Brownstein

Build Back Better Act: Tax Policy Summary and Analysis

BROWNSTEIN CLIENT ALERT, NOVEMBER 15, 2021

On Nov. 3, the House Rules Committee released updated text for the Build Back Better Act, the budget reconciliation bill, which contains President Joe Biden's human infrastructure and green energy priorities. This latest draft contains multiple changes to the various sections approved by House committees in mid-September and to an earlier version of the bill released on Oct. 28.

In the wake of the Democrats' loss in the Virginia governor's race, party leadership is forging ahead on trying to pass both parts of the president's economic agenda. With House passage of the Infrastructure Investment and Jobs Act, 228-206, on Nov. 5, the bill now heads to the president for his signature.

Neither chamber has yet passed the Build Back Better Act and the timeline for passage is uncertain. Moderate Democrats continue to push for a full Congressional Budget Office (CBO) score and more time to better understand various sections of the bill, thereby further delaying House passage. As of this writing, a House floor vote could occur as early as this week, though the release of the CBO score will likely determine timing. It is unclear when the Senate will consider the bill.

- Subtitle A—Universal Comprehensive Paid Leave
- Subtitle E—Infrastructure Financing and Community Development
- Subtitle F—Green Energy
- Subtitle G—Social Safety Net
- Subtitle H—Responsibly Funding Our Priorities

Latest Legislative Text

Below are links to the latest materials from the House Rules Committee on the Build Back Better Act.

- Legislative text
- Section-by-section summary
- Comparative print relative to the draft text released on Oct. 28
- Comparative print relative to the House Budget Committee-approved version in mid-September

Cost Estimate

With the new changes, the once-$3.5 trillion package now contains $2.4 trillion in new spending, according to the Joint Committee on Taxation (JCT), which released its official cost estimate on Thursday, Nov. 4. According to JCT, the offsets amount to just $1.47 trillion, falling $944 billion short of fully paying for the package.

Several costly provisions, including a new paid leave program, may be eliminated in the Senate to lower the price tag of the bill.

As of this writing, the Congressional Budget Office (CBO) has not released an estimate of the entire bill. Thus far, CBO has only released estimates for the portions of the package under the jurisdiction of the Committee on Veterans Affairs, the Committee on Small Business, the Committee on Homeland Security, the Committee on Oversight and Reform, the Committee on Transportation and Infrastructure and the Committee on Science, Space and Technology. According to reports, the estimate could be completed the week before or the week of Thanksgiving.

Subtitle A—Universal Comprehensive Paid Leave

Section 130001. Comprehensive Paid Leave.

- Amends the Social Security Act (SSA) to create a "Title XXII—Comprehensive Paid Leave Benefits," which includes four weeks of paid family and medical leave benefits for workers.
- Impact: Creates a new benefit under SSA that includes four weeks of paid family and medical leave benefits for workers.

Section 2201. Table of Contents.

- Provides a table of contents for Title XXII.

Section 2202. Entitlement to Comprehensive Paid Leave Benefits.

- Sets forth the requirements to qualify for benefits, which include:
    - Filing an application;
    - Having (or anticipate having) at least four caregiving hours (defined below) in a week ending at any time during the 90-day period prior to submitting an application or no later than 90 days after such date;
    - Having wages or self-employment income at any time during the period beginning with the most recent calendar quarter that ends at least four months prior to the start of the individual's benefit period and ending with the month before the benefit period begins; and
    - Has at least $2,000 in wages during the most recent eight-calendar quarter period that ends at least four months prior to the start of the individual's benefit period (for benefit periods beginning in calendar year 2024).
- A worker's benefit period begins with the month that ends the first week in which the individual has at least four hours of qualified caregiving.
    - In the case of retroactive benefits, the benefit period begins with the later of the month that ends the first week in which the individual has at least four hours of qualified caregiving, or the first month that begins during the 90 days before the application is filed.
- Benefits begin in January 2024.
- Defines "caregiving hour" as a one-hour period that a worker engages in qualified caregiving (i.e., an hour for which an individual may receive federal benefits).
    - "Qualified caregiving" is any activity performed instead of working for monetary compensation (generally including wages, paid time off, or paid sick leave) and must be undertaken for a reason that is a qualified reason for unpaid leave under the Family and Medical Leave Act (FMLA) or is in order to care for a qualified family member who has a serious health condition under the FMLA.
    - The types of family relationships are expanded beyond those in FMLA and "qualified family member" is defined as a spouse (including a domestic partnership in a civil union) and a spouse's parent; a child and a child's spouse; a parent and a parent's spouse; a sibling and a sibling's spouse; a grandparent, a grandchild or a spouse or either; and any other association by blood or affinity that is equivalent to a family relationship.
    - A worker does not need to be eligible for unpaid leave under the FMLA for hours to be considered qualified caregiving for the purposes of this program.
    - All full-time and part-time workers are covered, including gig workers and other self-employed workers.

- Permits paid time off for the death of a spouse, parent or child and is limited to 3/5 of the numbers of hours in the worker's regular workweek (i.e., three workdays for someone who normally works five days a week).
- The following workers are not eligible for benefits:
  - Those covered by a "legacy state" paid leave program under Section 2208; and
  - Those who are receiving employer-provided paid leave that is reimbursed under Section 2209.
- Benefits are not paid for the week during which the worker dies.
- Workers are ineligible for benefits for five years after any finding that they used false statements to secure family and medical leave benefits.
- Impact: Creates a federal paid leave program and describes who qualifies for said program and under what circumstances they qualify. Leave will be provided for activities that would quality for unpaid leave under the Family and Medical Leave Act (FMLA).

Section 2203. Benefit Amount.

- Describes how the benefit amount is calculated. With respect to benefits payable starting January 2024, the formula replaces:
  - 90.138% of the first $290 of average weekly earnings ($15,080 annualized)
  - 73.171% of average weekly earnings between $290 and $659 ($34,248 annualized)
  - 53.023% of average weekly earnings between $659 and $1,192 ($62,000 annualized)
- If a worker takes partial leave in a week, the benefit amount they are due for that week is prorated to reflect the fraction of their regular workweek for which they took caregiving leave.
- Earnings determinations will be based on data from the National Directory of New Hires (NDNH) and self-employment income data from tax returns, except that the Commissioner of Social Security will also consider recent or additional evidence submitted.
- The minimum number of hours that can be credited to a week is four hours, and a worker cannot be paid for more caregiving hours than they currently work in a regular workweek.
- A worker must complete a one-week waiting period before benefits can start (may use employer-provided leave benefits during this waiting period).
- Impact: The benefit amount is determined by using a formula designed to replace a greater share of wages for low-income workers.

Section 2204. Benefit Determination and Payment.

- Details the required contents for the initial application to be completed by the worker.
- Sets forth procedures for applications in advance of needed leave and applications filed after leave begins (e.g., new parental leave or scheduled medical treatment).
- In order to be paid for a month, a worker who has been found eligible for benefits must file a periodic benefit claim report, no later than 60 days after the end of a month, specifying their caregiving days during the month. The 60-day time limit does not apply to a worker applying for retroactive benefits.
- The Secretary must pay benefits not later than 15 days after the determination is made.
- Impact: Creates responsibilities for workers, the Commissioner and the Secretary of the Treasury regarding benefit determination and payment.

Section 2205. Appeals.

- Provides individuals with the right to appeal any determination regarding the benefits.
- Impact: Permits workers to appeal any determination regarding benefits.

Section 2206. Accurate Payment.

- Requires the Commissioner to promptly pay any underpayment, collect any overpayment and make redeterminations.
- Creates a civil monetary penalty for persons knowingly making false statements and misrepresentations.
- Impact: Provides guidelines for underpayments, overpayments and redeterminations, and creates civil penalties for individuals making false statements.

Section 2207. Funding for Benefit Payments, Grants, and Program Administration.

- Appropriates sums as are necessary to: pay the paid leave benefits under this bill; provide grants to legacy states under section 2208; and provide grants to eligible employers under section 2209.
- Provides funding for establishing and administering paid leave benefits: $1.5 billion for FY 2022 and $1,590,700,00 for FY 2023-2024.
- Appropriates $2 billion for FY 2022, to remain available until expended, for administrative expenses of the Social Security Administration.
- Appropriates $500 million for FY 2022 for an emergency fund for additional costs of administering comprehensive paid leave benefits.
- Impact: Provides funding for the federal paid leave program.

Section 2208. State Administration Option for Legacy States.

- Legacy states have the option to continue operating their paid leave programs and be reimbursed by the Commissioner. Legacy states can receive an annual grant from the Commissioner that is equal to the lesser of the following: (1) the total amount of federal comprehensive paid leave benefits that would otherwise have been paid to individuals who received benefits under a state program, as estimated by the Commissioner; or (2) the total cost of the state's paid leave law.
- Defines "legacy state" as a state that (1) had enacted a law providing paid family and medical leave benefits as of the date of enactment of this bill; (2) for any year prior to the calendar year that starts at least three years after the date of enactment, certifies to the Commissioner that it intends to remain a legacy state at least through the calendar year that starts at least three years after enactment; and (3) beginning with the first calendar year that starts three years after the date of enactment, has in effect a comprehensive paid leave program that covers all workers in the state who would be covered under the federal benefits program.
- If a legacy state law permits paid family and medical leave benefits to be provided by employers (directly, through an insurer or through a multiemployer plan) in lieu of the state, the employer-provided benefits are considered to have been paid under such state law, such employment is considered to be covered employment under such state law, and the state may distribute an appropriate share of its federal grant to those state-authorized employers.
- Impact: Provides an option for states with already enacted paid leave laws that provide benefits equivalent to the new federal benefits to continue operating their own programs and be reimbursed by the Commissioner.

Section 2209. Reimbursement Option for Employer-Sponsored Comprehensive Paid Leave Benefits.

