income Tax Convention of November 15, 2006, Art. 4, par. 1.

a treaty country or conducts a transaction in such a country for the purpose of qualifying for treaty benefits. For example, treaty shopping by a third-country resident may involve organizing in a treaty country a corporation that is entitled to the benefits of the treaty. Alternatively, a third-country resident eligible for favorable treatment under the tax rules of its country of residency may attempt to reduce the income base of a treaty country resident by having that treaty country resident pay to it, directly or indirectly, interest, royalties, or other amounts that are deductible in the treaty country from which the payments are made.

U.S. tax treaties contain a variety of limitation-on-benefits provisions due to the continued and recently accelerated development of limitation-on-benefits concepts, and the negotiated nature of tax treaties in general. Although many older U.S. tax treaties may lack limitation-on-benefits provisions[39] or lack the refinements now thought essential to such provisions, the U.S. model income tax treaty, as most recently revised in 2006 ("U.S. model treaty"),[40] and most of the newer U.S. treaties include limitation-on-benefits provisions that limit treaty benefits to resident taxpayers that meet certain detailed requirements intended to minimize these abuses. Present Treasury Department policy, which has been repeatedly ratified by the Senate, is broadly to revise older treaties by tightening limitation-on-benefits provisions to prevent treaty shopping.

The limitation-on-benefits rules included in U.S. income tax treaties and protocols signed since 2001 generally correspond with the limitation-on-benefits provisions of the U.S. model treaty.[41] Certain features of the limitation-on-benefits provisions in recent treaties and protocols, however, differ from the rules in the U.S. model treaty, and some recent treaties and protocols include additional limitation-on-benefits, rules not included in the U.S. model treaty. Some of the additions and differences make limitation-on-benefits provisions more restrictive than the rules in the U.S. model treaty, and others make the provisions less restrictive.

The U.S. model treaty limitation-on-benefits provision

The limitation-on-benefits rules of the U.S. model treaty include three provisions under which a resident of a treaty country may qualify for treaty benefits. First, a treaty-country resident may qualify for all treaty benefits if it has any one of several listed attributes. Second, a treaty-country resident that does not have one

[39] U.S. income tax treaties with Greece, Hungary, Iceland, Pakistan, the Philippines, Poland and Romania are examples of such treaties. The U.S.-Greece treaty entered into force on December 30, 1953; the U.S.-Hungary treaty entered into force on September 18, 1979; the U.S. Iceland treaty entered into force on December 26, 1975; the U.S.-Pakistan treaty entered into force on May 21, 1959; the U.S.-Philippines treaty entered into force on October 16, 1982; the U.S.-Poland treaty entered into force on July 23, 1976; and the U.S.-Romania treaty entered into force on February 26, 1976.

[40] United States Model Income Tax Convention of November 15, 2006, Art. 22.

[41] The income tax treaties and protocols signed since 2001 are those with the United Kingdom (treaty entered into force on March 31, 2003); Australia (protocol entered into force May 12, 2003); Mexico (protocol entered into force July 3, 2003); Sri Lanka (protocol entered into force July 12, 2004); Japan (treaty entered into force Match 30, 2004); Barbados (protocol entered into force December 20, 2004); Netherlands (protocol entered into force December 28, 2004); Bangladesh (treaty entered into force August 7, 2006); Sweden (protocol entered into force August 31, 2006); France (protocol entered into force December 21, 2006); Denmark (protocol entered into force December 28, 2007); Finland (protocol entered into force December 28, 2007); Germany (protocol entered into force December 28, 2007); Belgium (treaty entered into force December 28, 2007); Bulgaria (treaty signed February 23, 2007; has not yet entered into force); Canada (protocol signed September 21, 2007; has not yet entered into force); and Iceland (treaty signed October 23, 2007; has not yet entered into force).

of the listed attributes may qualify for treaty benefits for income items that are derived from the other treaty country and that are related to a trade or business carried on in the residence country. Third, a treaty-country resident that would not be eligible for treaty benefits under either of the preceding two provisions may qualify for treaty benefits at the discretion of the competent authority of the other treaty country. These three provisions are described in more detail below.

A treaty-country resident may qualify for treaty benefits under the U.S. model treaty if it has one of the following attributes: it is (1) An individual; (2) a contracting state or a political subdivision or a local authority of the contracting state; (3) a company that satisfies public-trading or ownership tests described below; (4) a pension fund or other tax-exempt organization (if, in the case of a pension fund, more than 50 percent of the fund's beneficiaries, members, or participants are individuals resident in either treaty country); or (5) a person other than an individual that satisfies ownership and base-erosion requirements described below.

A company satisfies the public trading test if its principal class of shares (and any disproportionate class of shares) is regularly traded on one or more recognized stock exchanges and either its principal class of shares is primarily traded on one or more recognized stock exchanges located in the treaty country in which-the company is a resident or the company's primary place of management and control is in its country of residence. A company may satisfy the ownership test if at least 50 percent of the aggregate vote and value of the company's shares (and at least 50 percent of any disproportionate class of the company's shares) is owned directly or indirectly by five or fewer companies entitled to benefits under the public trading test described above. This ownership requirement may be satisfied by indirect ownership only if each intermediate owner is a resident of either treaty country.

A resident of a treaty country satisfies the ownership prong of the ownership and base erosion requirements if on at least half the days of the taxable year, persons that are residents of that country and that are entitled to treaty benefits as individuals, governments, companies that satisfy the public trading requirement, or pension funds or other tax-exempt organizations own, directly or indirectly, stock representing at least 50 percent of the aggregate voting power and value (and at least 50 percent of any disproportionate class of shares) of the resident for whom treaty benefit eligibility is being tested. This ownership requirement may be satisfied by indirect ownership only if each intermediate owner is a resident of the country of residence of the person for which entitlement to treaty benefits is being tested. A resident of a treaty country satisfies the base erosion prong of the ownership and base erosion test if less than 50 percent of the person's gross income for the taxable year, as determined in the person's country of residence, is paid or accrued, directly or indirectly, in the form of deductible payments to persons who are not residents of either treaty country entitled to treaty benefits as individuals, governments, companies that satisfy the public trading requirement, or pension funds or other tax-exempt organizations (other than arm's-length payments in the ordinary course of business for services or tangible property).

Under the U.S. model treaty, a resident of a treaty country that is not eligible for all treaty benefits under any of the rules described above may be entitled to treaty benefits with respect to a particular item of income derived from the other treaty country. A resident is entitled to treaty benefits for such an income item if the resident is engaged in the active conduct of a trade or business in its country of residence (other than the business of making or managing investments for the resident's own account, unless these activities are banking, insurance, or securities activities carried on by a bank, an insurance company, or a registered securities dealer) and the income derived from the other treaty country is derived in connection with or is incidental to that trade or business. If a resident of a treaty country derives an item of income from a trade or business activity that it conducts in the other treaty country, or derives an income item arising in that other country from a related person, the income item eligibility rule just described is considered satisfied for that income item only if the trade or business activity carried on by the resident in its country of residence is substantial in relation to the trade or business activity carried on by the resident or the related person in the other country. The determination whether a trade or business activity is substantial is based on all the facts and circumstances.

A resident of a treaty country not otherwise eligible for treaty benefits under the U.S. model treaty may be eligible for benefits for a specific item of income based on a determination by the competent authority of the other treaty country. The competent authority may grant benefits for an item of income if it determines that the establishment, acquisition, or maintenance of the person for whom treaty benefits eligibility is being tested, and the conduct of that person's operations, did not have as one of its principal purposes the obtaining of benefits under the treaty.

REASONS FOR CHANGE

The Committee is aware that even though many recent U.S. income tax treaties include limitation-on-benefits provisions intended to ensure that only persons with sufficient nexus to the treaty partner countries may obtain treaty benefits, foreign multinational taxpayers residing in countries with which the United States does not have comprehensive tax treaties (including tax havens) may engage in treaty shopping. Treaty shopping by foreign multinational companies may involve organizing, in jurisdictions that have income tax treaties with the United States that offer favorable U.S. withholding rates on deductible payments; subsidiaries with no substantial business activities or other connections to those jurisdictions.[42] Such payments may ultimately be distributed to the foreign parent corporations in the non-tax-treaty jurisdictions, although payments made directly to the parent companies would not have been eligible for reduced treaty withholding rates. The Committee believes that some instances of treaty shopping involve for-

[42] As documented in the Department of the Treasury Report to the Congress on Earnings Stripping, Transfer Pricing and U.S. Income Tax Treaties, some of the older U.S. income treaties that do not have limitation-on-benefits provisions, or treaties which lack all of the recent refinements to such provisions, provide for zero or low rates of U.S. withholding on certain deductible payments, including interest. Department of the Treasury, *Report to the Congress on Earnings Stripping, Transfer Pricing and U.S. Income Tax Treaties*, November 28, 2007, at 82.

merly U.S.-based companies that engaged in corporate inversion transactions prior to the enactment of the anti-inversion rules of section 7874. As a result of these inversion transactions, U.S. parent corporations of multinational groups became subsidiaries of foreign corporations organized in low- or no-tax jurisdictions. The Committee believes that it is inappropriate to allow treaty benefits for deductible payments in cases in which a foreign parent corporation would not have qualified for benefits under a U.S. tax treaty if the payment had been made directly to the parent, including where the parent is resident in a tax haven.

EXPLANATION OF PROVISION

In general, the provision limits tax treaty benefits with respect to U.S. withholding tax imposed on deductible related-party payments. Under the provision, the amount of U.S. withholding tax imposed on such a payment may be reduced under any U.S. tax treaty only if U.S. withholding tax would have been reduced under a U.S. tax treaty if the payment had been made directly to the "foreign parent corporation" of the payee. A payment is a deductible related-party payment if it is made directly or indirectly by any entity to any other entity, it is allowable as a deduction, and both entities are members of the same "foreign controlled group of entities."

For purposes of the provision, a foreign controlled group of entities is a controlled group of corporations, modified as described below, in which the common parent company is a foreign corporation. Such common parent company is referred to as the "foreign parent corporation". A controlled group of corporations consists of a chain or chains of corporations connected through direct stock ownership of at least 80 percent vote or value. For purposes of the provision, the relevant ownership threshold is lowered from at least 80 percent to more than 50 percent, certain members of the controlled group of corporations that would otherwise be treated as excluded members are not treated as excluded members, and insurance companies are not treated as members of a separate controlled group of corporations. In addition, a partnership or other noncorporate entity is treated as a member of a controlled group of corporations if such entity is controlled by members of the group.

The Secretary may prescribe regulations that are necessary or appropriate to carry out the purposes of the provision, including regulations providing for the treatment of two or more persons as members of a foreign controlled group of entities if such persons would be the common parent of such group if treated as one corporation, and regulations providing for the treatment of any member of a foreign controlled group of entities as the common parent of that group if such treatment is appropriate taking into account the economic relationships among the group entities.

For example, under the provision, a deductible payment made by a U.S. entity to a foreign entity with a foreign parent corporation that is resident in a country with respect to which the United States does not have a tax treaty (or that is resident in a country with a U.S. tax treaty that would not reduce the withholding tax if the payment were made directly to the parent) is always subject to the statutory U.S. withholding tax rate of 30 percent, irrespective of whether the payee is resident of a treaty country. If the for-

eign parent corporation is resident in a country with respect to which the United States has a tax treaty that would have reduced the statutory U.S. withholding rate on a hypothetical deductible payment of the same type and amount made directly to the foreign parent corporation (regardless of the amount of such reduction), the U.S. withholding rate on the actual deductible payment is the applicable rate under the U.S. tax treaty with the country in which the payee is resident.

