

are sections 2201 and 2202 of Pub. L. 111-5, which are set out as notes under section 6428 of this title.

EFFECTIVE DATE

Pub. L. 111-5, div. B, title I, §1001(f), Feb. 17, 2009, 123 Stat. 312, provided that: “This section [enacting this section, amending sections 6211 and 6213 of this title and section 1324 of Title 31, Money and Finance, and enacting provisions set out as notes under this section], and the amendments made by this section, shall apply to taxable years beginning after December 31, 2008.”

TREATMENT OF POSSESSIONS

Pub. L. 111-5, div. B, title I, §1001(b), Feb. 17, 2009, 123 Stat. 310, provided that:

“(1) PAYMENTS TO POSSESSIONS.—

“(A) MIRROR CODE POSSESSION.—The Secretary of the Treasury shall pay to each possession of the United States with a mirror code tax system amounts equal to the loss to that possession by reason of the amendments made by this section [enacting this section and amending sections 6211 and 6213 of this title and section 1324 of Title 31, Money and Finance] with respect to taxable years beginning in 2009 and 2010. Such amounts shall be determined by the Secretary of the Treasury based on information provided by the government of the respective possession.

“(B) OTHER POSSESSIONS.—The Secretary of the Treasury shall pay to each possession of the United States which does not have a mirror code tax system amounts estimated by the Secretary of the Treasury as being equal to the aggregate benefits that would have been provided to residents of such possession by reason of the amendments made by this section for taxable years beginning in 2009 and 2010 if a mirror code tax system had been in effect in such possession. The preceding sentence shall not apply with respect to any possession of the United States unless such possession has a plan, which has been approved by the Secretary of the Treasury, under which such possession will promptly distribute such payments to the residents of such possession.

“(2) COORDINATION WITH CREDIT ALLOWED AGAINST UNITED STATES INCOME TAXES.—No credit shall be allowed against United States income taxes for any taxable year under section 36A of the Internal Revenue Code of 1986 (as added by this section) to any person—

“(A) to whom a credit is allowed against taxes imposed by the possession by reason of the amendments made by this section for such taxable year, or

“(B) who is eligible for a payment under a plan described in paragraph (1)(B) with respect to such taxable year.

“(3) DEFINITIONS AND SPECIAL RULES.—

“(A) POSSESSION OF THE UNITED STATES.—For purposes of this subsection, the term ‘possession of the United States’ includes the Commonwealth of Puerto Rico and the Commonwealth of the Northern Mariana Islands.

“(B) MIRROR CODE TAX SYSTEM.—For purposes of this subsection, the term ‘mirror code tax system’ means, with respect to any possession of the United States, the income tax system of such possession if the income tax liability of the residents of such possession under such system is determined by reference to the income tax laws of the United States as if such possession were the United States.

“(C) TREATMENT OF PAYMENTS.—For purposes of section 1324(b)(2) of title 31, United States Code, the payments under this subsection shall be treated in the same manner as a refund due from the credit allowed under section 36A of the Internal Revenue Code of 1986 (as added by this section).”

REFUNDS DISREGARDED IN THE ADMINISTRATION OF FEDERAL PROGRAMS AND FEDERALLY ASSISTED PROGRAMS

Pub. L. 111-5, div. B, title I, §1001(c), Feb. 17, 2009, 123 Stat. 311, provided that: “Any credit or refund allowed

or made to any individual by reason of section 36A of the Internal Revenue Code of 1986 (as added by this section) or by reason of subsection (b) of this section [set out as a note above] shall not be taken into account as income and shall not be taken into account as resources for the month of receipt and the following 2 months, for purposes of determining the eligibility of such individual or any other individual for benefits or assistance, or the amount or extent of benefits or assistance, under any Federal program or under any State or local program financed in whole or in part with Federal funds.”

§ 37. Overpayments of tax

For credit against the tax imposed by this subtitle for overpayments of tax, see section 6401.