- Requires the Commissioner to provide grants to eligible employers beginning in calendar year 2024.
- Provides two different payment mechanisms based on the different types of employer-sponsored plans
  - Employers who sponsor a plan that pays family and medical leave benefits through an insurer or a multiemployer plan are reimbursed at a rate equal to the lesser of the following: (1) 90% of the projected national average cost per individual of the federal comprehensive paid leave program multiplied by the number of employees covered by the plan; or (2) 90% of the total premiums paid to the insurer by the eligible employer for the coverage of eligible employees. A grant may not exceed an employer's actual expenditures.
  - Employers who self-insure and pay family and medical leave benefits directly, whether or not they use a third-party administrator to manage the plan, will be reimbursed for 90% of the cost of up to four weeks of qualified paid leave benefits for eligible employees, or if lesser, the national average weekly benefit paid in the federal comprehensive paid leave program multiplied by the number of weeks (up to four per person) of benefits provided to eligible employees. Such employers must hold a surety bond to ensure that full benefits will be paid.
- Provides the rules and requirements for employer eligibility and the procedures for submitting an application.
  - Initial application fee is $500 for an employer with 50 or fewer employees, $1,000 for an employer with more than 50 but fewer than 500 employees, and $2,000 for an employer with 500 or more employees.
  - Renewal application fee is $200.
- Outlines terms and conditions for an employer-sponsored plan to receive reimbursement, requires that all aspects be part of a written employer policy and are provided via one or more employee benefit plans, and describes additional conditions.
- Specifies that plans may be administered and guaranteed by an employer, an insurer or multiemployer plan, or a third-party administrator.
- Requires employers' plans to provide benefits to all employees who are not covered under a legacy state law, regardless of length of service, job type, membership in a labor organization, seniority status or any other classification.
- The plan must provide paid family and medical leave benefits in addition to any paid vacation, paid sick leave, or paid consolidated leave (a single amount of time off for employees to use for vacation, sickness or personal business) otherwise provided.
- The plan must meet or exceed the public plan level by: providing equal or higher wage replacement at all income levels; providing at least four weeks of benefits; allowing leave for all federal qualifying reasons, without any preexisting condition restrictions; providing for intermittent leave; not imposing fees or costs for coverage or receipt of benefits; paying benefits at least monthly or more frequently; and operating under a presumption that information provided by applicants is true unless demonstrated otherwise.
- Requires the Commissioner to determine the projected national average cost that will be used to calculate reimbursement for insured plans in the following year by Oct. 1 of each year.
- Specifies when payments will be made and requires reductions and delays in payments for late submissions or plan changes.

    - Payments for eligible employers with insured plans must be made within 30 days of the start of the calendar year.
    - Payments for eligible employers with self-insured plans must be made by March 31 of each year after the benefits were paid.
    - If an application or required documentation is late, requires payment to be made 45 days after all requirements are met and reduces the amount of the grant by 2% for each week it is late.
- As a condition of the grant, employers must provide to the Commissioner information about individuals who received a comprehensive paid leave benefit under the employer's plan and other information needed to pay grants and coordinate benefits with the federal program.
- Requires the Commissioner to periodically review employers receiving grants under this bill.
- Permits the Commissioner to penalize employers if a pattern of inappropriate benefit denial is found.
- Clarifies that nothing in the bill is intended to prohibit employers from providing benefits in excess of the amount of benefit that is reimbursable under the section.
- Impact: Provides an option for employers to receive partial reimbursement for paid leave benefits they provide to their workers instead of the benefits their workers could receive from the federal program, under certain conditions.

Section 2210. Definitions.

- Defines key terms used within Title XXII.
- Impact: Provides key definitions used in Title XXII.

Section 130002. Access to Wage Information from the National Directory of New Hires for the Purpose of Administering Comprehensive Paid Leave.

- Authorizes the Commissioner to access data from the National Directory of New Hires for the purpose of administering the paid leave program.
- Impact: Permits the Commissioner to access data from the National Directory of New Hires to carry out the paid leave program.

Section 130003. Access to Self-Employment Income Information for Paid Leave Administration.

- Authorizes the Secretary to provide the Commissioner with self-employment income information for the purpose of administering paid leave benefits.
- Impact: Permits the Secretary to provide self-employer income information to the Commissioner for purposes of carrying out the paid leave program.

Section 130004. Certain Comprehensive Paid Leave Benefits Excluded from Gross Income.

- Exempts the paid leave benefits from being considered part of gross income for tax purposes.
- Impact: Provides that the benefits provided under Title XXII shall not be considered gross income for tax purposes.

Subtitle E—Infrastructure Financing and Community Development

PART 1—LOW INCOME HOUSING CREDIT

Section 135101. Increases in State Allocations.

- Increases the state housing credit ceilings for calendar years 2022–2025.
- For calendar years starting in 2026, the state housing credit ceiling is adjusted for inflation.
- Effective for calendar years beginning after Dec. 31, 2021.
- Impact: Significantly increases the amounts available for projects over the next three years, particularly in small states.

Section 135102. Tax-exempt Bond Financing Requirement.

- Temporarily lowers tax-exempt bond limitation from 50% to 25%, allowing more credit allocations that are not subject to the state credit cap.
- Applies to buildings financed by bonds issued in calendar years 2022 through 2026.
- Effective Dec. 31, 2021.
- Impact: Incentivizes the building of additional low-income housing that is eligible for the 4% credit.

Section 135103. Buildings Designated to Serve Extremely Low-Income Households.

- Requires at least 8% of a state's housing credit ceiling be allocated to buildings where 20% or more of the residential units are rent-restricted. The units must be designated for households with an aggregate income lesser than the greater of (1) 30% of area median gross income, or (2) the federal poverty level.
- Increases the eligible basis to 150% of the otherwise applicable basis for buildings designated as requiring an increase in credit to be financially feasible. Housing credit agencies may not allocate more than 13% of the state housing credit ceiling amount to such buildings.
- Effective for credit allocations made after Dec. 31, 2021.
- Impact: Encourages the building of housing for extremely low-income households.

Section 135104. Repeal of Qualified Contract Option.

- Creates another exception to the extended low-income housing commitment for properties that received a credit allocation before Jan. 1, 2022, or a building financed under the lower tax-exempt bond limitation (see section 135103 above) that was received before Jan. 1, 2022, that the building would be eligible to receive an allocation of housing credits, or the credits to be earned are necessary for the financial feasibility of the project and its viability as a low-income housing project throughout the credit period.
- Modifies the rules for acquiring a building subject to the exceptions for the extended low-income housing commitment to provide that a bona fide contract must be for the fair market value of both the non-low-income and low-income portion of the building.

- The proposal is generally effective on the date of enactment. The proposal to modify the qualified contract rules applies to buildings with respect to which the building owner submits, after the date of enactment, a written request to find a buyer that agrees to acquire the owner's interest in the low-income portion of the building.
- Impact: Makes it more difficult to sell a property subject to one of the exceptions to the extended low-income commitment.

Section 135505. Modification and Clarification of Rights Relating to Building Purchase.

- The proposal changes the right of first refusal safe harbor into an option safe harbor.
- For existing agreements, clarifies that for the purposes of the safe harbor, the right to acquire the building includes the right to acquire all of the partnership interests relating to the building, as well as the right to acquire assets held for the development, operation or maintenance of the building.
- Clarifies that for existing agreements, the right of first refusal safe harbor may be satisfied by the grant of an option.
- Amends the minimum purchase price to exclude exit taxes.
- Clarifies that the option safe harbor applies to S corporations and other pass-through entities in the same manner as partnerships.
- The proposal to change the right of first refusal safe harbor into an option safe harbor is effective for agreements entered into or amended after the date of enactment. The other provisions of the proposal are effective for agreements entered into before, on or after the date of enactment. However, none of the changes of the proposal are intended to supersede express language in any agreement with respect to the terms of a right of first refusal or option permitted under the safe harbor.
- Impact: Would allow tax-exempt partners to purchase properties at below fair market value.

PART 2—NEIGHBORHOOD HOMES INVESTMENT ACT

Section 135201. Neighborhood Homes Credit.

- Establishes a new neighborhood homes credit as part of the general business credit.
- Provides that the credit amount is the lesser of either (1) the excess of development costs incurred, over the sales price of the property; or (2) 35% of the lesser of either (i) the development costs incurred, or (ii) 80% of the national median sales price for new homes.
- Directs states to designate an agency to serve as the Neighborhood Homes Credit Agency (NHCA) responsible for allocating credits to project sponsors based upon certain qualifying factors.
- The credit is available for the construction—or rehabilitation—for-sale of: (1) homes with up to four dwelling units; (2) condominiums; and (3) residences owned by a housing cooperative. Qualified residences must be located within census tracts that meet specified parameters prioritizing lower-income, rural or disaster locations.
- If the home is sold again within five years of a qualifying sale, the seller must repay a specified amount to the neighborhood home credit agency.
- Specifies alternate credit amount and repayment rules for rehabilitation of an owner-occupied property: the credit amount is equal to the lesser of (1) the excess of costs incurred by the taxpayer, over any amounts paid to the taxpayer for the rehabilitation; (2) 50% of the costs incurred; or 3) $50,000.

- Effective for taxable years beginning after Dec. 31, 2021.
- Impact: Creates a general business credit to subsidize taxpayers who develop or rehabilitate property and affordably sell to purchasers to use as their principal residence, or taxpayers who rehabilitate certain owner-occupied property.

PART 3—INVESTMENTS IN TRIBAL INFRASTRUCTURE

Section 135301. Treatment of Indian Tribes as States with Respect to Bond Issuance.

- For private activity bonds, it directs the Treasury Secretary to annually establish a national bond volume cap based on the greater of the (1) state population formula and (2) minimum state ceiling amount.
- An Indian Tribal Government is defined as the governing body of an Indian tribe, band, nation or other organized group or community of Alaska Natives, which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians, and also would include any agencies, instrumentalities or political subdivision thereof.
- No portion of the private activity bond volume cap may be used to finance (1) any portion of a building in which class II or class III gaming is conducted or housed or (2) property used in the conduct of such gaming.
- The changes apply to obligations issued in calendar years beginning after enactment.
- Impact: This section revises the rules for Indian Tribal Governments with regard to private activity bonds but does not allow the use of the bonds to finance gaming facilities.

Section 135302. New Markets Tax Credit for Tribal Statistical Areas.

- For years 2022 through 2025, this section establishes a new markets tax credit (NMTC) limitation of $175 million allocated only with respect to Tribal Statistical Areas.
- Defines a “Tribal Statistical Area” as “any low-income community which is located in any Tribal Census Tract, Oklahoma Tribal Statistical Area, Tribal-Designated Statistical Area, Alaska Native Village Statistical Area or Hawaiian Home Land.”
- Defines “low-income community” as (1) a census tract in which the poverty rate is at least 20% or (2) a census tract in which median family income does not exceed 80% of statewide median family income. Low-income community businesses that service a significant population of Tribal or Alaska Native Village members of a low-income community also fall under this definition.
- Adjusts the credit limitation for inflation.
- Directs the Treasury Secretary to prescribe regulations that outline procedures for determining which projects are qualified active low-income community businesses.
- The changes apply to NMTC limitation amounts determined after 2021.
- Impact: By expanding the NMTC for Tribal Statistical Areas, this section incentivizes community development and economic growth in low-income communities in tribal lands.