EFFECTIVE DATE

The provision applies to payments made after the date of enactment.

D. Require Information Reporting on Payment Card and Third Party Payment Transactions (Sec. 204 of the Bill and New Sec. 6050W of the Code)

PRESENT LAW

Present law imposes a variety of information reporting requirements on participants in certain transactions. These requirements are intended to assist taxpayers in preparing their income tax returns and to help the Internal Revenue Service ("IRS") determine whether such returns are correct and complete. For example, every person engaged in a trade or business generally is required to file information returns for each calendar year for payments of $600 or more made in the course of the payor's trade or business.[43] Payments to corporations generally are excepted from this requirement. Certain payments subject to information reporting also are subject to backup withholding if the payee has not provided a valid taxpayer identification number ("TIN").

Under present law, any person required to file a correct information return who fails to do so on or before the prescribed filing date is subject to a penalty that varies based on when, if at all, the correct information return is filed. In addition, under present law, the IRS has authority to operate the TIN matching program. The TIN matching program permits payors to verify the payee TINS required to be reported on information returns and payee statements.

REASONS FOR CHANGE

The Committee believes that requiring information reporting with respect to receipts from credit card and other electronic payment transactions will improve compliance and IRS enforcement efforts. Generally, business receipts that are subject to information reporting are less likely to be underreported by taxpayers. The Committee believes that expanding information reporting requirements will encourage the filing of timely and accurate income tax returns and improve overall tax administration.

EXPLANATION OF PROVISION

The provision requires any payment settlement entity making payment to a participating payee in settlement of reportable payments transactions to report annually to the IRS and to the partici-

[43] Sec. 6041(a). Unless otherwise stated, all section references are to the Internal Revenue Code of 1986, as amended (the "Code").

pating payee[44] the gross amount of such reportable payment transactions, as well as the name, address, and TIN of the participating payees. A "reportable payment transaction" means any payment card transaction and any third party network transaction.

Under the provision, a "payment settlement entity" means, in the case of a payment card transaction, a merchant acquiring bank and, in the case of a third party network transaction, a third party settlement organization. A "participating payee" means, in the case of a payment card transaction, any person who accepts a payment card as payment and, in the case of a third party network transaction, any person who accepts payment from a third party settlement organization in settlement of such transaction.

For purposes of the reporting requirement, the term "merchant acquiring bank" means the bank or other organization with the contractual obligation to make payment to participating payees in settlement of payment card transactions. A "payment card transaction" means any transaction in which a payment card is accepted as payment.[45] A "payment card" is defined as any card (e.g., a credit card or debit card) which is issued pursuant to an agreement or arrangement which provides for: (1) One or more issuers of such cards; (2) a network of persons unrelated to each other, and to the issuer, who agree to accept such cards as payment; and (3) standards and mechanisms for settling the transactions between the merchant acquiring banks and the persons who agree to accept such cards as payment. Thus, under the provision, a bank that enrolls a business to accept credit cards and contracts with the business to make payment on credit card transactions is required to report to the IRS the business's gross credit card transactions for each calendar year. The bank also is required to provide a copy of the information report to the business.

The provision also requires reporting on a third party network transaction. The term "third party network transaction" means any transaction which is settled through a third party payment network. A "third party payment network" is defined as any agreement or arrangement: (1) Which involves the establishment of accounts with a central organization for the purpose of settling transactions between persons who establish such accounts; (2) which provides standards and mechanisms for settling such transactions; (3) which involves a substantial number of persons (e.g., more than 50) unrelated to such central organization who provide goods or services and who have agreed to settle transactions for the provision of such goods or services pursuant to such agreement or arrangement; and (4) which guarantees persons providing goods or services pursuant to such agreement or arrangement that such persons will be paid for providing such goods or services. In the case of a third party network transaction, the payment settlement entity is the third party settlement organization, which is defined as the central organization which has the contractual obligation to make payment to participating payees of third party network transactions. Thus, an organization generally is required to report if it provides a network enabling buyers who have established accounts with the organization to transfer funds to sellers who have a con-

[44] The provision allows the payee statement to be furnished electronically.

[45] For this purpose, the acceptance as payment of any account number or other indicia associated with a payment card also qualifies a payment card transaction.

tractual obligation to accept payment through the network. However, an organization operating a network which merely processes electronic payments (such as wire transfers and direct deposit payments) between buyers and sellers, but does not have contractual agreements with such buyers and sellers to use such network, is not required to report under the provision.

A third party payment network does not include any agreement or arrangement which provides for the issuance of payment cards as defined by the provision. In addition, a third party settlement organization is required to report only if the aggregate value of third party network transactions for the year exceeds $10,000 and the aggregate number of such transactions exceeds 200.

The provision also imposes reporting requirements on intermediaries who receive payments from a payment settlement entity and distribute such payments to one or more participating payees. The provision treats such intermediaries as participating payees, with respect to the payment settlement entity and as payment settlement entities with respect to the participating payees to whom the intermediary distributes payments. Thus, for example, in the case of a corporation that receives payment from a bank for credit card sales effectuated at the corporation's independently-owned franchise stores, the bank is required to report the gross amount of reportable payment transactions settled through the corporation (notwithstanding the fact that the corporation does not accept payment cards and would not otherwise be treated as a participating payee). In turn, the corporation, as an intermediary, would be required to report the gross amount of reportable payment transactions allocable to each franchise store.

If a payment settlement entity contracts with a third party to settle reportable payment transactions on behalf of the payment settlement entity, the provision requires the third party to file the annual information return in lieu of the payment settlement entity.

Under the provision, reportable payment transactions subject to information reporting generally are subject to backup withholding requirements. Finally, present law penalties relating to the failure to file correct information returns would apply to the new information reporting requirements required under the provision.

EFFECTIVE DATE

The provision generally is effective for information returns for reportable payment transactions for calendar years beginning after December 31, 2010. The amendments to the backup withholding requirements apply to amounts paid after December 31, 2011. Solely for purposes of carrying out the TIN matching program established by the IRS, the provision shall be treated as taking effect on the date of enactment and each person responsible for setting the standards and mechanisms for settling transactions involving payment cards shall be treated in the same manner as a payment settlement entity.

E. Application of Continuous Levy to Payments Made to Federal Vendors Relating to Property (Sec. 205 of the Bill and Sec. 6331 of the Code)

PRESENT LAW

To facilitate the collection of tax, the IRS can generally levy upon all property and rights to property of a taxpayer.[46] With respect to specified types of recurring payments, the IRS may impose a continuous levy of up to 15 percent of each payment, which generally continues in effect until the liability is paid.[47] With respect to Federal payments to vendors of goods or services, the continuous levy may be up to 100 percent of each payment.

REASONS FOR CHANGE

The 100 percent continuous levy authority was intended to address abuse of the Federal tax system by some Federal contractors. The Committee is aware that the 100 percent continuous levy authority is not operating in the manner it was intended. Consequently, the Committee believes it is necessary to expand the scope of the provision to apply to payments to vendor for any type of property.

EXPLANATION OF PROVISION

The provision expands the types of Federal payments subject to the 100 percent continuous levy from vendor payments for goods and services to vendor payments for all property and services.

EFFECTIVE DATE

The provision is effective for levies approved after the date of enactment.

F. Modifications to Corporate Estimated Tax Payments (Sec. 206 of the Bill)

PRESENT LAW

In general

In general, corporations are required to make quarterly estimated tax payments of their income tax liability. For a corporation whose taxable year is a calendar year, these estimated tax payments must be made by April 15, June 15, September 15, and December 15.

Tax Increase Prevention and Reconciliation Act of 2005 ("TIPRA")

TIPRA provided the following special rules:

In case of a corporation with assets of at least $1 billion, the payments due in July, August, and September, 2012, shall be increased to 106.25 percent of the payment otherwise due and the next required payment shall be reduced accordingly.

In case of a corporation with assets of at least $1 billion, the payments due in July, August, and September, 2013, shall be in-

[46] Sec. 6331.
[47] Sec. 6331(h).

creased to 100.75 percent of the payment otherwise due and the next required payment shall be reduced accordingly.

Subsequent legislation

Several public laws have been enacted since TIPRA which further increase the percentage of payments due under each of the two special rules enacted by TIPRA described above.

REASONS FOR CHANGE

The Committee believes it is appropriate to adjust the corporate estimated tax payments.

EXPLANATION OF PROVISION

The provision makes two modifications to the corporate estimated tax payment rules.

First, in case of a corporation with assets of at least $1 billion, the payments due in July, August, and September, 2013, are increased by 59.5 percentage points of the payment otherwise due and the next required payment shall be reduced accordingly.

Second, in case of a corporation with assets of at least $1 billion, the increased payments due in July, August, and September, 2012 under the special rules in TIPRA and subsequent legislation are repealed. In effect the general rule is applied (i.e., such corporations are required to make quarterly estimated tax payments based on their income tax liability.)

EFFECTIVE DATE

The provision is effective on the date of enactment.

III. VOTES OF THE COMMITTEE

In compliance with clause 3(b) of rule XIII of the Rules of the House of Representatives, the following statements are made concerning the vote of the Committee on Ways and Means in its consideration of H.R. 6275, the "Alternative Minimum Tax Relief Act of 2008."

MOTION TO REPORT RECOMMENDATIONS

H.R. 6275, the "Alternative Minimum Tax Relief Act of 2008" as amended, was ordered favorably reported by a rollcall vote of 22-yeas and 16 nays (with a quorum being present). The vote was as follows:

Representatives	Yea	Nay	Present	Representatives	Yea	Nay	Present
Mr. Rangel	X			Mr. McCrery		X	
Mr. Stark				Mr. Herger		X	
Mr. Levin	X			Mr. Camp		X	
Mr. McDermott	X			Mr. Ramstad		X	
Mr. Lewis (GA)	X			Mr. Johnson		X	
Mr. Neal	X			Mr. English		X	
Mr. McNulty	X			Mr. Weller		X	
Mr. Tanner	X			Mr. Hulshof			
Mr. Becerra	X			Mr. Lewis (KY)		X	
Mr. Doggett	X			Mr. Brady		X	
Mr. Pomeroy	X			Mr. Reynolds		X	
Ms. Tubbs Jones	X			Mr. Ryan		X	
Mr. Thompson	X			Mr. Cantor		X	

Representatives	Yea	Nay	Present	Representatives	Yea	Nay	Present
Mr. Larson	X			Mr. Linder		X	
Mr. Emanuel	X			Mr. Nunes		X	
Mr. Blumenauer	X			Mr. Tiberi		X	
Mr. Kind				Mr. Porter		X	
Mr. Pascrell	X						
Ms. Berkley	X						
Mr. Crowley	X						
Mr. Van Hollen	X						
Mr. Meek	X						
Ms. Schwartz	X						
Mr. Davis	X						

VOTES ON AMENDMENTS

A rollcall vote was conducted on the following amendments to the Chairman's Amendment in the Nature of a Substitute.