(Aug. 16, 1954, ch. 736, 68A Stat. 16, §38; renumbered §39, Pub. L. 87-834, §2(a), Oct. 16, 1962, 76 Stat. 962; renumbered §40, Pub. L. 89-44, title VIII, §809(c), June 21, 1965, 79 Stat. 167; renumbered §42, Pub. L. 92-178, title VI, §601(a), Dec. 10, 1971, 85 Stat. 553; renumbered §43, Pub. L. 94-12, title II, §203(a), Mar. 29, 1975, 89 Stat. 29; renumbered §44, Pub. L. 94-12, title II, §204(a), Mar. 29, 1975, 89 Stat. 30; renumbered §45, Pub. L. 94-12, title II, §208(a), Mar. 29, 1975, 89 Stat. 32; renumbered §35, Pub. L. 98-369, div. A, title IV, §471(c), July 18, 1984, 98 Stat. 826; renumbered §36, Pub. L. 107-210, div. A, title II, §201(a), Aug. 6, 2002, 116 Stat. 954; renumbered §37, Pub. L. 110-289, div. C, title I, §3011(a), July 30, 2008, 122 Stat. 2888.)

PRIOR PROVISIONS

A prior section 37 was renumbered section 22 of this title.

SUBPART D—BUSINESS RELATED CREDITS

- Sec. 38. General business credit.
- 39. Carryback and carryforward of unused credits.
- 40. Alcohol, etc., used as fuel.
- 40A. Biodiesel and renewable diesel used as fuel.
- 41. Credit for increasing research activities.
- 41.<sup>1</sup> Employee stock ownership credit.
- 42. Low-income housing credit.
- 43. Enhanced oil recovery credit.
- 44. Expenditures to provide access to disabled individuals.
- [44A-H. Renumbered, Repealed.]
- 45. Electricity produced from certain renewable resources, etc.
- 45A. Indian employment credit.
- 45B. Credit for portion of employer social security taxes paid with respect to employee cash tips.
- 45C. Clinical testing expenses for certain drugs for rare diseases or conditions.
- 45D. New markets tax credit.
- 45E. Small employer pension plan startup costs.
- 45F. Employer-provided child care credit.
- 45G. Railroad track maintenance credit.
- 45H. Credit for production of low sulfur diesel fuel.
- 45I. Credit for producing oil and gas from marginal wells.
- 45K.<sup>2</sup> Credit for producing fuel from a nonconventional source.
- 45J. Credit for production from advanced nuclear power facilities.
- 45L. New energy efficient home credit.

<sup>1</sup> Section 41 repealed by Pub. L. 99-514 without corresponding amendment of subpart analysis.

<sup>2</sup> So in original. Probably should follow item 45J.

- 45M. Energy efficient appliance credit.  
 45N. Mine rescue team training credit.  
 45O. Agricultural chemicals security credit.  
 45P. Employer wage credit for employees who are active duty members of the uniformed services.  
 45Q. Credit for carbon dioxide sequestration.

## AMENDMENTS

2008—Pub. L. 110-343, div. B, title I, §115(c), Oct. 3, 2008, 122 Stat. 3831, which directed amendment of table of sections for subpart B by adding item 45Q at end, was executed by adding item 45Q at end of table of sections for this subpart to reflect the probable intent of Congress.

Pub. L. 110-245, title I, §111(d), June 17, 2008, 122 Stat. 1635, added item 45P.

Pub. L. 110-234, title XV, §§15321(b)(3)(B), 15343(d), May 22, 2008, 122 Stat. 1513, 1520, and Pub. L. 110-246, title XV, §§15321(b)(3)(B), 15343(d), June 18, 2008, 122 Stat. 2275, 2282, made identical amendments, inserting “, etc.,” after “Alcohol” in item 40 and adding item 45O. The amendments by Pub. L. 110-234 were repealed by Pub. L. 110-246, §4(a), June 18, 2008, 122 Stat. 1664.

2006—Pub. L. 109-432, div. A, title IV, §405(d), Dec. 20, 2006, 120 Stat. 2958, added item 45N.

2005—Pub. L. 109-58, title XIII, §§1306(c), 1322(a)(3)(L), 1332(e), 1334(c), 1346(b)(2), Aug. 8, 2005, 119 Stat. 999, 1012, 1026, 1033, 1055, inserted “and renewable diesel” after “Biodiesel” in item 40A and added items 45J to 45M.

2004—Pub. L. 108-357, title II, §245(d), title III, §§302(c)(3), 339(e), 341(d), title VII, §710(b)(3)(B), Oct. 22, 2004, 118 Stat. 1448, 1466, 1484, 1487, 1556, added items 40A and 45G to 45I and inserted “, etc.” after “resources” in item 45.

Pub. L. 108-311, title IV, §408(b)(7), Oct. 4, 2004, 118 Stat. 1193, amended directory language of Pub. L. 107-16, §619(c)(3). See 2001 Amendment note below.