Section 135303. Inclusion of Indian Areas as Difficult Development Areas for Purposes of Certain Buildings.

- Expands the definition of a "difficult development area" for purposes of the low-income housing tax credit to include "any Indian area," which is any area designated as one that has high construction, land and utility costs relative to area median gross income.
- The changes shall apply to buildings placed in service after 2021.
- Impact: By including Indian areas in the definition of a difficult development area, projects in these areas are eligible to receive additional housing credit assistance.

PART 4—OTHER PROVISIONS

Section 135401. Possessions Economic Activity Credit.

- Creates a new possessions economic activity credit equal to 20% of qualified possession wages and allocable employee fringe benefit expenses up to $50,000 per year for full-time employees of qualified domestic corporations. The credit is a general business credit.
- Qualifying possession wages are those paid in connection with the active conduct of a trade or business within a U.S. territory or possession to any employee for services performed if the principal place of employment of the employee is within the U.S. territory or possession.
- Qualifying corporations are those for which (1) 80% or more of gross income for the previous three-year period was derived from sources within the U.S. territory or possession or (2) 75% or more of gross income was derived from the active conduct or a trade or business within the U.S. territory or possession.
- The credit applies to taxable years beginning after the date of enactment through 2031.
- Impact: This section provides a new incentive to encourage business activity in U.S. territories or possessions.

Section 135402. Tax Treatment of Certain Assistance to Farmers, Etc.

- Clarifies that certain loan payments made to farmers under sections 1005(b) and 1006(e) of ARPA are excluded from the payee's gross income.
- Provides that any otherwise allowable deductions are still permissible notwithstanding the tax-free treatment of the subject payments.
- Impact: Provides relief for farmers by excluding certain loan payments authorized in ARPA from income taxes and prohibiting any denial of deductions on the basis of such exclusion.

Section 135403. Exclusion of Amounts Received from State-Based Catastrophe Loss Mitigation Programs.

- Excludes from gross income state-qualified catastrophe mitigation payments—the amount received to make improvements to a residence for reducing the damage that would have occurred from windstorms, earthquakes or wildfire.
- Applies to taxable years beginning after 2020.
- Impact: By excluding catastrophe mitigation payments from gross income, the section provides relief for taxpayers affected by natural disasters.

Subtitle F—Green Energy

PART 1—RENEWABLE ELECTRICITY AND REDUCING CARBON EMISSIONS

Section 136101. Extension of Credit for Electricity Produced from Certain Renewable Resources.

- Extends the section 45 production tax credit (PTC) allowing producers to claim a base credit of 0.5 cents per kilowatt hour and bonus credit of 2.5 cents per kilowatt hour, subject to the producer satisfying the new prevailing-wage requirements during the facility's construction and the 10-years credit period and meeting the new apprenticeship requirements.
- Projects would be eligible for the bonus rate even if they do not meet the prevailing-wage and apprenticeship requirements provided they start construction before the enactment date or have a maximum net output of less than one megawatt.
- The prevailing-wage requirement applies to the taxpayer and its contractors and requires that employees receive the prevailing-wage rates for construction, alteration or repair in the project's locality as determined by the Secretary of Labor, in accordance with subchapter IV of chapter 31, of title 40, United States Code. Rules are provided to cure noncompliance, subject to a penalty of $5,000 per affected worker.
- The apprenticeship requirement is satisfied by ensuring that not less than 15% (10% for projects with construction beginning before 2023 and 12.5% for projects beginning in 2023) of the total labor hours of construction, alteration or repair work on any applicable project are performed by qualified apprentices. An exception can be obtained if the taxpayer demonstrates a lack of available qualified apprentices in the area of the construction, alteration or repair work and makes a good faith effort to comply with the requirement. Rules are provided to cure noncompliance, subject to a penalty of $50 per hour (increased to $500 per hour if the taxpayer intentionally disregards the rules) of apprenticeship requirement that has not been met, capped at the value of the credit.
- The base credit is increased by 10 percentage points if the facilities meet domestic-content requirements. The domestic-content provision generally requires that a certain percentage of the total cost of the components are attributable to components that are mined, produced or manufactured in the United States—40% if construction begins before 2025; 45% for construction starting in 2025; 50% for construction beginning in 2026; and 55% for construction starting in 2027 (20%, 27.5%, 35% and 45% for offshore wind facilities), with an additional threshold of 55% for construction beginning after 2027.
- The Treasury Secretary is permitted to make exceptions where relevant components are not produced in sufficient supply in the United States, or the requirement would increase the overall cost of the project by more than 25%.
- The base credit is increased by 10 percentage points for projects in energy communities, where a coal mine has closed or a coal-fired electric generating unit has been retired.
- For taxpayers electing the direct-payment option in lieu of the credit, the direct-pay amount is reduced if the domestic-content requirements are not met beginning in 2024 and eliminated if the requirements are not met in 2026 or later.
- Modifies the formula for calculating the reduced credit amount for tax-exempt bonds to allow for a greater reduced amount to be claimed.
- All modifications are effective for projects placed in service after Dec. 31, 2021, except for the modifications to the tax-exempt bond provisions—which apply to projects that begin construction after Dec. 31, 2021, and before Jan. 1, 2027.
- <u>Impact</u>: Extends the benefits of the production tax credit for 10 years to provide business certainty and encourage the development of electricity from certain renewable resources.

Section 136102. Extension and Modification of Energy Credit.

- Extends the section 48 investment tax credit (ITC) for taxpayers that begin construction of energy property before the end of 2033. The ITC provides a base credit of 6% for fuel cell, qualified small wind, waste energy recovery, and solar energy property (2% for all other energy properties) and a bonus credit of 30% for projects meeting the prevailing-wage and apprenticeship requirements. *(See description in summary of section 136101 above.)*.
- The base credit amount is increased to 26% for projects that began construction after Dec. 31, 2019, and are placed in service before Jan. 1, 2022.
- The base credit is increased by 2 percentage points if the facilities meet domestic-content requirements (10 percentage points where the prevailing-wage and apprenticeship requirements are also met). Projects in energy communities are also eligible for the additional credit percentage based on domestic-content.
- The tax-exempt bond rules similar to those applicable to the PTC apply.
- Construction must begin before Jan. 1, 2027.
- Impact: Extends the ITC for 10 years to provide business certainty and encourage investments in certain renewable-energy facilities, including energy-storage technology and linear generators.

Section 136103. Increase in Energy Credit for Solar and Wind Facilities Placed in Service in Connection with Low-Income Communities.

- Expands the section 48 ITC to include solar and wind facilities located in low-income or Native American communities, including energy-storage technology property, provided the facility receives an allocation of environmental justice solar and wind capacity.
- Requires the Treasury Secretary, in consultation with the Energy Secretary and the EPA Administrator, to allocate an annual environmental justice solar and wind capacity limitation to qualifying projects based on those with the greatest health and economic benefit, the greatest employment and wages, and the greatest engagement with local governments, Indian tribal governments and community-based organizations.
- Sets the annual capacity limitation from 2022 to 2026 at 1.8 gigawatts direct-current capacity and zero thereafter, taking into account the prior year's unused credit allocations through 2026.
- Increases the allocation by an additional 10% if the project is located in a low-income community or an Indian reservation, and 20% if the project is a qualifying low-income residential building project or low-income economic benefit project.
- Impact: Creates an investment incentive for solar and wind facilities in qualifying low-income and Native American residential building projects.

Section 136104. Elective Payment for Energy Property and Electricity Produced from Certain Renewable Resources.

- Allows taxpayers to forego claiming a qualifying credit in exchange for an equivalent tax refund. The direct-payment option is available with respect to:
  - section 48 ITC,
  - section 45 PTC (projects placed in service after Dec. 31, 2021),
  - section 45Q carbon capture credit (projects placed in service after Dec. 31, 2021),

    - section 30C alternative fuel vehicle refueling property credit,
    - section 48C advanced energy project credit.
    - section 48D investment credit for transmission property,
    - section 45W zero-emission nuclear power production credit,
    - section 45X clean hydrogen production,
    - section 45E advanced manufacturing investment credit,
    - section 45AA clean energy electricity production credit,
    - section 45BB clean electricity production credit,
    - section 48F clean electricity investment credit, and
    - section 45CC clean fuel production credit.
- Provides special rules for direct payments in the case of partnerships, S corporations and tax-exempt entities.
- Impact: Allows taxpayers with insufficient taxable income to use green-energy credits by monetizing the value through a tax refund when they qualify for the credit.

Section 136105. Investment Credit for Electric Transmission Property.

- Creates an ITC for electric transmission property with a base rate of 6% and a bonus rate of 30%. A qualifying electric transmission property is an electric transmission or superconducting line that can transmit at least 275 kilowatts and has a capacity of at least 500 megawatts. The credit also covers related, FERC-defined transmission property, including any property listed as a "transmission plant" that also is necessary for either electricity transmission or conversion.
- Treats upgrades to existing lines as a replacement line and the 500-megawatt capacity requirement is increased by the transmission capacity. The basis for an existing transmission line is not eligible for a credit.
- Requires taxpayers claiming the bonus credit to satisfy prevailing-wage and apprenticeship requirements during the property's construction and five years after the project is placed into service as well as domestic-content requirements.
- The tax-exempt bond rules similar to those applicable to the PTC apply.
- Applies to property placed in service in 2022 through 2031.
- Impact: Creates an investment incentive for electric transmission property.

Section 136106. Extension and Modification of Credit for Carbon Oxide Sequestration.

- Extends and expands the section 45Q carbon oxide sequestration credit for facilities that begin construction before 2032. Direct-air capture (DAC) facilities would qualify for the enhanced credit if they capture at least 1,000 metric tons of carbon oxide per year. Electricity-generating facilities would be required to capture at least 18,750 metric tons of carbon oxide and at least 75% of total carbon emissions that otherwise would have been released by the facility. All other facilities would be required to capture at least 12,500 metric tons of carbon oxide per year to qualify for the credit.
- For geological storage, the base credit rate is $17, and the bonus credit rate is $85 per metric ton of carbon oxide captured. For carbon oxide that is captured and utilized, the base credit is $12, and the bonus credit rate is $60 per metric ton. For the enhanced DAC credit applied to geological storage, the base credit rate is $36, and the bonus rate is $180 per metric ton. DAC carbon oxide that is utilized qualifies for an enhanced base credit rate of $26 and a bonus rate of $130 per metric ton.