An amendment by Mr. English which would strike Title II of the bill was defeated by a rollcall vote of 16 yeas and 22 nays. The vote was as follows:

Representatives	Yea	Nay	Present	Representatives	Yea	Nay	Present
Mr. Rangel		X		Mr. McCrery	X		
Mr. Stark				Mr. Herger	X		
Mr. Levin		X		Mr. Camp	X		
Mr. McDermott		X		Mr. Ramstad	X		
Mr. Lewis (GA)		X		Mr. Johnson	X		
Mr. Neal		X		Mr. English	X		
Mr. McNulty		X		Mr. Weller	X		
Mr. Tanner		X		Mr. Hulshof			
Mr. Becerra		X		Mr. Lewis (KY)	X		
Mr. Doggett		X		Mr. Brady	X		
Mr. Pomeroy		X		Mr. Reynolds	X		
Ms. Tubbs Jones		X		Mr. Ryan	X		
Mr. Thompson		X		Mr. Cantor	X		
Mr. Larson		X		Mr. Linder	X		
Mr. Emanuel		X		Mr. Nunes	X		
Mr. Blumenauer		X		Mr. Tiberi	X		
Mr. Kind				Mr. Porter	X		
Mr. Pascrell		X					
Ms. Berkley		X					
Mr. Crowley		X					
Mr. Van Hollen		X					
Mr. Meek		X					
Ms. Schwartz		X					
Mr. Davis		X					

An amendment by Mr. Brady which would strike section 202 of the bill and modify the bill by providing an increase in deductions for certain trade and business expenses was defeated by a rollcall vote of 17 yeas and 21 nays. The vote was as follows:

Representatives	Yea	Nay	Present	Representatives	Yea	Nay	Present
Mr. Rangel		X		Mr. McCrery	X		
Mr. Stark				Mr. Herger	X		
Mr. Levin		X		Mr. Camp	X		
Mr. McDermott		X		Mr. Ramstad	X		
Mr. Lewis (GA)		X		Mr. Johnson	X		
Mr. Neal		X		Mr. English	X		
Mr. McNulty		X		Mr. Weller	X		
Mr. Tanner		X		Mr. Hulshof			
Mr. Becerra		X		Mr. Lewis (KY)	X		
Mr. Doggett		X		Mr. Brady	X		
Mr. Pomeroy		X		Mr. Reynolds	X		

Representatives	Yea	Nay	Present	Representatives	Yea	Nay	Present
Ms. Tubbs Jones		X		Mr. Ryan	X		
Mr. Thompson		X		Mr. Cantor	X		
Mr. Larson		X		Mr. Linder	X		
Mr. Emanuel		X		Mr. Nunes	X		
Mr. Blumenauer		X		Mr. Tiberi	X		
Mr. Kind				Mr. Porter	X		
Mr. Pascrell	X						
Ms. Berkley		X					
Mr. Crowley		X					
Mr. Van Hollen		X					
Mr. Meek		X					
Ms. Schwartz		X					
Mr. Davis		X					

An amendment by Mr. Brady which would exempt real estate from section 201 of the bill was defeated by a rollcall vote of 16 yeas and 22 nays. The vote was as follows:

Representatives	Yea	Nay	Present	Representatives	Yea	Nay	Present
Mr. Rangel		X		Mr. McCrery	X		
Mr. Stark				Mr. Herger	X		
Mr. Levin		X		Mr. Camp	X		
Mr. McDermott		X		Mr. Ramstad	X		
Mr. Lewis (GA)		X		Mr. Johnson	X		
Mr. Neal		X		Mr. English	X		
Mr. McNulty		X		Mr. Weller	X		
Mr. Tanner		X		Mr. Hulshof			
Mr. Becerra		X		Mr. Lewis (KY)	X		
Mr. Doggett		X		Mr. Brady	X		
Mr. Pomeroy		X		Mr. Reynolds	X		
Ms. Tubbs Jones		X		Mr. Ryan	X		
Mr. Thompson		X		Mr. Cantor	X		
Mr. Larson		X		Mr. Linder	X		
Mr. Emanuel		X		Mr. Nunes	X		
Mr. Blumenauer		X		Mr. Tiberi	X		
Mr. Kind				Mr. Porter	X		
Mr. Pascrell		X					
Ms. Berkley		X					
Mr. Crowley		X					
Mr. Van Hollen		X					
Mr. Meek		X					
Ms. Schwartz		X					
Mr. Davis		X					

IV. BUDGET EFFECTS OF THE BILL

A. Committee Estimate of Budgetary Effects

In compliance with clause 3(d)(2) of rule XIII of the Rules of the House of Representatives, the following statement is made concerning the effects on the budget of the revenue provisions of the bill, H.R. 6275, as reported.

The bill is estimated to have the following effects on Federal budget receipts for fiscal years 2008–2018:

ESTIMATED REVENUE EFFECTS OF H.R. 6275,
THE "ALTERNATIVE MINIMUM TAX RELIEF ACT OF 2008,"
AS REPORTED BY THE COMMITTEE ON WAYS AND MEANS

Fiscal Years 2008 - 2018

[Millions of Dollars]

Provision	Effective	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018	2008-13	2008-18
I. One-Year Extensions - Set AMT exemption amounts at $46,200/$69,950 for 2008 and extend application of nonrefundable credits	tyba 12/31/07	-1,230	-75,143	14,851	---	---	---	---	---	---	---	---	-61,522	-61,522
II. Revenue Provisions														
1. Income of partners for performing investment management services treated as ordinary income received for performance of services	[1]	82	3,519	3,810	3,832	3,591	3,243	2,818	2,567	2,383	2,458	2,678	18,077	30,981
2. Deny section 199 deduction for major integrated oil companies, and freeze at 6% for all non-majors, for income attributable to oil, gas, or primary products thereof	tyba 2008	---	367	955	1,170	1,258	1,352	1,453	1,562	1,578	1,805	2,065	5,102	13,565
3. Limit eligibility for reduced treaty withholding rates based on availability of treaty benefits to foreign parent	pa DOE	13	551	592	636	667	701	719	737	755	774	796	3,160	6,941
4. Require information reporting on payment card and third party payment transactions	[2]	---	---	---	24	620	860	1,262	1,630	1,717	1,802	1,888	1,504	9,802
5. Application of continuous levy to payments made to Federal vendors relating to property	laa DOE	2	27	27	28	29	29	30	31	32	33	34	142	301
6. Modify timing for corporate estimated tax payment [3]	DOE	---	---	---	---	-9,934	43,629	-33,695	---	---	---	---	33,695	---
Total of Revenue Provisions		**97**	**4,464**	**5,384**	**5,690**	**-3,769**	**49,814**	**-27,413**	**6,527**	**6,465**	**6,872**	**7,461**	**61,680**	**61,590**
NET TOTAL		**-1,133**	**-70,679**	**20,235**	**5,690**	**-3,769**	**49,814**	**-27,413**	**6,527**	**6,465**	**6,872**	**7,461**	**158**	**68**

Joint Committee on Taxation

NOTE: Details may not add to totals due to rounding. The date of enactment is assumed to be August 1, 2008.

[Legend and Footnotes for the Table appear on the following page]

Legend and Footnotes for the Table:

Legend for "Effective" column:

DOE = date of enactment
pa = payments after
tyba = taxable years beginning after
laa = levies approved after

[1] The provision is generally effective for taxable years ending after June 18, 2008; for dispositions of partnership interests and partnership distributions after that date and, in the case of other income and gain in connection with investment management services by a person holding a disqualified interest in an entity, June 18, 2008. The provision as it relates to publicly traded partnerships is effective for taxable years beginning after December 31, 2010. The estimate assumes no interaction with provisions related to deferred compensation contained in other pending legislation.

[2] Generally effective for information returns for reportable transactions for calendar years beginning after December 31, 2010. The amendments to backup withholding apply to amounts paid after December 31, 2011.

[3] Reduce to 100 percent the required corporate estimated tax payments factor for corporations with assets of at least $1 billion for payments due in July, August, and September 2012; increase by 59.5 percentage points such payments due in July, August, and September 2013.

B. Statement Regarding New Budget Authority and Tax Expenditures Budget Authority

In compliance with clause 3(c)(2) of rule XIII of the Rules of the House of Representatives, the Committee states that the bill involves no new or increased budget authority. The Committee further states that the revenue-reducing tax provisions involve increased tax expenditures. (See amounts in table in Part IV.A., above.)

C. Cost Estimate Prepared by the Congressional Budget Office

In compliance with clause 3(c)(3) of rule XIII of the Rules of the House of Representatives, requiring a cost estimate prepared by the CBO, the following statement by CBO is provided.

U.S. Congress,
Congressional Budget Office,
Washington, DC, June 20, 2008.

Hon. Charles B. Rangel,
Chairman, Committee on Ways and Means,
House of Representatives, Washington, DC.

Dear Mr. Chairman: The Congressional Budget Office as prepared the enclosed cost estimate for H.R. 6275, the Alternative Minus Tax Relief Act of 2008.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Zachary Epstein.

Sincerely,

Robert P. Murphy
(For Peter R. Orszag, Director).

Enclosure.

H.R. 6275—Alternative Minimum Tax Relief Act of 2008

Summary: H.R. 6275 would provide relief from the alternative minimum tax (AMT) for tax year 2008. Additionally, the bill would raise revenue by modifying the tax treatment of income ("carried interest") from investment services partnerships, denying a deduction for the domestic production of oil and gas products, limiting the ability of foreign corporations to use United States tax treaties to reduce their withholding taxes, requiring information reporting on merchants' credit and debit card transactions, and adjusting the rules for assessing levies on payments from the federal government to private vendors with outstanding tax liability. The bill would also shift some corporate income tax receipts from 2012 and 2014 into 2013. On balance, the Joint Committee on Taxation (JCT) estimates that enacting the bill would increase revenues by $158 million over the 2008–2013 period and by $68 million over the 2008–2018 period.

JCT has determined that the bill contains no intergovernmental mandates as defined by the Unfunded Mandates Reform Act (UMRA), but that it contains four private-sector mandates: The taxation of carried interest as ordinary income, the denial of the section 199 deduction for major integrated oil companies and freezing of the current deduction for other oil and gas producers, the limitation on the ability of foreign corporations to use United

States tax treaties to reduce tax withholding, and the additional information reporting on credit and debit card transactions. JCT estimates that the costs required to comply with the mandates would exceed the annual threshold established by UMRA for private-sector mandates ($136 million in 2008, adjusted annually for inflation) in each of the next 10 years (2009 through 2018).

Estimated cost to the Federal Government: The estimated budgetary impact of H.R. 6275 is shown in the following table.