2001—Pub. L. 107-16, title VI, §619(c)(3), June 7, 2001, 115 Stat. 110, as amended by Pub. L. 108-311, title IV, §408(b)(7), Oct. 4, 2004, 118 Stat. 1193, added item 45E.

Pub. L. 107-16, title II, §205(b)(2), June 7, 2001, 115 Stat. 53, added item 45F.

2000—Pub. L. 106-554, §1(a)(7) [title I, §121(d)], Dec. 21, 2000, 114 Stat. 2763, 2763A-610, added item 45D.

1996—Pub. L. 104-188, title I, §1205(a)(3)(B), Aug. 20, 1996, 110 Stat. 1775, added item 45C.

1993—Pub. L. 103-66, title XIII, §§13322(e), 13443(c), Aug. 10, 1993, 107 Stat. 563, 569, added items 45A and 45B.

1992—Pub. L. 102-486, title XIX, §1914(d), Oct. 24, 1992, 106 Stat. 3023, added item 45.

1990—Pub. L. 101-508, title XI, §§11511(c)(1), 11611(d), Nov. 5, 1990, 104 Stat. 1388-485, 1388-503, added items 43 and 44.

1986—Pub. L. 99-514, title II, §§231(d)(3)(K), 252(d), Oct. 22, 1986, 100 Stat. 2180, 2205, added item 41 relating to credit for increasing research activities and item 42.

1984—Pub. L. 98-369, div. A, title IV, §471(b), July 18, 1984, 98 Stat. 826, added subpart D heading and analysis of sections for subpart D, consisting of items 38 (new), 39 (new), 40 (formerly 44E), and 41 (formerly 44G). Former subpart D was redesignated F.

### § 38. General business credit

#### (a) Allowance of credit

There shall be allowed as a credit against the tax imposed by this chapter for the taxable year an amount equal to the sum of—

- (1) the business credit carryforwards carried to such taxable year,
- (2) the amount of the current year business credit, plus
- (3) the business credit carrybacks carried to such taxable year.

#### (b) Current year business credit

For purposes of this subpart, the amount of the current year business credit is the sum of

the following credits determined for the taxable year:

(1) the investment credit determined under section 46,

(2) the work opportunity credit determined under section 51(a),

(3) the alcohol fuels credit determined under section 40(a),

(4) the research credit determined under section 41(a),

(5) the low-income housing credit determined under section 42(a),

(6) the enhanced oil recovery credit under section 43(a),

(7) in the case of an eligible small business (as defined in section 44(b)), the disabled access credit determined under section 44(a),

(8) the renewable electricity production credit under section 45(a),

(9) the empowerment zone employment credit determined under section 1396(a),

(10) the Indian employment credit as determined under section 45A(a),

(11) the employer social security credit determined under section 45B(a),

(12) the orphan drug credit determined under section 45C(a),

(13) the new markets tax credit determined under section 45D(a),

(14) in the case of an eligible employer (as defined in section 45E(c)), the small employer pension plan startup cost credit determined under section 45E(a),

(15) the employer-provided child care credit determined under section 45F(a),

(16) the railroad track maintenance credit determined under section 45G(a),

(17) the biodiesel fuels credit determined under section 40A(a),

(18) the low sulfur diesel fuel production credit determined under section 45H(a),

(19) the marginal oil and gas well production credit determined under section 45I(a),

(20) the distilled spirits credit determined under section 5011(a),

(21) the advanced nuclear power facility production credit determined under section 45J(a),

(22) the nonconventional source production credit determined under section 45K(a),

(23) the new energy efficient home credit determined under section 45L(a),

(24) the energy efficient appliance credit determined under section 45M(a),

(25) the portion of the alternative motor vehicle credit to which section 30B(g)(1) applies,

(26) the portion of the alternative fuel vehicle refueling property credit to which section 30C(d)(1) applies,

(27) the Hurricane Katrina housing credit determined under section 1400P(b),

(28) the Hurricane Katrina employee retention credit determined under section 1400R(a),

(29) the Hurricane Rita employee retention credit determined under section 1400R(b),

(30) the Hurricane Wilma employee retention credit determined under section 1400R(c),

(31) the mine rescue team training credit determined under section 45N(a),

(32) in the case of an eligible agricultural business (as defined in section 45O(e)), the ag-