- Requires taxpayers claiming the credit to satisfy the prevailing-wage and apprenticeship requirements during the facility's construction and the 12-year credit period.
- The tax-exempt bond rules similar to those applicable to the PTC apply.
- Applies to projects beginning construction after Dec. 31, 2021.
- Impact: Extends the carbon-capture credit and provides an additional incentive for investments in direct-air capture facilities that begin construction before the end of 2031.

Section 136107. Green Energy Publicly Traded Partnerships.

- Expands the definition of qualified income for publicly traded partnerships (PTP) to include income from green and renewable energy, including energy production eligible for the PTC, ITC, renewable fuels and carbon sequestration credits.
- Removes from the definition of qualified PTP income any income or gains derived from the transportation or storage of alcohol fuel, biodiesel, alternative fuels and alternative fuel mixtures.
- Applies to taxable years beginning after Dec. 31, 2021.
- Impact: Expands the definition of publicly traded partnerships to provide additional financing alternatives to encourage green and renewable energy production while limiting the use of PTPs in the fossil-fuel sector.

Section 136108. Zero-Emission Nuclear Power Production Credit.

- Creates a new credit for electricity from a qualified nuclear facility. The base credit is 0.3 cents per kilowatt hour and a bonus credit rate of 1.5 cents per kilowatt hour. As the price of electricity increases, the credit is reduced. The credit reduction formula reduces the credit by 16% of the excess of gross receipts from electricity produced and sold over the product of 2.5 cents times the amount of electricity produced and sold during the year.
- Applies to a facility owned by the taxpayer that uses nuclear energy to produce electricity, provided the taxpayer has not claimed a credit for advanced nuclear power facilities under section 45J.
- Requires taxpayers claiming the bonus credit to satisfy the prevailing-wage and apprenticeship requirements.
- Permits taxpayers to elect the direct-payment option in lieu of the credit.
- Applies to electricity produced and sold after Dec. 31, 2021. The credit expires after Dec. 31, 2027.
- Impact: Creates a credit to support power production by existing nuclear facilities and power sources not dependent on sources like wind and solar.

PART 2—RENEWABLE FUELS

Section 136201. Extension of Excise Tax Credits Relating to Alternative Fuels.

- Extends the income and excise tax credits for biodiesel and biodiesel mixtures at $1.00 per gallon through 2026. Extends the $0.10 per gallon small agri-biodiesel producer credit, and the $0.50 per gallon excise tax credit for alternative fuel and alternative fuel mixtures through 2026.
- The bill repeals liquid hydrogen as an alternative fuel under the alternative fuel and alternative fuel mixture credit.

- Impact: Provides a five-year extension of the tax incentives for the production of biodiesel and alternative fuels, affording greater certainty for these producers in the energy sector.

Section 136202. Extension of Second-Generation Biofuel Incentives.

- Extends the second-generation biofuel income tax credit through 2026.
- Impact: Provides a five-year extension of the tax incentives for the second-generation biofuel income tax credit through 2026, affording greater certainty for these producers in the energy sector.

Section 136203. Sustainable Aviation Fuel Credit.

- Creates a refundable blenders credit for each gallon of sustainable aviation fuel sold as part of a qualified mixture starting in 2023. The credit operates on a sliding scale, providing $1.25 to $1.75 based on the fuel's reduction in lifecycle greenhouse emissions above 50%. The credit may be claimed against section 4041 excise tax liability.
- Requires taxpayers to certify that the fuel reduces emissions by at least 50%.
- Eliminates the $1.00 tax credit for aviation fuel produced from biodiesel under section 40A.
- Applies to fuel sold or used in 2023 through 2026.
- Impact: Creates a new tax incentive for the production of sustainable aviation fuel.

Section 136204. Clean Hydrogen.

- Creates a new tax credit for the production of clean hydrogen in the U.S. for sale or use by the taxpayer. Beginning in 2022, the credit applies to the 10-year period beginning on the date the clean-hydrogen facility is placed in service.
- The credit is based on (1) a base amount of $0.60 and the bonus amount of $3.00 (indexed to inflation), multiplied by (2) the kilograms of clean hydrogen produced, and multiplied by (3) an applicable percentage representing the ratio of kilograms of carbon dioxide (CO_2e) emissions to kilograms of hydrogen produced.
- The applicable percentage (ranging from 15% to 100%) is determined by the lifecycle greenhouse gas emissions rate achieved from producing clean hydrogen.
- Permits taxpayers to claim the section 45 PTC for electricity produced from renewable resources that are used in a facility producing clean hydrogen.
- Permits taxpayers to elect to treat a qualified clean hydrogen facility as energy property under the section 48 ITC, in lieu of claiming the new PTC credit for clean hydrogen.
- The credit is no longer available for projects that begin construction in 2029 or later.
- Impact: Creates a new tax incentive for the production of clean hydrogen.

PART 3—GREEN ENERGY AND EFFICIENCY INCENTIVES FOR INDIVIDUALS

Section 136301. Extension, Increase and Modifications of Nonbusiness Energy Property Credit.

- Extends the nonbusiness energy property credit by 10 years for property placed in service through Dec. 31, 2031.

- Increases the credit amount from 10% to 30% for qualified energy efficiency improvements and residential energy property expenditures.
- Converts the lifetime-limits under current law to an annual credit amount, which is increased from a maximum of $500 to $1,200.
    - The credit does not apply to the cost of any qualified energy property in excess of $600 per year.
    - The maximum credit amount for exterior windows and skylights may not exceed $600.
    - The maximum credit amount for *any* exterior door may not exceed $250, and the maximum credit for *all* exterior doors may not exceed $500.
- Excludes from the annual credit limitation amounts paid for central air conditioners, electric heat pumps, water heaters and boilers, and biomass stoves that meet energy-efficiency standards.
- Removes metal roof and asphalt roofs from qualifying as building envelope components and adds air sealing material and systems.
- Removes the requirement for purposes of the "residential energy property expenditures" that qualified energy property be used by the taxpayer's *principal* residence. The bill requires qualified energy property only to be "used as a residence by the taxpayer."
- Changes the definition of qualified energy property to mean:
    - Any of the following that meet the highest efficiency tier established by the Consortium for Energy Efficiency in effect at the beginning of the calendar year in which the property is placed in service: an electric heat pump water heater, an electric heat pump, a central air conditioner, a natural gas, propane or oil water heater, a natural gas, propane or oil furnace or hot water boiler;
    - A geothermal heat pump that meets the requirements of the Energy Star program;
    - A biomass stove that uses the burning of biomass fuel to heat or heat water in a dwelling unit in the United States that is used as a residence by the taxpayer and that has a thermal efficiency rating of at least 75%; and
    - Any oil furnace or hot water boiler placed in service:
        - between 2022 and 2026 that meets the 2021 Energy Star efficiency criteria and is rated for use with eligible fuel blends of 20% or more, or
        - after Dec. 31, 2026, and achieves an annual fuel utilization efficiency rate of at least 90% and is rated for use with eligible fuel blends of 50% or more.
        - Defines eligible fuel as biodiesel and renewable diesel and second-generation biofuel.
- Creates a 30% credit for home energy audits that may not exceed $150. Defines a home energy audit as an inspection and written report with respect to a dwelling unit located in the United States and owned or used by the taxpayer as the taxpayer's principal residence, which (1) identifies the most significant and cost-effective energy efficiency improvements including an estimate of the energy and cost savings, and (2) is conducted and prepared by a home energy auditor that meets the certification or other requirements specified by the Treasury Secretary.
- Requires taxpayers to report product identification numbers for property with respect to which the energy-efficient property credit is claimed on their annual tax return.

- Generally applies to property placed in service and to amounts paid for home energy audits after Dec. 31, 2021.
- Impact: Extends and triples the Nonbusiness Energy Property Credit, making it more affordable for homeowners to invest in energy-efficient home improvements, as well as encouraging home energy audits.

Section 136302. Residential Energy Efficient Property.

- Extends the residential energy efficient property credit by 10 years to property placed in service through Dec. 31, 2033, with adjustments to the corresponding phaseout dates.
- Allows qualified battery storage technology expenditures for battery storage technology that is installed in the taxpayer's U.S. residence and has a capacity of at least 3 kilowatt hours to qualify for the credit.
- Eliminates the carryforward of unused credits starting in 2023.
- Makes the credit refundable for taxable years beginning after Dec. 31, 2023, if the property is installed by a qualified installer and the taxpayer reports the installer's identification number on the taxpayer's annual tax return.
- The provision contemplates a Treasury Department program to register installers and provide installation identification numbers. Installers are required to provide written receipt of qualifying purchases and installations and make periodic written reports to the Secretary of such installation transactions.
- Generally applies to expenditures made after Dec. 31, 2021.
- Impact: Extends and makes refundable the Residential Energy Efficient Property credit so taxpayers can more easily pay for residential alternative energy equipment, such as solar hot water heaters, wind turbines and solar electricity equipment, subject to new compliance requirements regarding qualified installers.

Section 136303. Energy Efficient Commercial Building Deduction.

- Modifies the energy-efficient commercial building deduction for taxable years beginning after Dec. 31, 2021, and before Jan. 1, 2031:
    - Requires "energy efficient commercial building property" to be part of a plan to reduce total energy and power costs with respect to certain systems of the building by only 25% as opposed to the 50% requirement under current law.
    - Sets the maximum deduction equal to the applicable dollar value multiplied by the square footage of the building divided by the aggregate amount of deductions with respect to the building for the three years immediately preceding the taxable year.
        - The applicable dollar value is $0.50, which increases (but not above $1.00) by $0.02 for each percentage point by which the total annual energy and power costs for the building are certified to be reduced by a percentage greater than 25%.