	By fiscal year, in millions of dollars—												
	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018	2008–2013	2008–2018
CHANGES IN REVENUES													
Individual AMT relief	−1,230	−75,143	14,851	0	0	0	0	0	0	0	0	−61,522	−61,522
Altered Taxation of Carried Interest	82	3,519	3,810	3,832	3,591	3,243	2,818	2,567	2,383	2,458	2,678	18,077	30,981
Limiting the Section 199 Deduction for Oil and Gas Producers	0	367	955	1,170	1,258	1,352	1,453	1,562	1,578	1,805	2,065	5,102	13,565
Limiting the Use of Tax Treaties by Foreign Companies	13	551	592	636	667	701	719	737	755	774	796	3,160	6,941
Additional Information Reporting	0	0	0	24	620	860	1,262	1,630	1,717	1,802	1,888	1,504	9,802
Expanding the Application of a Levy on Certain Federal Payments	2	27	27	28	29	29	30	31	32	33	34	142	301
Corporate Estimated Tax Payments Due in 2012 and 2013	0	0	0	0	−9,934	43,629	33,695	0	0	0	0	33,695	0
Total Changes	−1,133	−70,679	20,235	5,690	−3,769	49,814	−27,413	6,527	6,465	6,872	7,461	158	68

Source: Joint Committee on Taxation.
Note: AMT = Alternative Minimum Tax.

Basis of the estimate: JCT estimated the effects of H.R. 6275 on revenues. For this estimate, JCT assumes the bill will be enacted by August 1, 2008.

Individual AMT relief

H.R. 6275 would reduce revenues by raising the exemption amount against one's gross income for AMT purposes and by extending the rule that allows the use of nonrefundable credits against the AMT. Under current law, unmarried individuals, married individuals filing joint returns, and married individuals filing separate returns are permitted an exemption on their taxable income under the alternative minimum tax rules for 2008 of $33,750, $45,000, and. $22,500, respectively. H.R. 6275 would raise those respective exemption amounts to $46,200, $69,950, and $34,975. Also, under current law, individuals with nonrefundable personal tax credits are permitted to claim the credits against the AMT in 2007 but not thereafter. H.R. 6275 would extend such treatment through tax year 2008. JCT estimates that this provision would decrease revenues by $61.5 billion over the 2008–2010 period.

Altered Taxation of Carried Interest

The bill would modify the rules for the taxation of income of a general partner in a private equity or hedge fund. Such a partner's income may include compensation that is determined as a share of the profits on the assets under the fund's management. This kind of compensation is referred to as carried interest. Under current law, carried interest is taxed at the long-term capital gains rate to the extent that the fund's profits reflect long-term capital gains. Under H.R. 6275, all carried interest would be taxed as ordinary income except for that which is directly attributable to such partner's invested capital. JCT estimates that enacting this provision would increase revenues by $31.0 billion over the 2008–2018 period.

Limiting the Section 199 Deduction for Oil and Gas Producers

Under current law, taxpayers are permitted a deduction under section 199 of the Internal Revenue Code of up to 6 percent of a income attributable to qualifying domestic production activity. That deduction will rise to 9 percent after 2009. H.R. 6275 would deny that tax deduction to any income of major integrated oil companies from the sale or exchange of oil, natural gas, or related byproducts beginning in 2009. The bill would also freeze the existing deduction at 6 percent for other oil and natural gas producers. JCT estimates that this provision would increase revenues by $13.6 billion over the 2009–2018 period.

Limiting the Use of Tax Treaties by Foreign Companies

The bill would change tax provisions that in some cases allow a U.S. subsidiary of a foreign parent corporation to avoid U.S. withholding tax on payments to a related subsidiary in another country that has a tax treaty with the United States. JCT estimates that this provision would increase revenues by $6.9 billion over the 2008–2018 period.

Information Reporting on Payment Card Transactions

H.R. 6275 would require banks and other payment settlement entities to report to the IRS the gross amount of money paid to merchants as settlement for credit and debit card transactions. Such information reporting would be required beginning in tax year 2011. JCT estimates this provision would increase revenues by $9.8 billion over the 2011–2018 period.

Application of continuous levy

Under current law, the IRS may impose a continuous levy on federal payments to vendors of goods or services with unpaid, outstanding tax ability. The bill would expand the IRS' ability to impose such a levy to include federal payments for other kinds of property. JCT estimates that this provision would increase revenues by about $0.3 billion over the 2008–2018 period.

Corporate estimated tax payments due in 2012 and 2013

H.R. 6275 would shift revenues out of 2012 and 2014 and into 2013 by adjusting the portion of corporate estimated tax payments due in July through September of 2012 and 2013. JCT estimates that this change would reduce revenues by $9.9 billion in 2012, increase them by $43.6 billion in 2013, and reduce them by $33.7 billion in 2014.

Intergovernmental and private-sector impact: JCT has reviewed the bill and determined that it contains no intergovernmental mandates, but that it contains four private-sector mandates. The bill would alter the tax treatment of investment services income (carried interest of general partners in private equity and hedge funds, deny the section 199 deduction for major integrated oil companies and freeze the current deduction for other oil and gas producers, limit the ability of foreign corporations to use United States tax treaties to reduce U.S. tax withholding, and require that additional information regarding the gross amount of credit and debit card transactions be reported to the IRS. JCT estimates that the costs required to comply with the mandates would exceed the annual threshold established by UMRA ($136 million in 2008, adjusted annually for inflation) in each of the next 10 years (2009 through 2018).

Estimate prepared by: Zachary Epstein.

Estimate approved by: G. Thomas Woodward, Assistant Director for Tax Analysis.

D. Macroeconomic Impact Analysis

In compliance with clause 3(h)(2) of rule XIII of the rules of the House of Representatives, the following statement is made by the Joint Committee on Taxation with respect to the provisions of the bill amending the Internal Revenue Code of 1986:

This bill significantly reduces alternative minimum tax liability for one year, in a temporary extension of prior law. However, since the relevant provisions have been extended repeatedly in recent years, our conventional revenue estimate assumes that most taxpayers already anticipated such an extension would occur for the current year, and that the applicable marginal rates for 2008 are those which apply under the provision. Because taxpayers are al-

ready responding as if the provision were extended, there can be little effect on economic activity in 2008. Since most taxpayers file returns after their taxable year is complete, any change in marginal tax rates due to this provision may be understood too late to affect labor supply decisions. Thus, extending the provision has primarily an effect on after-tax income in 2009, when taxpayers file their returns. The reduction in individual tax liability results in more disposable income for individuals, and thus may be expected to increase total personal consumption expenditures.

However, the temporary nature of the provision implies that the economic effects are small when considered relative to the five-year time horizon within which our macroeconomic results are reported. In addition, the temporary nature of this provision increases the amount of uncertainty associated with modeling the effects of these proposals on the macro-economy. Modeling the effects of such proposals requires making assumptions about taxpayers' expectations about the future of the provision, as well as adjusting their responses in light of those assumptions. Empirical evidence on taxpayers' expectations about future tax policy and likely response to temporary incentives is inconclusive.

The extent of this response is also sensitive to individuals' expectations about how this provision would affect their future tax liability. To the extent that individuals choose to spend the additional income rather than save it, interest rates may rise and private investment may be reduced. The short run stimulative effects of any decrease in tax liability are also affected by the state of the economy at the time of the tax reduction. If the economy is operating near capacity, short run stimulus cannot be expected to result in much additional real growth. Depending on the reaction of the Federal Reserve Board, it may result in inflation or higher interest rates. We would expect any stimulus generated by this provision, relative to the present-law baseline, to be small, short-lived, and occurring in the first three quarters of 2009. As with the marginal rate response, this analysis is subject to uncertainty about taxpayers' expectations for future tax policy and behavioral response.

In addition, this bill contains several provisions that permanently increase the tax liability of several limited groups of taxpayers. To the extent that these tax increases provide incentives for reducing investment in the affected sectors, we would expect that much of this investment would shift to other sectors. The increased rate of taxation on certain income of partners for performing investment services affects a group of taxpayers whose labor supply is known to be fairly insensitive to changes in tax policy. As a whole, we would expect these tax increases to have very small effects on the economy.

Thus, we estimate that the effects of the bill on economic activity are so small relative to the size of the economy and the degree of uncertainty associated with the estimate as to be incalculable within the context of a model of the aggregate economy.

E. PAY-GO RULE

In compliance with clause 10 of rule XXI of the Rules of the House of Representatives, the following statement is made concerning the effects on the budget of title X of the bill, H.R. 5720, as reported: the provisions of the bill affecting revenues have the

net effect of not increasing the deficit or reducing the surplus for either: (1) The period comprising the current fiscal year and the five fiscal years beginning with the fiscal year that ends in the following calendar year; and (2) the period comprising the current fiscal year and the ten fiscal years beginning with the fiscal year that ends in the following calendar year.

V. OTHER MATTERS TO BE DISCUSSED UNDER THE RULES OF THE HOUSE

A. Committee Oversight Findings and Recommendations

With respect to clause 3(c)(1) of rule XIII of the Rules of the House of Representatives (relating to oversight findings), the Committee advises that it is appropriate and timely to enact the provisions of the bill as reported.

B. Statement of General Performance Goals and Objectives

With respect to clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, the Committee advises that the bill contains no measure that authorizes funding, so no statement of general performance goals and objectives for which any measure authorizes funding is required.

C. Constitutional Authority Statement

With respect to clause 3(d)(1) of rule XIII of the Rules of the House of Representatives (relating to Constitutional Authority), the Committee states that the Committee's action in reporting this bill is derived from Article I of the Constitution, Section 8 ("The Congress shall have Power To lay and collect Taxes, Duties, Imposts and Excises * * *"), and from the 16th Amendment to the Constitution.

D. Information Relating to Unfunded Mandates

This information is provided in accordance with section 423 of the Unfunded Mandates Act of 1995 (Pub. L. No. 104–4).

The Committee has determined that the following tax provisions of the reported bill contain Federal private sector mandates within the meaning of Public Law No. 104–4, the Unfunded Mandates Reform Act of 1995: (1) Income of partners for performing investment management services treated as ordinary income received for the performance of services (sec. 201 of the bill); (2) limitation of deduction of income attributable to domestic production of oil, gas, or primary products thereof (sec. 202 of the bill); (3) limit tax treaty benefits with respect to certain deductible payments (sec. 203 of the bill); and (4) require information reporting on payment card and third party payment transactions (sec. 204 of the bill). The costs required to comply with each Federal private sector mandate generally are no greater than the aggregate estimated budget effects of the provision.

The Committee has determined that the revenue provisions of the bill do not impose a Federal intergovernmental mandate on State, local, or tribal governments.

E. Applicability of House Rule XXI 5(b)

Clause 5 of rule XXI of the Rules of the House of Representatives provides, in part, that "A bill or joint resolution, amendment, or conference report carrying a Federal income tax rate increase may not be considered as passed or agreed to unless so determined by a vote of not less than three-fifths of the Members voting, a quorum being present." The Committee has carefully reviewed the provisions of the bill, and states that the provisions of the bill do not involve any Federal income tax rate increases within the meaning of the rule.

F. Tax Complexity Analysis

Section 4022(b) of the Internal Revenue Service Reform and Restructuring Act of 1998 (the "IRS Reform Act") requires the Joint Committee on Taxation (in consultation with the Internal Revenue Service and the Department of the Treasury) to provide a tax complexity analysis. The complexity analysis is required for all legislation reported by the Senate Committee on Finance, the House Committee on Ways and Means, or any committee of conference if the legislation includes a provision that directly or indirectly amends the Internal Revenue Code and has widespread applicability to individuals or small businesses. For each such provision identified by the staff of the Joint Committee on Taxation a summary description of the provision is provided along with an estimate of the number and type of affected taxpayers, and a discussion regarding the relevant complexity and administrative issues. One provision has been identified as requiring a complexity analysis in this bill (the increase in the AMT exemption amount).