        - A higher applicable dollar value—$2.50, which increases (but not above $5.00) by $0.10 for each percentage point by which the total annual energy and power costs for the building are certified to be reduced by a percentage greater than 25%—generally applies if construction for a building or retrofit plan satisfies certain wage and apprenticeship requirements guidance and satisfies the requirements.
    - Allows an alternative deduction for energy-efficient retrofit buildings based on the energy usage intensity and the aggregate adjusted basis for the building. A qualified retrofit plan is a written plan prepared by a qualified professional that specifies modifications to a building that, in the aggregate, are expected to reduce the building's energy usage intensity by at least 25%.
- Allows for the allocation of the deduction to certain tax-exempt entities in the same manner as allowed for federal, state and local governments.
- Provides that for real estate investment trusts any amount deductible shall be allowed in the year in which the property is placed in service.
- Updates the energy-efficiency standard to the more recent of: Standard 90.1-2007 published by the American Society of Heating, Refrigerating and Air Conditioning Engineers (ASHRACE) and the Illuminating Engineering Society of North America (IESNA); or the most recent Standard 90.1 published by the ASHRACE and IESNA for which the Department of Energy has issued a final determination and which has been affirmed by the Secretary not later than four years before the property is placed in service.
- Applies to taxable years beginning after Dec. 31, 2021.
- Impact: Increases the incentive for building owners to make energy-efficient commercial building improvements and retrofits.

Section 136304. Extension, Increase and Modifications Of New Energy Efficient Home Credit.

- Extends the new energy efficient home credit for 10 years for qualified new energy efficient homes acquired through Dec. 31, 2031.
- Increases the credit amount applicable to single-family and multifamily housing construction:
    - Dwelling units in which heating and cooling energy consumption is at least 50% below the annual consumption of a comparable unit are eligible for a credit of $2,500 ($500 for units in which the building is eligible to participate in the Energy Star Multifamily New Construction Program), and
    - Units in which building envelope component improvements account for at least 20% of such 50% are eligible for a credit of $5,000 ($1,000 for units in which the building is eligible to participate in the Energy Star Multifamily New Construction Program).
- Provides that a dwelling unit meets the energy saving requirements if it conforms to Federal Manufactured Home Construction and Safety Standards or is certified as a zero-

energy ready home under the zero-energy ready home program of the Department of Energy.

- Applies to dwelling units acquired after Dec. 31, 2021.
- Impact: Increases the incentive for developers to construct or substantially reconstruct energy-efficient residences and multifamily housing.

Section 136305. Modifications to Income Exclusion for Conservation Subsidies.

- Excludes from gross income the value of any subsidy:
  - provided by a public utility to a customer or by a state or local government to a resident for the purchase or installation of any water conservation or efficiency measure;
  - provided by a storm water management provider to a customer or by a state or local government to a resident for the purchase or installation of any storm water management measure.
- Applies to amounts received after Dec. 31, 2018.
- Impact: Provides relief for taxpayers receiving subsidies for water conservation or efficiency and storm water management.

Section 136306. Credit for Qualified Wildfire Mitigation Expenditures.

- Allows a credit of up to 30% of the qualified wildfire mitigation expenditures paid by the taxpayers with respect to real property owned or leased by the taxpayer.
- Applies to expenditures paid or incurred after enactment of the Act.
- Impact: Allows taxpayers who participate in state mitigation programs to offset costs associated with wildfire mitigation expenditures.

PART 4—GREENING THE FLEET AND ALTERNATIVE VEHICLES

Section 136401. Refundable New-Qualified Plug-In Electric Drive Motor Vehicle Credit for individuals.

- Creates a refundable income tax credit for purchases of new plug-in electric motor vehicles through 2031. Sets the base credit amount at $4,000 plus any of the following:
  - $3,500 for vehicles (with no more than 2.5 gallons in gasoline capacity) that meet certain battery capacity requirements:
    - 40 or more kwh for vehicles placed in service before 2027, or
    - 50 kwh or more for vehicles placed in service after 2026.
  - $4,500 for vehicles assembled in domestic facilities operating under a union-negotiated collective-bargaining agreement.
  - $500 for vehicles with battery cells manufactured in the United States.

- Limits the credit to 50% of the purchase price and provides that only vehicles assembled domestically will be eligible for credits starting in January 2027. Disallows the credit for vehicles by which the manufacturer's suggested retail price exceeds:
    - $80,000 for vans, SUVs and pickup trucks, and
    - $55,000 for any other vehicle.
- Phases the credit out for buyers earning more than $250,000 ($500,000 for married couples filing jointly and $375,000 for head of household filers) at a rate of $200 per every $1,000 in excess of the respective threshold.
- Taxpayers may only elect the credit for the purchase of one electric vehicle per year.
- Provides a 30% credit for certain two- and three-wheel plug-in vehicles (mopeds, etc.) not to exceed $7,500.
- Directs the Secretary to make payments to mirror-code territories for the amount of revenue lost with respect to this provision.
- Impact: Encourages the purchase of plug-in electric vehicles for personal use.

Section 136402. Credit for Previously Owned Qualified Plug-In Electric Drive Motor Vehicles.

- Creates a refundable credit for the purchase of used battery and fuel-cell electric vehicles through 2031. Applies to the first resale of a used electric vehicle from a dealership for personal use following enactment.
- Sets the base credit amount at $2,000, with an additional $2,000 available for certain battery capacities. Limits the credit to 50% of the sale price.
- Applicable to qualifying electric and fuel cell vehicles (under the existing sections 30D and 30B credit) priced under $25,000 and with a model year at least two years old.
- Phases the credit out for buyers earning more than $75,000 ($150,000 for married couples filing jointly and $112,500 for head of household filers) at a rate of $200 per every $1,000 in excess.
- Impact: Encourages the sale of electric vehicles in the used car market.

Section 136403. Credit for Qualified Commercial Electric Vehicles.

- Creates a new credit equal to 30% of the cost of qualified commercial electric vehicles through 2031.
- Applicable to externally chargeable motor vehicles with at least 10 kwh in battery capacity and vehicles that qualify as fuel cell vehicles under section 30B.
- Eligible manufacturers must provide the Secretary with each vehicle identification number (VIN) of electric vehicles sold under this provision. Taxpayers must include the VIN on their return to receive the credit.
- Impact: Promotes the purchase of electric vehicles at the commercial level.

Section 136404. Qualified Fuel Cell Motor Vehicles.

- Extends the credit for the purchase of qualified fuel cell motor vehicles through 2031.
- Impact: Promotes the purchase and sale of fuel cell motor vehicles.

Section 136405. Alternative Fuel Refueling Property Credit.

- Extends the credit for alternative fuel vehicle refueling property through 2031.
- Expands the credit for zero-emissions charging and refueling infrastructure with a base credit of 6% for expenses up to $100,000 and 4% for excess expenses starting January 2022.
- Provides an alternative bonus credit for taxpayers that meet certain wage requirements during construction: 30% for expenses up to $100,000 and 20% for amounts in excess.
- For the credit to apply to amounts over $100,000, the property must either be: (1) intended for public use and either accept credit card payment or charge nothing, or (2) intended for exclusive government or commercial fleet use.
- Expands the list of eligible property to include electric charging stations for electric two- and three-wheel vehicles limited to public use property (referenced above) or for government or commercial fleet use. Clarifies that bidirectional charging equipment is eligible property for the credit.
- Impact: Promotes and incentivizes placing electric vehicle refueling property into service for public, government or commercial use.

Section 136406. Reinstatement and Expansion of Employer Provided Fringe Benefits for Bicycle Commuting.

- Removes the temporary suspension of the exclusion for qualified bicycle commuting benefits and increases the maximum benefit from $20 per month to $52.50 per month.
- Expands the definition of qualified benefits to include employer reimbursement for leased bikes, including a bikeshare, and the direct or indirect provision of qualified commuting property by an employer.
- Defines qualified commuting property to include bicycles, electric bicycles, two- or three-wheeled scooters (other than scooters equipped with motors), and any two- or three-wheeled scooter propelled by an electric motor if the maximum speed of such motor does not exceed 20 miles per hour.
- Impact: Reinstatement of the credit that incentivizes commuters to utilize environment-friendly methods of travel to and from work.

Section 136407. Credit for Certain New Electric Bicycles.

- Provides a 30% refundable tax credit for up to $3,000 of the cost of qualified electric bikes placed into service before Jan. 1, 2027. Limits the credit to $900.
- Phases the credit out for buyers earning more than $75,000 ($150,000 for married couples filing jointly and $112,500 for head of household filers) at a rate of $200 per every $1,000 in excess.
- Defines qualified electric bicycles as those equipped with fully operable pedals, a saddle or seat for the rider, an electric motor of less than 750 watts subject to certain speed limitations. Aggregate amount paid for the bicycle may not exceed $4,000.
- Eligible manufacturers must provide the Secretary with each vehicle identification number (VIN) of electric vehicles sold under this provision. Taxpayers must include the VIN on their return to receive the credit.
- The credit would expire after Dec. 31, 2025.
- Impact: The credit incentivizes individuals to purchase electric bicycles.

PART 5—INVESTMENT IN THE GREEN WORKFORCE AND MANUFACTURING

Section 136501. Extension of the Advanced Energy Project Credit.

- Amends section 48C qualified advanced energy property credit and allocates $5 billion in credits for each year from 2022 through 2023 and then $1.875 billion for each year from 2024 through 2031, and then zero thereafter.
- $800 million in credits each year is reserved for projects in automotive communities and energy communities from 2022 to 2023 and then $300 million each year from 2024 to 2031.
- Each applicant has two years from the date of acceptance to provide evidence of certification and to place the project in service.
- Taxpayers receive a base rate of 6% and if taxpayers satisfy wage and apprenticeship requirements, that rate is multiplied by five.
- Selection criteria takes into account which projects provide the greatest impact of reducing greenhouse gases, provides domestic job creation, provides job creation within low-income communities and for dislocated workers previously employed in manufacturing, coal power plants or coal mining. Highest priority will be given to projects that manufacture and have the greatest potential for commercial deployment of new applications.
- Impact: Provides additional incentives for advanced energy projects by providing a base credit and bonus credit for projects that create jobs and reduce carbon emissions.

Section 136502. Labor Costs of Installing Mechanical Insulation Property.

- Creates new code section 45Z to provide a 2% credit (multiplied by five for meeting wage and apprenticeship requirements) of the labor costs incurred in installing mechanical insulation property into a mechanical system originally placed in service not less than one year before the date on which such mechanical insulation property is installed.
- The credit is available for costs paid or incurred starting Dec. 31, 2021, and before Jan. 1, 2026.
- Impact: Creates a new credit for the labor costs associated with installing mechanical insulation property.

Section 136503. Advanced Manufacturing Investment Credit.