Following the analysis of the staff of the Joint Committee on Taxation are the comments of the IRS and Treasury regarding each of the provisions included in the complexity analysis.

Summary description of the provision

The alternative minimum tax exemption amounts for 2008 are increased.

Number of affected taxpayers

It is estimated that the provisions will affect approximately 26 million individual tax returns.

Discussion

Many individuals will not have to compute their alternative minimum tax and file the IRS forms relating to that tax.

COMMISSIONER

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

June 19, 2008

Mr. Edward D. Kleinbard
Chief of Staff
Joint Committee on Taxation
Washington, D.C. 20515

Dear Mr. Kleinbard:

Enclosed are the combined comments of the Internal Revenue Service and the Treasury Department on the extension of the increased alternative minimum exemption amount for the Committee Report on the "Alternative Minimum Tax Relief Act of 2008," that you preliminarily identified, in your letter dated June 18, 2008, for inclusion in the complexity analysis in the report for the bill.

Our comments are based on the description of the provision provided in your letter, and the statutory language and description of this provision in the Chairman's Amendment in the nature of a substitute for the Committee Report on H.R. 6275, dated June 18, 2008. Due to the short turnaround time, our comments are provisional and subject to change upon a more complete and in-depth analysis of the provision.

Sincerely,

Douglas H. Shulman

Enclosure

COMPLEXITY ANALYSIS OF THE ALTERNATIVE MINIMUM TAX RELIEF ACT OF 2008 (H.R. 6275)

Increase in the AMT Exemption Amount

Provision: Under present law, for taxable years beginning after 2007, the individual alternative minimum tax exemption amounts are $33,750, if single or head of household; $45,000, if married filing jointly or a surviving spouse; and $22,500, if married filing separately.

The provision increases these amounts for taxable years beginning in 2008 to $46,200, if single or head of household; $69,950, if married filing jointly or a surviving spouse; and $34,975, if married filing separately.

IRS/Treasury Comments:

- The provision would reduce the number of taxpayers whose tax liability is affected by the AMT for 2008 from 26.4 million to 4.2 million. (When combined with the provision to permit most nonrefundable personal tax credits to be used against tentative AMT for 2008, the number of taxpayers whose tax liability is affected by the AMT for 2008 would be reduced to 4.1 million.)
- No new tax forms would be required to implement the provision.
- The 2008 Form 6251 would be revised to reflect the increased AMT exemption amounts on line 29. The 2009 Form 8801 would be revised to reflect the 2008 increased AMT exemption amounts on line 5. Publications 17 and 505 and the instructions for Forms 1040, 1040A, and 1040NR would be revised to reflect the increased AMT exemption amounts.
- The expiration of the increased 2008 AMT exemption amounts would result in a reduction in these amounts for 2009. The reduced amounts would be reflected in the subsequent year's versions of the above tax forms, instructions, and publications.
- Programming changes would be required to reflect the changes in the AMT exemption amounts for 2008 and 2009.

G. LIMITED TAX BENEFITS

Pursuant to clause 9 of rule XXI of the Rules of the House of Representatives, the Ways and Means Committee has determined that the bill as reported contains no congressional earmarks, limited tax benefits, or limited tariff benefits within the meaning of that rule.

VI. CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

INTERNAL REVENUE CODE OF 1986

Subtitle A—Income Taxes

* * * * * * *

CHAPTER 1—NORMAL TAXES AND SURTAXES

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Subchapter A—Determination of Tax Liability

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PART IV—CREDITS AGAINST TAX

* * * * * * *

Subpart A—Nonrefundable Personal Credits

* * * * * * *

SEC. 26. LIMITATION BASED ON TAX LIABILITY; DEFINITION OF TAX LIABILITY.

(a) LIMITATION BASED ON AMOUNT OF TAX.—

(1) * * *

(2) SPECIAL RULE FOR TAXABLE YEARS 2000 THROUGH [2007] *2008*.—For purposes of any taxable year beginning during 2000, 2001, 2002, 2003, 2004, 2005, 2006, [or 2007] *2007, or 2008*, the aggregate amount of credits allowed by this subpart for the taxable year shall not exceed the sum of—

(A) * * *

* * * * * * *

PART VI—ALTERNATIVE MINIMUM TAX

* * * * * * *

SEC. 55. ALTERNATIVE MINIMUM TAX IMPOSED.

(a) * * *

* * * * * * *

(d) EXEMPTION AMOUNT.—For purposes of this section—

(1) EXEMPTION AMOUNT FOR TAXPAYERS OTHER THAN CORPORATIONS.—In the case of a taxpayer other than a corporation, the term "exemption amount" means—

(A) $45,000 **[**($66,250 in the case of taxable years beginning in 2007)**]** *($69,950 in the case of taxable years beginning in 2008)* in the case of—

(i) * * *

* * * * * * *

(B) $33,750 **[**($44,350 in the case of taxable years beginning in 2007)**]** *($46,200 in the case of taxable years beginning in 2008)* in the case of an individual who—

(i) * * *

* * * * * * *

Subchapter B—Computation of Taxable Income

* * * * * * *

PART VI—ITEMIZED DEDUCTIONS FOR INDIVIDUALS AND CORPORATIONS

* * * * * * *

SEC. 199. INCOME ATTRIBUTABLE TO DOMESTIC PRODUCTION ACTIVITIES.

(a) * * *

* * * * * * *

(c) QUALIFIED PRODUCTION ACTIVITIES INCOME.—For purposes of this section—

(1) * * *

* * * * * * *

(4) DOMESTIC PRODUCTION GROSS RECEIPTS.—

(A) * * *

(B) EXCEPTIONS.—Such term shall not include gross receipts of the taxpayer which are derived from—

(i) * * *

(ii) the transmission or distribution of electricity, natural gas, or potable water, **[**or**]**

(iii) the lease, rental, license, sale, exchange, or other disposition of land**[**.**]***, or*

(iv) in the case of any major integrated oil company (as defined in section 167(h)(5)(B)), the production, refining, processing, transportation, or distribution of oil, gas, or any primary product thereof during any taxable year described in section 167(h)(5)(B).

For purposes of clause (iv), the term "primary product" has the same meaning as when used in section 927(a)(2)(C), as in effect before its repeal.

* * * * * * *

(d) DEFINITIONS AND SPECIAL RULES.—

(1) * * *

(2) APPLICATION TO INDIVIDUALS.—In the case of an individual, [subsection (a)(1)(B)] *subsections (a)(1)(B) and (d)(9)(A)(iii)* shall be applied by substituting "adjusted gross income" for "taxable income". For purposes of the preceding sentence, adjusted gross income shall be determined—

(A) * * *

* * * * * * *

(9) SPECIAL RULE FOR TAXPAYERS WITH OIL RELATED QUALIFIED PRODUCTION ACTIVITIES INCOME.—

(A) IN GENERAL.—If a taxpayer (other than a major integrated oil company (as defined in section 167(h)(5)(B))) has oil related qualified production activities income for any taxable year beginning after 2009, the amount of the deduction under subsection (a) shall be reduced by 3 percent of the least of—

(i) the oil related qualified production activities income of the taxpayer for the taxable year,

(ii) the qualified production activities income of the taxpayer for the taxable year, or

(iii) taxable income (determined without regard to this section).

(B) OIL RELATED QUALIFIED PRODUCTION ACTIVITIES INCOME.—The term "oil related qualified production activities income" means for any taxable year the qualified production activities income which is attributable to the production, refining, processing, transportation, or distribution of oil, gas, or any primary product thereof during such taxable year.

[(9)] *(10)* REGULATIONS.—The Secretary shall prescribe such regulations as are necessary to carry out the purposes of this section, including regulations which prevent more than 1 taxpayer from being allowed a deduction under this section with respect to any activity described in subsection (c)(4)(A)(i).

* * * * * * *

Subchapter K—Partners and Partnerships

PART I—DETERMINATION OF TAX LIABILITY

Sec. 701. Partners, not partnership, subject to tax.

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Sec. 710. Special rules for partners providing investment management services to partnership.

* * * * * * *

SEC. 710. SPECIAL RULES FOR PARTNERS PROVIDING INVESTMENT MANAGEMENT SERVICES TO PARTNERSHIP.

(a) TREATMENT OF DISTRIBUTIVE SHARE OF PARTNERSHIP ITEMS.—For purposes of this title, in the case of an investment services partnership interest—

(1) IN GENERAL.—Notwithstanding section 702(b)—

(A) any net income with respect to such interest for any partnership taxable year shall be treated as ordinary income for the performance of services, and

(B) any net loss with respect to such interest for such year, to the extent not disallowed under paragraph (2) for such year, shall be treated as an ordinary loss.

All items of income, gain, deduction, and loss which are taken into account in computing net income or net loss shall be treated as ordinary income or ordinary loss (as the case may be).

(2) TREATMENT OF LOSSES.—

(A) LIMITATION.—Any net loss with respect to such interest shall be allowed for any partnership taxable year only to the extent that such loss does not exceed the excess (if any) of—

(i) the aggregate net income with respect to such interest for all prior partnership taxable years, over

(ii) the aggregate net loss with respect to such interest not disallowed under this subparagraph for all prior partnership taxable years.

(B) CARRYFORWARD.—Any net loss for any partnership taxable year which is not allowed by reason of subparagraph (A) shall be treated as an item of loss with respect to such partnership interest for the succeeding partnership taxable year.

(C) BASIS ADJUSTMENT.—No adjustment to the basis of a partnership interest shall be made on account of any net loss which is not allowed by reason of subparagraph (A).

(D) EXCEPTION FOR BASIS ATTRIBUTABLE TO PURCHASE OF A PARTNERSHIP INTEREST.—In the case of an investment services partnership interest acquired by purchase, paragraph (1)(B) shall not apply to so much of any net loss with respect to such interest for any taxable year as does not exceed the excess of—

(i) the basis of such interest immediately after such purchase, over

(ii) the aggregate net loss with respect to such interest to which paragraph (1)(B) did not apply by reason of this subparagraph for all prior taxable years.

Any net loss to which paragraph (1)(B) does not apply by reason of this subparagraph shall not be taken into account under subparagraph (A).

(E) PRIOR PARTNERSHIP YEARS.—Any reference in this paragraph to prior partnership taxable years shall only include prior partnership taxable years to which this section applies.

(3) NET INCOME AND LOSS.—For purposes of this section—

(A) NET INCOME.—The term "net income" means, with respect to any investment services partnership interest, for any partnership taxable year, the excess (if any) of—

(i) all items of income and gain taken into account by the holder of such interest under section 702 with respect to such interest for such year, over

(ii) all items of deduction and loss so taken into account.

(B) NET LOSS.—The term "net loss" means with respect to such interest for such year, the excess (if any) of the amount described in subparagraph (A)(ii) over the amount described in subparagraph (A)(i).

(b) DISPOSITIONS OF PARTNERSHIP INTERESTS.—

(1) GAIN.—Any gain on the disposition of an investment services partnership interest shall be treated as ordinary income for the performance of services.

(2) LOSS.—Any loss on the disposition of an investment services partnership interest shall be treated as an ordinary loss to the extent of the excess (if any) of—

(A) the aggregate net income with respect to such interest for all partnership taxable years, over

(B) the aggregate net loss with respect to such interest allowed under subsection (a)(2) for all partnership taxable years.