- Creates new code section 48E that provides an advanced manufacturing investment tax credit that provides at least a 5% base credit (up to 25% bonus credit for meeting wage and apprenticeship requirements) for advanced manufacturing facilities.
- The credit includes an option to receive the credit as elective payment or direct payment.
- An advanced manufacturing facility is a facility where the primary purpose is the manufacturing of semiconductors or semiconductor tooling equipment, and includes buildings and equipment that are integral to manufacturing. This credit is available for property placed into service after Dec. 31, 2021, and does not apply to properties that begin construction after Dec. 31, 2025.
- Impact: Creates a new investment tax credit for property that creates semiconductors and semiconductor tooling equipment.

Section 136504. Advanced Manufacturing Production Credit.

- Creates new code section 45AA that provides a production credit for eligible components produced by the taxpayer and sold to an unrelated person. Both the production and sale must be in a trade or businesses of such taxpayer.

- The credit amount depends on the following products or component. The components covered are: thin photovoltaic cell, crystalline photovoltaic cell, photovoltaic wafer, solar grade polysilicon, solar modules, and wind energy components. Wind energy components are broken out by blades, nacelles, towers and foundations.
- The credit begins to phase out on Dec. 31, 2026. Components sold during 2027 will only receive 75% of the credit, components sold during 2028 will only receive 50% of the credit, and components sold in 2029 will only receive 25% of the credit. After Dec. 31, 2029, the credit is zero.
- A facility operating under a collective bargaining agreement negotiated by an employee organization will receive an increased credit of 10%.
- This only applies to U.S. production.
- This provision includes an elective payment of the credit.
- Impact: Creates incentives for manufacturing components for clean energy property in the U.S.

PART 6—ENVIRONMENTAL JUSTICE

Section 136601. Qualified Environmental Justice Program Credit.

- Creates new section 36G that provides eligible higher education institutions a 20% tax credit for costs incurred by the taxpayer for a qualified environmental justice program. The credit is 30% for a program at a historically black college or university if faculty and students materially participate.
- A qualified environmental justice program is one that is conducted by one or more educational institutions designed to address qualified environmental stressors for the primary purpose of improving health and economic outcomes for individuals in low-income areas. Qualified environmental stressors are contamination to the air, water, soil or food.
- The credit is limited to five years and may not exceed $1 billion for years 2022 to 2031.The credit may not exceed the credit dollar amount allocated to the institution over the credits previous claimed by the institution.
- If the credit limitation for any year exceeds the aggregate amount for that year, the limitation for the following year is increased by the same amount. No amounts may be carried after 2036.
- The institution must make their application for the credit publicly available and submit an annual impact report. The Secretary will also publicly disclose the institutions receiving the credit and the amount.
- Impact: Encourages educational institutions to focus on environmental justice as part of the overall green agenda.

PART 7—SUPERFUND

Section 136701. Reinstatement of Superfund.

- Reinstates the Hazardous Substance Superfund Financing Rate on crude oil and imported petroleum products at the rate of 16.4 cents per gallon, indexed to inflation, and reinstates the tax on taxable chemicals.
- The amendments will become effective on July 1, 2022.
- Impact: Reinstates the Hazardous Substance Superfund tax to support environmental cleanup projects.

PART 8—INCENTIVES FOR CLEAN ELECTRICITY AND CLEAN TRANSPORTATION

Section 136801. Clean Electricity Production Credit.

- Creates new section 45BB that provides a 10-year clean energy production tax credit equal to the kilowatt hours of electricity produced in the U.S. by a qualified facility and sold by the taxpayer multiplied by an applicable amount. In cases of a facility equipped with a metering device, the electricity may be sold, consumed or stored. The applicable base amount is .3 cents. An alternative amount of 1.5 cents is applied for facilities with a maximum output of less than 1 megawatt or satisfies wage and apprenticeship requirements. These amounts will be adjusted for inflation.
- To be considered a qualified facility, it must be used for the generation of electricity, construction must begin after Dec. 31, 2026, and the greenhouse gas rate must be under zero. The credit includes expansion for a facility where construction began before Jan. 1, 2027, but increased the amount of electricity because a new unit of construction began after Dec. 31, 2026, or additions of capacity of construction began after Dec. 31, 2026.
- Facilities available for credits under sections 45, 45J, 45Q, 48, 48A or 48F are not available for this credit.
- In the case of facilities that produce electricity through fuel combustion or gasification, the greenhouse gas emissions rate is equal to the net rate of emissions released by that facility. The Secretary must annually publish a table that sets greenhouse gas rates.
- The credit is subject to phase out. For a facility that begins construction during the first calendar year following the year, the percentage is 100, year two is 75%, year three is 50%, and subsequent years are 0%. Annual greenhouse gas emissions from the production of electricity in the U.S. are equal to or less than 25% of such emissions in 2021 or 2031.
- The credit applies to facilities placed in service after Dec. 31, 2022.
- Impact: Incentivizes emission reductions from electricity production by rewarding taxpayers with a tax credit for meeting emissions reduction goals.

Section 136802. Clean Electricity Investment Credit.

- Creates new section 48F that provides an investment tax credit equal to the applicable percentage of the qualified investment with respect to any qualified facility and grid improvement property. The base rate of the credit is 6% and the bonus rate is 30% for facilities of a maximum output of less than 1 megawatt or that satisfy prevailing wage and apprenticeship requirements.
- The credit is increased for energy communities. The base credit is increased to 8% and the bonus credit is also increased to 40%.
- A qualified facility is one that generates electricity, construction begins after Dec. 31, 2026, and the greenhouse gas emission rate is not greater than zero. This definition does not include facilities that can apply for section 45, section 45J, section 45Q, section 45BB, section 48, section 48A or section 48D. A qualified grid improvement property means any storage property.
- The credit phases out. For a qualified investment for a qualified facility or grid improvement property where the construction begins the first calendar year after the applicable year, the percentage is 100, year two is 75%, year three is 50%, and subsequent years are 0%. Construction that begins during any year after the applicable percentage is zero.

- Credit recapture: If the Secretary determines that the greenhouse gas emission rate for a facility is greater than 10 grams of CO_2e per KWh, the property that received the credit will no longer be an investment credit property.
- Wage, apprenticeship and domestic content requirements apply.
- Impact: Creates an incentive to invest in grid improvement technology necessary to support clean energy goals.

Section 136803. Increase in Clean Electricity Investment Credit for Facilities Placed in Service in Connection With Low-Income Communities.

- In connection with the credit created above, this provision creates special rules for facilities placed in service in low-income communities. A qualified facility is one that has a maximum output of less than five megawatts and is located in a low-income community or on Indian land or part of a low-income economic benefit project.
- A facility is considered a part of a qualified low-income residential building project if it the building participates in a covered housing program, a Housing Development Fund Corporation cooperative, a housing assistance program, a housing program administered by a tribally designating entity, or other affordable housing programs and the financial benefits of the electricity are allocated among the occupants equitably.
- A low-income housing economic benefit project can also be a facility where 50% of the financial benefits are provided to households with income less than 200% of the poverty line or less than 80% of area median gross income.
- The selection criteria for this program focuses on the greatest health and economic benefits, greatest employment and wages for those individuals, and the greatest engagement with community-based organizations, Indian tribal government or any Alaska Native Corporation.
- The Secretary will establish a program to allocate amounts of environmental justice capacity limitation that will not exceed the annual capacity limitation, which means 1.8 gigawatts of direct current capacity for each year 2027 through 2031.
- If the annual capacity limitation exceeds the aggregate amount, the limitation for the succeeding year will be increased by the amount of excess until 2033. If the capacity limitation for 2026 exceeds the aggregate amount under 48(e)(4)(D), the excess is carried over and applied to 2027.
- Facilities must be placed in service four years after the date of allocation. This provision takes effect on Jan. 1, 2027.
- A recapture rule applies if any property ceases to be a qualifying property.
- Impact: Creates an investment tax credit for facilities placed in service in low-income communities.

Section 136804. Cost Recovery for Qualified Facilities, Qualified Property, and Grid Improvement Property.

- This provision treats qualified facilities that receive the clean electricity production credit and any qualified facilities or grid improvement properties that receive the electricity investment tax credit as a five-year property under section 168.
- Applies to facilities placed into service after Dec. 31, 2026.
- Impact: Clarifies the class life of new categories of depreciable property.

Section 136805. Clean Fuel Production Credit.

- Creates a new section 45CC that provides a production credit equal to the amount per gallon of transportation fuel produced by a qualified facility, sold during the taxable year, and meets certain emissions requirements. The base credit is 20 cents and the bonus credit is $1.00 if the fuel is produced at a facility that meets prevailing wage and apprenticeship requirements. For sustainable aviation fuel, the base credit is 35 cents and the bonus credit is $1.75. Sustainable aviation fuel is a liquid fuel sold for use in an aircraft that meets certain requirements.
- The calculation of the emission factor of transportation fuel is an amount equal to 50 kilograms of CO_2e per mmBTU minus the emissions rate for that fuel divided by 50 kilograms of CO_2e per mmBTU. The Secretary will annually publish a table that sets the emissions rate for transportation fuels based on the amount of lifecycle greenhouse gas emissions.
- In calendar years beginning after 2026, the base rates and bonus rates will be adjusted for inflation. The credit phases out. For the first calendar year after the applicable year, the percentage of the credit is 100%, year two is 75% and year three is 50%. The applicable year is the year the Secretary determines greenhouse gas emissions in the U.S. are equal to 25% of 2021 or calendar year 2031.
- Impact: Incentivizes investment in clean fuel to meet emission reduction goals.

PART 9—APPROPRIATIONS

Section 136901. Appropriations.

- Appropriates $4.073 billion for fiscal year 2022 to Sept. 30, 2031.
- Impact: Provides additional funding for the IRS to administer the new energy credits.

Subtitle G—Social Safety Net

Section 137001. Amendment of 1986 Code.

- Clarifies that, except where expressly stated otherwise, the social safety net programs created by the bill either amend or repeal provisions of the Internal Revenue Code.
- Impact: any reference to sections or "such code" refers to the Internal Revenue Code, unless specifically stated otherwise.

PART 1—CHILD TAX CREDIT

Section 137101. Modifications Applicable Beginning in 2021.

- Provides an exception to the safe harbor rule that states that certain taxpayers who receive a larger advanced payment amount than they are eligible to claim do not have to repay the excess.
- Clarifies that the safe harbor does not apply if the Treasury Secretary determines that a child was fraudulently taken into account for purposes of the advance payment.
- Clarifies that a taxpayer is fraudulently taking a child into account for the purposes of the advance payment if the taxpayer made arrangements with, or expected, another taxpayer to take the child into account in determining the credit.