(3) DISPOSITION OF PORTION OF INTEREST.—In the case of any disposition of an investment services partnership interest, the amount of net loss which otherwise would have (but for subsection (a)(2)(C)) applied to reduce the basis of such interest shall be disregarded for purposes of this section for all succeeding partnership taxable years.

(4) DISTRIBUTIONS OF PARTNERSHIP PROPERTY.—In the case of any distribution of property by a partnership with respect to any investment services partnership interest held by a partner—

(A) the excess (if any) of—

(i) the fair market value of such property at the time of such distribution, over

(ii) the adjusted basis of such property in the hands of the partnership,

shall be taken into account as an increase in such partner's distributive share of the taxable income of the partnership (except to the extent such excess is otherwise taken into account in determining the taxable income of the partnership),

(B) such property shall be treated for purposes of subpart B of part II as money distributed to such partner in an amount equal to such fair market value, and

(C) the basis of such property in the hands of such partner shall be such fair market value.

Subsection (b) of section 734 shall be applied without regard to the preceding sentence.

(5) APPLICATION OF SECTION 751.—In applying section 751(a), an investment services partnership interest shall be treated as an inventory item.

(c) INVESTMENT SERVICES PARTNERSHIP INTEREST.—For purposes of this section—

(1) IN GENERAL.—The term "investment services partnership interest" means any interest in a partnership which is held by any person if such person provides (directly or indirectly) a substantial quantity of any of the following services with respect to the assets of the partnership in the conduct of the trade or business of providing such services:

(A) Advising as to the advisability of investing in, purchasing, or selling any specified asset.

(B) Managing, acquiring, or disposing of any specified asset.

(C) Arranging financing with respect to acquiring specified assets.

(D) Any activity in support of any service described in subparagraphs (A) through (C).

For purposes of this paragraph, the term "specified asset" means securities (as defined in section 475(c)(2) without regard to the last sentence thereof), real estate, commodities (as defined in section 475(e)(2))), or options or derivative contracts with respect to securities (as so defined), real estate, or commodities (as so defined).

(2) EXCEPTION FOR CERTAIN CAPITAL INTERESTS.—

(A) IN GENERAL.—If—

(i) a portion of an investment services partnership interest is acquired on account of a contribution of invested capital, and

(ii) the partnership makes a reasonable allocation of partnership items between the portion of the distributive share that is with respect to invested capital and the portion of such distributive share that is not with respect to invested capital,

then subsection (a) shall not apply to the portion of the distributive share that is with respect to invested capital. An allocation will not be treated as reasonable for purposes of this subparagraph if such allocation would result in the partnership allocating a greater portion of income to invested capital than any other partner not providing services would have been allocated with respect to the same amount of invested capital.

(B) SPECIAL RULE FOR DISPOSITIONS.—In any case to which subparagraph (A) applies, subsection (b) shall not apply to any gain or loss allocable to invested capital. The portion of any gain or loss attributable to invested capital is the proportion of such gain or loss which is based on the distributive share of gain or loss that would have been allocable to invested capital under subparagraph (A) if the partnership sold all of its assets immediately before the disposition.

(C) INVESTED CAPITAL.—For purposes of this paragraph, the term "invested capital" means, the fair market value at the time of contribution of any money or other property contributed to the partnership.

(D) TREATMENT OF CERTAIN LOANS.—

(i) PROCEEDS OF PARTNERSHIP LOANS NOT TREATED AS INVESTED CAPITAL OF SERVICE PROVIDING PARTNERS.—For purposes of this paragraph, an investment services partnership interest shall not be treated as acquired on account of a contribution of invested capital to the extent that such capital is attributable to the proceeds of any loan or other advance made or guaranteed, directly or indirectly, by any partner or the partnership.

(ii) LOANS FROM NONSERVICE PROVIDING PARTNERS TO THE PARTNERSHIP TREATED AS INVESTED CAPITAL.—

For purposes of this paragraph, any loan or other advance to the partnership made or guaranteed, directly or indirectly, by a partner not providing services to the partnership shall be treated as invested capital of such partner and amounts of income and loss treated as allocable to invested capital shall be adjusted accordingly.

(d) OTHER INCOME AND GAIN IN CONNECTION WITH INVESTMENT MANAGEMENT SERVICES.—

(1) IN GENERAL.—If—

(A) a person performs (directly or indirectly) investment management services for any entity,

(B) such person holds a disqualified interest with respect to such entity, and

(C) the value of such interest (or payments thereunder) is substantially related to the amount of income or gain (whether or not realized) from the assets with respect to which the investment management services are performed,

any income or gain with respect to such interest shall be treated as ordinary income for the performance of services. Rules similar to the rules of subsection (c)(2) shall apply where such interest was acquired on account of invested capital in such entity.

(2) DEFINITIONS.—For purposes of this subsection—

(A) DISQUALIFIED INTEREST.—The term "disqualified interest" means, with respect to any entity—

(i) any interest in such entity other than indebtedness,

(ii) convertible or contingent debt of such entity,

(iii) any option or other right to acquire property described in clause (i) or (ii), and

(iv) any derivative instrument entered into (directly or indirectly) with such entity or any investor in such entity.

Such term shall not include a partnership interest and shall not include stock in a taxable corporation.

(B) TAXABLE CORPORATION.—The term "taxable corporation" means—

(i) a domestic C corporation, or

(ii) a foreign corporation subject to a comprehensive foreign income tax.

(C) INVESTMENT MANAGEMENT SERVICES.—The term "investment management services" means a substantial quantity of any of the services described in subsection (c)(1) which are provided in the conduct of the trade or business of providing such services.

(D) COMPREHENSIVE FOREIGN INCOME TAX.—The term "comprehensive foreign income tax" means, with respect to any foreign corporation, the income tax of a foreign country if—

(i) such corporation is eligible for the benefits of a comprehensive income tax treaty between such foreign country and the United States, or

(ii) such corporation demonstrates to the satisfaction of the Secretary that such foreign country has a comprehensive income tax.

(e) REGULATIONS.—The Secretary shall prescribe such regulations as are necessary or appropriate to carry out the purposes of this section, including regulations to—

(1) prevent the avoidance of the purposes of this section, and

(2) coordinate this section with the other provisions of this subchapter.

(f) CROSS REFERENCE.—For 40 percent no fault penalty on certain underpayments due to the avoidance of this section, see section 6662.

* * * * * * *

PART II—CONTRIBUTIONS, DISTRIBUTIONS, AND TRANSFERS

* * * * * * *

Subpart B—Distributions by a Partnership

* * * * * * *

SEC. 731. EXTENT OF RECOGNITION OF GAIN OR LOSS ON DISTRIBUTION.

(a) * * *

* * * * * * *

(d) EXCEPTIONS.—This section shall not apply to the extent otherwise provided by *section 710(b)(4) (relating to distributions of partnership property),* section 736 (relating to payments to a retiring partner or a deceased partner's successor in interest), section 751 (relating to unrealized receivables and inventory items), and section 737 (relating to recognition of precontribution gain in case of certain distributions).

* * * * * * *

Subpart C—Transfers of Interests in a Partnership

SEC. 741. RECOGNITION AND CHARACTER OF GAIN OR LOSS ON SALE OR EXCHANGE.

In the case of a sale or exchange of an interest in a partnership, gain or loss shall be recognized to the transferor partner. Such gain or loss shall be considered as gain or loss from the sale or exchange of a capital asset, except as otherwise provided in section 751 (relating to unrealized receivables and inventory items) *or section 710 (relating to special rules for partners providing investment management services to partnership).*

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Subchapter M—Regulated Investment Companies and Real Estate Investment Trusts

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PART II—REAL ESTATE INVESTMENT TRUSTS

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SEC. 856. DEFINITION OF REAL ESTATE INVESTMENT TRUST.

(a) * * *

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(c) LIMITATIONS.—A corporation, trust, or association shall not be considered a real estate investment trust for any taxable year unless—

(1) * * *

* * * * * * *

(9) EXCEPTION FROM RECHARACTERIZATION OF INCOME FROM INVESTMENT SERVICES PARTNERSHIP INTERESTS.—

(A) IN GENERAL.—Paragraphs (2), (3), and (4) shall be applied without regard to section 710 (relating to special rules for partners providing investment management services to partnership).

(B) SPECIAL RULE FOR PARTNERSHIPS OWNED BY REITS.—Section 7704 shall be applied without regard to section 710 in the case of a partnership which meets each of the following requirements:

(i) Such partnership is treated as publicly traded under section 7704 solely by reason of interests in such partnership being convertible into interests in a real estate investment trust which is publicly traded.

(ii) 50 percent or more of the capital and profits interests of such partnership are owned, directly or indirectly, at all times during the taxable year by such real estate investment trust (determined with the application of section 267(c)).

(iii) Such partnership meets the requirements of paragraphs (2), (3), and (4) (applied without regard to section 710).

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Subchapter N—Tax Based on Income From Sources Within or Without the United States

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PART II—NONRESIDENT ALIENS AND FOREIGN CORPORATIONS

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Subpart D—Miscellaneous Provisions

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SEC. 894. INCOME AFFECTED BY TREATY.

(a) * * *

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(d) LIMITATION ON TREATY BENEFITS FOR CERTAIN DEDUCTIBLE PAYMENTS.—

(1) IN GENERAL.—In the case of any deductible related-party payment, any withholding tax imposed under chapter 3 (and any tax imposed under subpart A or B of this part) with respect to such payment may not be reduced under any treaty of the

United States unless any such withholding tax would be reduced under a treaty of the United States if such payment were made directly to the foreign parent corporation.

(2) DEDUCTIBLE RELATED-PARTY PAYMENT.—For purposes of this subsection, the term "deductible related-party payment" means any payment made, directly or indirectly, by any person to any other person if the payment is allowable as a deduction under this chapter and both persons are members of the same foreign controlled group of entities.

(3) FOREIGN CONTROLLED GROUP OF ENTITIES.—For purposes of this subsection—

(A) IN GENERAL.—The term "foreign controlled group of entities" means a controlled group of entities the common parent of which is a foreign corporation.

(B) CONTROLLED GROUP OF ENTITIES.—The term "controlled group of entities" means a controlled group of corporations as defined in section 1563(a)(1), except that—

(i) "more than 50 percent" shall be substituted for "at least 80 percent" each place it appears therein, and

(ii) the determination shall be made without regard to subsections (a)(4) and (b)(2) of section 1563.

A partnership or any other entity (other than a corporation) shall be treated as a member of a controlled group of entities if such entity is controlled (within the meaning of section 954(d)(3)) by members of such group (including any entity treated as a member of such group by reason of this sentence).

(4) FOREIGN PARENT CORPORATION.—For purposes of this subsection, the term "foreign parent corporation" means, with respect to any deductible related-party payment, the common parent of the foreign controlled group of entities referred to in paragraph (3)(A).

(5) REGULATIONS.—The Secretary may prescribe such regulations or other guidance as are necessary or appropriate to carry out the purposes of this subsection, including regulations or other guidance which provide for—

(A) the treatment of two or more persons as members of a foreign controlled group of entities if such persons would be the common parent of such group if treated as one corporation, and

(B) the treatment of any member of a foreign controlled group of entities as the common parent of such group if such treatment is appropriate taking into account the economic relationships among such entities.

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CHAPTER 2—TAX ON SELF-EMPLOYMENT INCOME

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SEC. 1402. DEFINITIONS.

(a) NET EARNINGS FROM SELF-EMPLOYMENT.—The term "net earnings from self-employment" means the gross income derived by an individual from any trade or business carried on by such indi-

vidual, less the deductions allowed by this subtitle which are attributable to such trade or business, plus his distributive share (whether or not distributed) of income or loss described in section 702(a)(8) from any trade or business carried on by a partnership of which he is a member; except that in computing such gross income and deductions and such distributive share of partnership ordinary income or loss—

(1) * * *

* * * * * * *

(A) by striking "other than guaranteed" and inserting "other than—

"(A) guaranteed",

(13) there shall be excluded the distributive share of any item of income or loss of a limited partner, as such, [other than guaranteed] *other than—*

(A) guaranteed payments described in section 707(c) that partner for services actually rendered to or on behalf of the partnership to the extent that those payments are established to be in the nature of remuneration for those services[;]*, and*

(B) any income treated as ordinary income under section 710 received by an individual who provides investment management services (as defined in section 710(d)(2));

* * * * * * *

Subtitle C—Employment Taxes

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CHAPTER 24—COLLECTION OF INCOME TAX AT SOURCE ON WAGES

* * * * * * *

SEC. 3406. BACKUP WITHHOLDING.

(a) * * * .—

(b) REPORTABLE PAYMENT, ETC.—For purposes of this section—

(1) * * *

* * * * * * *

(3) OTHER REPORTABLE PAYMENT.—The term "other reportable payment" means any payment of a kind, and to a payee, required to be shown on a return required under—

(A) * * *

* * * * * * *

(D) section 6050A (relating to reporting requirements of certain fishing boat operators), but only to the extent such payment is in money and represents a share of the proceeds of the catch, [or]

(E) section 6050N (relating to payments of royalties)[.]*, or*

(F) section 6050W (relating to returns relating to payments made in settlement of payment card transactions).

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Subtitle F—Procedure and Administration

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CHAPTER 61—INFORMATION AND RETURNS

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Subchapter A—Returns and Records

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PART III—INFORMATION RETURNS

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Subpart B—Information Concerning Transactions With Other Persons

Sec. 6041. Information at source.

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Sec. 6050W. Returns relating to payments made in settlement of payment card and third party network transactions.

* * * * * * *

SEC. 6050W. RETURNS RELATING TO PAYMENTS MADE IN SETTLEMENT OF PAYMENT CARD AND THIRD PARTY NETWORK TRANSACTIONS.

(a) IN GENERAL.—Each payment settlement entity shall make a return for each calendar year setting forth—

(1) the name, address, and TIN of each participating payee to whom one or more payments in settlement of reportable payment transactions are made, and

(2) the gross amount of the reportable payment transactions with respect to each such participating payee.

Such return shall be made at such time and in such form and manner as the Secretary may require by regulations.

(b) PAYMENT SETTLEMENT ENTITY.—For purposes of this section—

(1) IN GENERAL.—The term "payment settlement entity" means—

(A) in the case of a payment card transaction, the merchant acquiring bank, and

(B) in the case of a third party network transaction, the third party settlement organization.

(2) MERCHANT ACQUIRING BANK.—The term "merchant acquiring bank" means the bank or other organization which has the contractual obligation to make payment to participating payees in settlement of payment card transactions.

(3) THIRD PARTY SETTLEMENT ORGANIZATION.—The term "third party settlement organization" means the central organization which has the contractual obligation to make payment to participating payees of third party network transactions.

(4) SPECIAL RULES RELATED TO INTERMEDIARIES.—For purposes of this section—

(A) AGGREGATED PAYEES.—In any case where reportable payment transactions of more than one participating payee are settled through an intermediary—

(i) such intermediary shall be treated as the participating payee for purposes of determining the reporting obligations of the payment settlement entity with respect to such transactions, and

(ii) such intermediary shall be treated as the payment settlement entity with respect to the settlement of such transactions with the participating payees.

(B) ELECTRONIC PAYMENT FACILITATORS.—In any case where an electronic payment facilitator or other third party makes payments in settlement of reportable payment transactions on behalf of the payment settlement entity, the return under subsection (a) shall be made by such electronic payment facilitator or other third party in lieu of the payment settlement entity.

(c) REPORTABLE PAYMENT TRANSACTION.—For purposes of this section—

(1) IN GENERAL.—The term "reportable payment transaction" means any payment card transaction and any third party network transaction.

(2) PAYMENT CARD TRANSACTION.—The term "payment card transaction" means any transaction in which a payment card is accepted as payment.

(3) THIRD PARTY NETWORK TRANSACTION.—The term "third party network transaction" means any transaction which is settled through a third party payment network.

(d) OTHER DEFINITIONS.—For purposes of this section—

(1) PARTICIPATING PAYEE.—

(A) IN GENERAL.—The term "participating payee" means—

(i) in the case of a payment card transaction, any person who accepts a payment card as payment, and

(ii) in the case of a third party network transaction, any person who accepts payment from a third party settlement organization in settlement of such transaction.

(B) EXCLUSION OF FOREIGN PERSONS.—Except as provided by the Secretary in regulations or other guidance, such term shall not include any person with a foreign address.

(C) INCLUSION OF GOVERNMENTAL UNITS.—The term "person" includes any governmental unit (and any agency or instrumentality thereof).

(2) PAYMENT CARD.—The term "payment card" means any card which is issued pursuant to an agreement or arrangement which provides for—

(A) one or more issuers of such cards,

(B) a network of persons unrelated to each other, and to the issuer, who agree to accept such cards as payment, and

(C) standards and mechanisms for settling the transactions between the merchant acquiring banks and the persons who agree to accept such cards as payment.

The acceptance as payment of any account number or other indicia associated with a payment card shall be treated for purposes of this section in the same manner as accepting such payment card as payment.

(3) THIRD PARTY PAYMENT NETWORK.—The term "third party payment network" means any agreement or arrangement—

(A) which involves the establishment of accounts with a central organization for the purpose of settling transactions between persons who establish such accounts,

(B) which provides for standards and mechanisms for settling such transactions,

(C) which involves a substantial number of persons unrelated to such central organization who provide goods or services and who have agreed to settle transactions for the provision of such goods or services pursuant to such agreement or arrangement, and

(D) which guarantees persons providing goods or services pursuant to such agreement or arrangement that such persons will be paid for providing such goods or services.

Such term shall not include any agreement or arrangement which provides for the issuance of payment cards.

(e) EXCEPTION FOR DE MINIMIS PAYMENTS BY THIRD PARTY SETTLEMENT ORGANIZATIONS.—A third party settlement organization shall be required to report any information under subsection (a) with respect to third party network transactions of any participating payee only if—

(1) the amount which would otherwise be reported under subsection (a)(2) with respect to such transactions exceeds $10,000, and

(2) the aggregate number of such transactions exceeds 200.

(f) STATEMENTS TO BE FURNISHED TO PERSONS WITH RESPECT TO WHOM INFORMATION IS REQUIRED.—Every person required to make a return under subsection (a) shall furnish to each person with respect to whom such a return is required a written statement showing—

(1) the name, address, and phone number of the information contact of the person required to make such return, and

(2) the gross amount of the reportable payment transactions with respect to the person required to be shown on the return.

The written statement required under the preceding sentence shall be furnished to the person on or before January 31 of the year following the calendar year for which the return under subsection (a) was required to be made. Such statement may be furnished electronically.

(g) REGULATIONS.—The Secretary may prescribe such regulations or other guidance as may be necessary or appropriate to carry out this section, including rules to prevent the reporting of the same transaction more than once.

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CHAPTER 64—COLLECTION

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Subchapter D—Seizure of Property for Collection of Taxes

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PART II—LEVY

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SEC. 6331. LEVY AND DISTRAINT.

(a) * * *

* * * * * * *

(h) CONTINUING LEVY ON CERTAIN PAYMENTS.—

(1) * * *

* * * * * * *

(3) INCREASE IN LEVY FOR CERTAIN PAYMENTS.—Paragraph (1) shall be applied by substituting "100 percent" for "15 percent" in the case of any specified payment due to a vendor of [goods] *property* or services sold or leased to the Federal Government.

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CHAPTER 68—ADDITIONS TO THE TAX, ADDITIONAL AMOUNTS, AND ASSESSABLE PENALTIES

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Subchapter A—Additions to the Tax and Additional Amounts

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PART II—ACCURACY-RELATED AND FRAUD PENALTIES

* * * * * * *

SEC. 6662. IMPOSITION OF ACCURACY-RELATED PENALTY ON UNDERPAYMENTS.

(a) * * *

(b) PORTION OF UNDERPAYMENT TO WHICH SECTION APPLIES.—This section shall apply to the portion of any underpayment which is attributable to 1 or more of the following:

(1) * * *

* * * * * * *

(6) The application of subsection (d) of section 710 or the regulations prescribed under section 710(e) to prevent the avoidance of the purposes of section 710.

* * * * * * *

(i) INCREASE IN PENALTY IN CASE OF PROPERTY TRANSFERRED FOR INVESTMENT MANAGEMENT SERVICES.—In the case of any portion of an underpayment to which this section applies by reason of subsection (b)(6), subsection (a) shall be applied with respect to such portion by substituting "40 percent" for "20 percent".

SEC. 6662A. IMPOSITION OF ACCURACY-RELATED PENALTY ON UNDERSTATEMENTS WITH RESPECT TO REPORTABLE TRANSACTIONS.

(a) * * *

* * * * * * *

(e) SPECIAL RULES.—

(1) * * *

(2) COORDINATION WITH OTHER PENALTIES.—

(A) * * *

(B) COORDINATION WITH [GROSS VALUATION MISSTATEMENT PENALTY] *CERTAIN INCREASED UNDERPAYMENT PENALTIES*.—This section shall not apply to any portion of an understatement on which a penalty is imposed under section 6662 if the rate of the penalty is determined under [section 6662(h)] *subsection (h) or (i) of section 6662*.

* * * * * * *

SEC. 6664. DEFINITIONS AND SPECIAL RULES.

(a) * * *

* * * * * * *

(c) REASONABLE CAUSE EXCEPTION FOR UNDERPAYMENTS.—

(1) * * *

(2) EXCEPTION.—Paragraph (1) shall not apply to any portion of an underpayment to which this section applies by reason of subsection (b)(6).

[(2)] *(3)* SPECIAL RULE FOR CERTAIN VALUATION OVERSTATEMENTS.—In the case of any underpayment attributable to a substantial or gross valuation overstatement under chapter 1 with respect to charitable deduction property, paragraph (1) shall not apply. The preceding sentence shall not apply to a substantial valuation overstatement under chapter 1 if—

(A) * * *

* * * * * * *

[(3)] *(4)* DEFINITIONS.—For purposes of this subsection—

(A) CHARITABLE DEDUCTION PROPERTY.—The term "charitable deduction property" means any property contributed by the taxpayer in a contribution for which a deduction was claimed under section 170. For purposes of [paragraph (2)] *paragraph (3)*, such term shall not include any securities for which (as of the date of the contribution) market quotations are readily available on an established securities market.