- Amends section 7527A to allow the Treasury Secretary to provide advance payment based on any other information known to the Secretary.
- Impact: Denies taxpayers the advance payment if they fraudulently attempt to claim a child.

Section 137102. Extension and Modification Applicable Beginning in 2022.

- Extends through 2022 the special rules applicable to the child tax credit (CTC) for 2021. This includes a one-year extension of the credit amount to $3,000 in the case of a qualifying child over age 6, $3,600 for a qualifying child under the age of 6, and $500 in the case of another qualifying dependent who is not a child. The $3,000, $3,600 and $500 amounts are indexed for inflation in 2022.
- Makes changes to automatic advance payments of the credit. Starting in 2022, only eligible taxpayers that meet modified adjusted gross income requirements may make an affirmative election to receive advance payment by filing a return, submitting information through the online portal, or in any manner provided by the Treasury Secretary.
- Eliminates the Social Security Number requirement for qualifying children, which was added by the Tax Cuts and Jobs Act (TCJA).
- Impact: Extends the American Rescue Plan Act (ARPA)'s expanded version of the CTC through 2022, including automatic advance payments.

Section 137103. Refundable Child Tax Credit After 2022.

- Makes the CTC fully refundable for taxable years after 2022.
- Impact: Once the CTC reverts to pre-2021 levels starting in 2023, the lower credit amount will remain fully refundable. Previously, the refundable amount of the credit was limited to $1,400.

Section 137104. Appropriations.

- Provides the Internal Revenue Service (IRS) with $3.9 billion through Sept. 30, 2026, to administer provisions related to the CTC.
- Provides the Treasury Department with $1 billion to increase enrollment of eligible families in the CTC and for advance payments of the credit.
- Impact: Provides the IRS and Treasury Department with funding to administer the expanded CTC.

PART 2—EARNED INCOME TAX CREDIT

Section 137201. Certain Improvements to the Earned Income Tax Credit Extended through 2022.

- Extends the special rules for individuals without qualifying children for one year through Dec. 31, 2022, and adjusts the earned income and phaseout amounts to inflation. This includes:

    - A reduction in the minimum age requirement for eligibility for the EITC from 25 to 19 in general, to 24 for specified students, and to 18 for qualified former foster youth or homeless youth.
    - An elimination of the age limit of 65.
- Increases the credit phaseout percentage for the childless EITC from 7.65% to 15.3%.
- Raises the earned income amount from $4,220 to $9,820 and raises the phaseout amount from $5,280 to $11,610.
- Taxpayers may use prior-year income if their earnings fell in 2022 as compared to 2021.
- The amendments of this section shall apply to tax years beginning after Dec. 31, 2021.
- Impact: Extends for one year the "childless" ETIC and adjusts the earned income and phaseout amounts to inflation. Taxpayers are also able to use their 2021 income if it is higher than their 2022 income for purposes of the credit.

Section 137202. Funds for Administration of Earned Income Tax Credits in the Territories.

- Allows for payments of up to $4 million per year to Puerto Rico for "reasonable administrative costs" associated with the EITC.
- Allows for payments of up to $200,000 per year to possessions with mirror tax code systems for "reasonable administrative costs" associated with the EITC.
- Allows for payments of up to $200,000 per year to American Samoa for "reasonable administrative costs" associated with the EITC.
- The amendments shall apply to payments made for calendar years beginning after Dec. 31, 2021.
- Impact: Assists U.S. territories with administrative costs associated with the EITC.

PART 3—EXPANDING ACCESS TO HEALTH COVERAGE AND LOWERING COSTS

Section 137301. Improve Affordability and Reduce Premium Costs of Health Insurance for Consumers.

- Extends the ARPA premium tax credits for taxpayers with household incomes at 400% or below the Federal Poverty Level (FPL) through 2025.
- Extends the ARPA premium tax credits for taxpayers with household income above 400% of FPL through 2025.
- Impact: Provides ARPA premium tax credits for additional years.

Section 137302. Modification of Employer-Sponsored Coverage Affordability Test in Health Insurance Premium Tax Credit.

- Extends the test for determining if a taxpayer has access to affordable insurance through an employer-sponsored plan or qualified small employer health reimbursement arrangement to 8.5% of income in order to access premium tax credits.
- Impact: Extends the ARPA 8.5% affordability test through 2025.

Section 137303. Treatment of Lump-Sum Social Security Benefits in Determining Household Income.

- Excludes Social Security benefit lump-sum payments for taxpayers with disabilities, widows, new retirees and others from the calculation of household income for purposes of premium tax credits through 2025.
- Permits taxpayers to elect to include such excludable lump-sum benefits in taxable years beginning after Dec. 31, 2025.
- Impact: Excludes social security lump-sum benefits from household income with respect to the premium tax credit calculation.

Section 137304. Temporary Expansion of Health Insurance Premium Tax Credits for Certain Low-Income Populations.

- Expands premium tax credit eligibility to taxpayers below 100% of the FPL.
- Specifies that taxpayers who have access to employer-sponsored health insurance or qualified small employer health reimbursement arrangements and have household incomes below 138% of the FPL can still receive premium tax credits.
- Reduces recapture limitation for taxpayers with household incomes below 200% of the FPL.
- Exempts certain taxpayers from having to file a return, reconcile or repay advance payments of premium tax credits.
- Modifies the applicable large employer's share responsibility payment with respect to certain low-income taxpayers.
- Impact: Temporarily expands premium tax credit use and flexibility with respect to low-income populations for 2022 through 2025.

Section 137305. Special Rule for Individuals Receiving Unemployment Compensation.

- Extends and expands the ARPA provision that taxpayers who receive unemployment can receive premium tax credits if their household income is no higher than 133% of FPL for weeks beginning during 2021 and 150 of FPL for weeks during 2022.
- Impact: Permits taxpayers who receive unemployment insurance in tax years 2021 and 2022, but who have household income below 133% and 150% of FPL, respectively, to receive premium tax credits.

Section 137306. Permanent Credit for Health Insurance Costs.

- Makes the health coverage tax credit in IRC section 35 permanent.
- Increases the amount paid for qualified health insurance that is subject to the credit from 72.5% to 80%.
- Impact: Makes the IRC section 35 health insurance tax credit permanent and increases the percentage paid that qualifies for the credit.

Section 137307. Exclusion of Certain Dependent Income for Purposes of the Premium Tax Credit.

- Allows the modified adjusted gross income of dependents who are not age 24 to be excluded from household income to the extent that income does not exceed $3,500, as adjusted for inflation, in determining the premium tax credit and cost-sharing reduction.
- Sunsets in taxable years beginning after Dec. 31, 2026.
- Impact: Excludes certain dependent income from the calculation of household income for purposes of applying the premium tax credit.

PART 5—HIGHER EDUCATION

Section 137501. Credit for Public University Research Infrastructure.

- Provides a 40% general business credit for qualified cash contributions made by a taxpayer to a certified educational institution in connection with a qualifying research infrastructure program.
- Taxpayers may elect to claim this credit with respect to a qualifying cash contribution in lieu of treating such contribution as a charitable deduction.
- A qualified cash contribution must be treated as such by a certified educational institution.
- The credit amount allocated to a certified educational institution is $50 million per calendar year.
- The total amount of qualifying project credit that can be allocated cannot exceed $500 million for each of calendar years 2022–2026 and $0 for each subsequent year; any rollover amounts unallocated are carried to the succeeding calendar year.
- A certified educational institution cannot designate more than 250% of the credit amount as qualifying cash contributions to a qualifying project.
- An eligible educational institution seeking certification of a project must submit an application to the Secretary.
- The Secretary, after consultation with the Secretary of Education, must issue applicable regulations and guidance.
- Provides penalties for noncompliance during the five-year period beginning the date of allocation of credit amounts to a certified educational institution.
- Applies to qualified cash contributions made after Dec. 31, 2021.
- Impact: Establishes the conditions for a general business credit for cash contributions made to certified educational institutions for qualifying research projects.

Section 137502. Treatment of Federal Pell Grants for Income Tax Purposes.

- Requires the Federal Pell Grant to be used for qualified tuition and related expenses in order to be excluded from gross income.
- Applies to taxable years beginning Dec. 31, 2021.
- Impact: Provides for tax-free treatment of Pell Grants if the grant monies are used for qualified tuition and related expenses.

Section 137503. Repeal of Denial of American Opportunity Tax Credit on the Basis of a Felony Drug Conviction.

- Removes felony drug conviction as a basis of denial of the American Opportunity Tax Credit.
- Applies to taxable years beginning Dec. 31, 2021.
- Impact: Allows American Opportunity Tax Credits to be claimed despite felony drug convictions.

PART 6—DEDUCTION FOR STATE AND LOCAL TAXES, ETC.

Section 137601. Modification of Limitation on Deduction for State and Local Taxes.

- Increases the deduction for state and local taxes from $10,000 to $80,000 through 2031.
- After 2031, the limitation would revert back to $10,000. Under current law, the $10,000 limitation on the deduction for state and local taxes was set to sunset at the end of 2025.

Subtitle H—Responsibly Funding Our Priorities

Subpart B—Limitations on Deduction for Interest Expense

Section 138111. Limitations on Deduction for Interest Expense.

- Limits the deductibility of interest of a domestic corporation that is a member of an international financial reporting group (IFRG) to 110% of the domestic corporation's allocable share of the IFRG's net interest expense.
- Does not apply to certain small businesses, S corporations, real estate investment trusts or regulated investment companies.
- The domestic corporation's allocable share of the IFRG's reported net interest expense is based on the domestic corporation's allocable share of the IFRG's net interest expense, which is determined according to a ratio of the domestic corporation's earnings before net interest expense, tax expense, depreciation, depletion and amortization (EBITDA) to the IFRG's EBITDA for the reporting year.
- Applies a coordination rule with the section 163(j) interest deduction limitation under which the lowest limitation between the two provisions applies to the taxable year.
- Any disallowed interest paid or accrued in a taxable year under either section 163(j) or new section 163(n) is treated as paid or accrued in the succeeding taxable year.
- Applies to taxable years beginning after Dec. 31, 2022.
- Impact: The provision imposes additional complexity to the calculation of the deduction for interest expenses and further may restrict a U.S. multinational's ability to deduct its interest expenses.