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Subchapter B—Assessable Penalties

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PART II—FAILURE TO COMPLY WITH CERTAIN INFORMATION REPORTING REQUIREMENTS

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SEC. 6724. WAIVER; DEFINITIONS AND SPECIAL RULES.

(a) * * *

* * * * * * *

(d) DEFINITIONS.—For purposes of this part—

(1) INFORMATION RETURN.—The term "information return" means—

(A) * * *

(B) any return required by—

(i) * * *

* * * * * * *

(xx) section 6050U (relating to charges or payments for qualified long-term care insurance contracts under combined arrangements), **[**and**]**

[(xix)**]** *(xxi)* section 6039(a) (relating to returns required with respect to certain options), **[**and**]** *or*

(xxii) section 6050W (relating to returns to payments made in settlement of payment card transactions), and

* * * * * * *

(2) PAYEE STATEMENT.—The term "payee statement" means any statement required to be furnished under—

(A) * * *

* * * * * * *

(BB) section 6050T (relating to returns relating to credit for health insurance costs of eligible individuals),

(CC) section 6050U (relating to charges or payments for qualified long-term care insurance contracts under combined arrangements)**[**.**]**, *or*

(DD) section 6050W(c) (relating to returns relating to payments made in settlement of payment card transactions).

* * * * * * *

CHAPTER 79—DEFINITIONS

* * * * * * *

SEC. 7704. CERTAIN PUBLICLY TRADED PARTNERSHIPS TREATED AS CORPORATIONS.

(a) * * *

* * * * * * *

(d) QUALIFYING INCOME.—For purposes of this section—

(1) * * *

* * * * * * *

(4) CERTAIN INCOME QUALIFYING UNDER REGULATED INVESTMENT COMPANY OR REAL ESTATE TRUST PROVISIONS.—The term "qualifying income" also includes any income which would

qualify under section 851(b)(2)(A) or 856(c)(2) *(determined without regard to section 856(c)(8))*.

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SOCIAL SECURITY ACT

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TITLE II—FEDERAL OLD-AGE, SURVIVORS, AND DISABILITY INSURANCE BENEFITS

* * * * * * *

SELF-EMPLOYMENT

SEC. 211. For the purposes of this title—

(a) NET EARNINGS FROM SELF-EMPLOYMENT.—The term "net earnings from self-employment" means the gross income, as computed under subtitle A of the Internal Revenue Code of 1986, derived by an individual from any trade or business carried on by such individual, less the deductions allowed under such subtitle which are attributable to such trade or business, plus his distributive share (whether or not distributed) of the ordinary net income or loss, as computed under section 702(a)(8) of such Code, from any trade or business carried on by a partnership of which he is a member; except that in computing such gross income and deductions and such distributive share of partnership ordinary net income or loss—

(1) * * *

* * * * * * *

(12) There shall be excluded the distributive share of any item of income or loss of a limited partner, as such, **[**other than guaranteed**]** *other than—*

(A) guaranteed payments described in section 707(c) of the Internal Revenue Code of 1986 to that partner for services actually rendered to or on behalf of the partnership to the extent that those payments are established to be in the nature of remuneration for those services**[**;**]***, and*

(B) any income treated as ordinary income under section 710 of the Internal Revenue Code of 1986 received by an individual who provides investment management services (as defined in section 710(d)(2) of such Code);

* * * * * * *

SECTION 401 OF THE TAX INCREASE PREVENTION AND RECONCILIATION ACT OF 2005

SEC. 401. TIME FOR PAYMENT OF CORPORATE ESTIMATED TAXES.

Notwithstanding section 6655 of the Internal Revenue Code of 1986—

(1) in the case of a corporation with assets of not less than $1,000,000,000 (determined as of the end of the preceding taxable year)—

(A) * * *

(B) the amount of any required installment of corporate estimated tax which is otherwise due in July, August, or September of 2012 shall be [123.50 percent] *100 percent* of such amount,

* * * * * * *

VII. DISSENTING VIEWS

Earlier this month, the distinguished Chairman of the Senate Finance Committee said: "I think it's important to recognize the reality that at the end of the day, the AMT patch will not be paid for." A day later, he was even more explicit, observing: "We all know it's not going to be paid for, so, why go through all the motions?"

Given those comments, one might conclude that H.R 6275—legislation containing an important AMT patch for 2008, but also a series of highly controversial, unwarranted tax hikes—is "dead on arrival" in the Senate. But, frankly, that characterization gives even more credence to this hopelessly doomed bill than it deserves.

Indeed, this legislation is dead even before arrival in the other body. A distinguished Democratic Member of our panel acknowledged as much in a pre-markup media interview, conceding: "What's likely to happen is we'll pass a bill that's paid for, the Senate will send it back without offsets and we'll agree to it—just like last year." Simply put: this bill, like so many others authored by the House Majority before it, is just for show—another purely partisan exercise that stands absolutely no chance of making it through the other body and becoming law.

Republicans were united in opposition to this misguided proposal during Committee consideration, and we fully expect a similar party-line vote on the Floor, should the Majority insist on bringing this political charade before the full House. We have a better idea: the Majority should abandon its efforts to enact needless tax increases and instead work with Republicans in a constructive, bipartisan manner to ensure that middle-class taxpayers are protected against the growing reach of the AMT.

PAYGO MEANS NEEDLESS TAX HIKES, EVEN TO PREVENT TAX INCREASES

We have said it before, and we will say it again: Congress should not have to raise taxes to prevent tax increases. Yet, as we have repeatedly stressed since the start of the 110th Congress, the Majority's paygo rules require precisely that—massive tax increases simply to extend current law.

While we all agree that something needs to be done about the deficit, we need to keep in mind that Washington doesn't have a revenue problem; it has a spending problem. The federal government is already collecting more taxes as a percent of GDP (18.8% in 2007) than the historical average (18.3% over the past 40 years). Under the Majority's paygo baseline, revenues will vastly exceed historical averages and will approach an incredible 20.5% of GDP within the decade. Even if the AMT patch were permanently extended, federal revenues would exceed historical averages for al-

most the entire ten-year window, and would, by 2018, reach 19.9% of GDP, a figure exceeded only three times since 1968.

Are there long-term budget challenges facing us? Of course there are. But they are mostly the result of our inability to tackle fast-growing entitlements, not a lack of revenue. In light of all this, we believe that Congress should not be in the business of raising taxes, generally, and it certainly should not be doing so to "pay for" extensions of current low-tax policies, such as the AMT patch. The Majority was wrong to propose tax increases to offset the AMT patch last year, they are wrong again now, and the end result in both cases will be the same: an extension of the current AMT patch to protect millions of Americans without any corresponding tax increases.

INCREASINGLY CONTROVERSIAL AND EVER-MORE DANGEROUS TAX HIKES

Our experience with H.R. 6275 offers a pointed reminder about just how small and finite the supply of "acceptable" revenue raisers truly is. This exercise clearly shows that even the fertile minds of our friends across the aisle have only a few "cute and cuddly" tax increases that impact only a few disfavored individuals or companies.

Indeed, the array of offsets in this $61.5 billion bill is far more objectionable than those used for the extenders bill (H.R. 6049) passed by the House last month. That previous bill contained revenue raising provisions related to the deferred compensation of managers of offshore hedge funds and a delay of pending worldwide interest allocation rules. While many of us were not particularly enamored of those provisions, they were certainly not the most egregious offsets the Majority could have chosen.

But with those offsets now "taken," the Majority has shown its commitment to recycling by bringing back, as part of H.R. 6275, a troublesome trio of previously rejected offsets that are far more controversial. This threatening threesome includes a tax hike on domestic oil and gas production that will do nothing to lower prices at the pump and will instead discourage domestic energy production, a provision imposing higher taxes on multi-national firms that invest and create good jobs in the U.S., and a "carried interest" tax increase on investment partnerships that could affect countless 'mom and pop' businesses along Main Street, U.S.A. The bill also contains several altogether new revenue raisers, including a potentially burdensome, reporting requirement on credit card companies, that have never been subject to a formal hearing before our Committee.

Just as the offsets in H.R. 6275 are more offensive than the ones used last month on the extenders bill, the ones we will see used the next time around are likely to be even worse. And, as we head toward 2010, when a huge number of critically important tax policies—ranging from the expanded $1,000 child credit to the lower tax rates on income, capital gains, and dividends—are set to expire, the Majority's treacherous, high-tax road will lead us straight toward a $3.5 M trillion tax hike simply to extend current law.

It didn't have to be this way, at least with respect to H.R. 6275. Republicans offered, three common-sense amendments during our

Committee markup, but all were rejected on partyline or near-party-line votes. Mr. English's amendment would have eliminated the offsets entirely, leaving a clean AMT patch that could easily pass the Senate and be signed into law. Mr. Brady's amendment to exempt real estate partnerships, including many small businesses that happen to be organized in partnership form, from the Majority's proposed tax hike on carried interest met a similar, unfortunate fate. Perhaps most surprising of all, the Majority even rejected a separate amendment by Mr. Brady to strike the bill's provisions discouraging domestic energy production and to provide crucial increases in the per mile deductions that taxpayers can claim for driving for business, medical, moving, or charitable purposes. In light of the record-high gas prices that are now occurring on the Majority's watch, we are disappointed but not surprised that the Majority would oppose this effort to increase our domestic energy supply while providing modest, yet important, relief to drivers across the country who are feeling unprecedented pain at the pump.

MAJORITY'S POLITICAL GAMES THREATEN TIMELY A.M.T. PATCH

Republicans strongly support a clean AMT patch to protect millions of middle-class taxpayers from falling victim to the AMT in 2008. Without this patch, more than 25 million families would pay an additional $61.5 billion in taxes next April, including 21 million families who did not owe AMT in 2007. This would translate into an average tax increase of more than $2,400 per affected taxpayer.

Sadly, the Majority's decision to play politics with this bill puts us on the same regrettable path as last year—toward another historically late AMT patch. As we all painfully remember, House Democrats' stubborn insistence on linking the 2007 patch to unrelated tax hikes ultimately resulted in the patch being enacted—without offsets—later in the year than ever before, causing headaches and uncertainty for taxpayers and the IRS alike. According to the Government Accountability Office (GAO), that late enactment of the 2007 patch prevented the IRS from processing AMT-affected returns until about a month into the filing season.

To avoid a repeat of last year's mismanaged procesd—and to protect millions of middleclass taxpayers from the AMT—the Majority should be working closely with Republicans to enact a timely AMT patch, *without* offsets. Our friends in the Majority have supported clean AMT patches in the past, most recently last December. And we all know that we're going to end up with a clean AMT patch once again this year. As the esteemed Chairman of the Senate Finance Committee put it: "We all know it's not going to be paid for, so why go through all the motions?"

We couldn't have said it better ourselves.

JIM MCCRERY.
WALLY HERGER.
DAVE CAMP.
JIM RAMSTAD.
SAM JOHNSON.
PHIL ENGLISH.
JERRY WELLER.

KENNY HULSHOF.
RON LEWIS.
KEVIN BRADY.
THOMAS M. REYNOLDS.
PAUL RYAN.
ERIC CANTOR.
JOHN LINDER.
DEVIN NUNES.
PAT TIBERI.
JON C. PORTER.

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