Subpart C—Outbound International Provisions

Section 138121. Modifications to Deduction for Foreign-Derived Intangible Income and Global Intangible Low-Taxed Income.

- Increases the tax rate on Global Intangible Low-Taxed Income (GILTI) effectively to 15.015%—the provision reduces the section 250 deduction with respect to GILTI from 50% to 28.5%, which results in the increased tax rate when coupled with maintaining the corporate rate at 21%.
- Increases the tax rate on Foreign-Derived Intangible Income to 15.792%—the provision reduces the section 250 deduction with respect to FDII from 50% to 24.8%, which results in the increased rate when coupled with maintaining the corporate rate at 21%.

- Allows excess section 250 deductions relating to GILTI and FDII to become net operating losses and be taken into account in future years.
- Applies to taxable years beginning after Dec. 31, 2022, with a proportional transition rule for fiscal years straddling the calendar year.
- Impact: Increases the United States' global minimum tax (slightly more than the 15% rate proposed by the Organisation for Economic Co-operation and Development (OECD) on the foreign operations of U.S. companies). When the foreign tax credit haircut is taken into account *(See section 138127 below.)*, the effective tax rate is nearly a percentage point out of alignment with the OECD agreed rate. The provision also decreases the FDII incentive for U.S. production activities by increasing the tax rate from the current 13.125% to 15.792%.

Section 138122. Repeal of Election for One-Month Deferral in Determination of Taxable Year of Specified Foreign Corporations.

- Repeals the provision that allows a specified foreign corporation to elect a taxable year beginning one month earlier than the majority U.S. shareholder.
- Applies to tax years of specified foreign corporations beginning after Nov. 30, 2022. A transition provides that a taxpayer's first tax year beginning after Nov. 30, 2022, shall end either with the year of the majority U.S. shareholder or, if there is not a majority U.S. shareholder, the year provided under regulations.
- Impact: This, along with all the changes to the international tax rules, would further tighten rules that apply to U.S. multinational corporations.

Section 138123. Modifications of Foreign Tax Credit (FTC) Rules Applicable to Certain Taxpayers Receiving Specific Economic Benefits.

- Modifies the FTC rules with respect to dual-capacity taxpayers, which generally are U.S. companies that are subject to levy/tax in a foreign country or U.S. possession but also receive certain tax benefits.
- Limits the FTCs of dual-capacity taxpayers to the amount of tax that the corporation would have paid to the foreign country or possession if it were not a dual-capacity taxpayer.
- Applies to taxable years beginning after Dec. 31, 2021.
- Impact: Limits the FTCs and increases U.S. tax on companies in the extractive and gaming industries where they pay country-specific levies/taxes on their foreign income that are separate from, or in addition to, a generally applicable income tax.

Section 138124. Modifications to Foreign Tax Credit Limitations.

- Imposes a country-by-country regime on the determination of FTC, which prevents the cross-crediting of high-and low-tax FTCs to reduce overall foreign income. The country-

by-country rules are applied based on the "taxable units" of a U.S. taxpayer that are tax residents of the same foreign country.

- Applies the country-by-country regime to the separate foreign income basket for GILTI, passive income and general income. The proposal repeals the current branch basket. As a result, foreign branch income will tier up to the legal entity of which it is a branch.
- Modifies the expense allocation rules so that for purposes of determining GILTI, deductions for interest, stewardship and research and development expenses do not have to be allocated to foreign source income and thus do not affect the taxpayer's FTC limitation.
- Applies the country-by-country regime to separate loss limitations.
- Repeals the carryback of excess FTC, with carryforwards generally subject to the current 10-year carryforward period. Through Dec. 31, 2030, the provision limits the carryforward of FTC in the GILTI basket to five years, rather than the current 10 years.
- Repeals the rule requiring applicable U.S. corporations to determine the foreign-source income of its foreign subsidiary by disregarding certain tax-exempt dividends.
- Applies the principles of section 338(h)(16) in determining the source and character of a "covered asset acquisition" for purposes of the FTC rules, subject to an exception for binding written contracts in effect on Sept. 13, 2021.
- Modifies the rules applicable to redeterminations of credit or deductions for foreign taxes paid.
- Applies to taxable years beginning after Dec. 31, 2022, and with respect to the modifications to the carryback or carryforward of FTC, it applies to taxes paid in taxable years beginning after Dec. 31, 2022.
- <u>Impact</u>: Imposes a country-by-country regime, which will create significant compliance burdens and costs, while limiting a U.S. company's ability to cross-credit taxes across the aggregate of its foreign income relating to the GILTI, passive income and general income categories.

Section 138125. Foreign Oil-Related Income to Include Oil Shale and Tar Sands.

- Expands the definition of foreign-related income for purposes of the FTC rules to include oil shale and tar sands in addition to the current oil and gas wells.
- Applies generally to taxable years beginning after Dec. 31, 2021.
- <u>Impact</u>: Expands the base of foreign oil-related income subject to U.S. taxation.

Section 138126. Modifications to Inclusion of Global Intangible Low-Taxed Income.

- Requires that GILTI be determined on a country-by-country basis. The provision uses that same "taxable unit" concept as applies to the FTC limitation provision. *(See section 138124 above.)*
- Applies the same country-by-country regime to the determination of net controlled foreign corporation (CFC) tested income, net deemed intangible return, qualified business

asset investment (QBAI), and other items and amounts with respect to each CFC taxable unit of a U.S. taxpayer that is a tax resident of a particular country.

- Permits excess losses with respect to a CFC tested unit in a country to be carried forward to the succeeding years.
- Reduces the deemed rate of return on QBAI from the current 10% to 5%, except in U.S. possessions where the percentage remains at 10%.
- Repeals the exclusion from GILTI of foreign oil and gas extraction income (FOGEI), requiring such income to be included in the determination of tested income and loss.
- Applies generally to taxable years beginning after Dec. 31, 2022.
- Impact: Imposes a country-by-country regime on the determination of GILTI, which will create significant compliance burdens and costs. While GILTI will increase for companies with significant investments in assets, given the reduction of the deemed rate of return on QBAI, losses may be carried forward, thereby mitigating some volatility in taxable income. The provision will also increase the tax liability for oil and gas companies due to the inclusion of FOGEI under the GILTI rules.

Section 138127. Modifications to Determination of Deemed Paid Credit for Taxes Properly Attributable to Tested Income.

- Reduces the current 20% FTC haircut to 5% for purposes of determining GILTI.
- Applies the current 20% FTC haircut to previously taxed GILTI, generally for taxable years beginning after the date of enactment, but the haircut would be reduced to 5% for taxable years beginning after Dec. 31, 2022.
- Expands the definition of tested foreign income tax under GILTI to include foreign income taxes properly attributable to amounts taken into account to determine tested income or tested loss.
- Grants the Treasury Secretary authority to expand the definition of tested foreign income tax further to include taxes paid or accrued by a foreign corporation (other than a CFC) that owns, directly or indirectly, 80% or more of a U.S. corporation, provided certain conditions are met.
- Applies generally to taxable years beginning after Dec. 31, 2022.
- Impact: Reduces the tax penalty with respect to foreign taxes taken into account in determining a U.S. corporation's GILTI tax liability, although the tax credit will only be applicable on a country-by-country basis.

Section 138128. Deduction for Foreign Source Portion of Dividends Limited to Controlled Foreign Corporations, Etc.

- Amends section 245A to limit the deduction for dividends received for the foreign source portion of dividends only to dividends received from a controlled foreign corporation (i.e., a foreign corporation with more than 50% of its ownership interest held by a corporation). Current law allows a dividends-received reduction for the foreign-source portion of dividends received by a corporation that owns 10% or more of the foreign corporation.

- Restores the attribution rule under section 958(b)(4), which was repealed in TCJA, and provides a limitation rule in new section 951B for downward attribution from a foreign person in certain instances.
- Applies to dividend distributions after the date of enactment. The attribution rules are not retroactive and apply after the date of enactment.
- Impact: Increases the U.S. tax liability of U.S. corporations that own between 10% and 50% of a foreign corporation.

Section 138129. Limitation on Foreign-Based Company Sales and Services Income.

- Limits foreign-based company sales income and foreign-based company services income to residents of the United States and pass-through entities and branches in the United States (i.e., a taxable unit that is a U.S. resident).
- Subjects a U.S. shareholder to tax on its pro-rata share of the controlled foreign corporation's income if it owns the controlled foreign corporation's stock for any day during the taxable year.
- Applies generally to taxable years beginning after Dec. 31, 2021, with certain modifications applying after 2017.
- Impact: Increases the number of U.S. taxpayers that have Subpart F inclusions.

Section 138128. Deduction for Foreign Source Portion of Dividends Limited to Controlled Foreign Corporations, Etc.

- Amends section 245A to limit the deduction for dividends received for the foreign source portion of dividends only to dividends received from a controlled foreign corporation (i.e., a foreign corporation with more than 50% of its ownership interest held by a corporation). Current law allows a dividends-received reduction for the foreign-source portion of dividends received by a corporation that owns 10% or more of the foreign corporation.
- Restores the attribution rule under section 958(b)(4), which was repealed in TCJA, and provides a limitation rule in new section 951B for downward attribution from a foreign person in certain instances.
- Applies to dividend distributions after the date of enactment. The attribution rules are not retroactive and apply after the date of enactment.
- Impact: Increases the U.S. tax liability of U.S. corporations that own between 10% and 50% of a foreign corporation.

Subpart D—Inbound International Provisions

Section 138131: Modifications to Base Erosion and Anti-Abuse Tax (BEAT).

- Accelerates the scheduled increase in the BEAT rate so the 12.5% rate applies in 2023 and increases the BEAT tax rate to 15% in 2024 and to 18% in 2025.
- Excludes outbound payments to a related foreign party that are subject to U.S. taxation; excludes as base erosion payments amounts paid to a related foreign party that are subject to an effective foreign rate of tax that is not less than the lesser of 15% or the BEAT tax rate then in effect.
- Permits general business tax credits and net operating losses (as adjusted) to reduce BEAT liability.

- Repeals the exclusion from BEAT for payments with respect to cost of goods sold. Base erosion payments to acquire inventory exclude the direct cost incurred by the foreign related party, with an alternative 20% safe harbor.
- Treats the acquisition of property from a related property that is of a character subject to the allowance for depreciation (or amortization in lieu of depreciation) as a base erosion payment.
- Effective in 2024, the base erosion percentage (i.e., the 3% generally and 2% for banks and securities dealers) will be repealed. In effect, the BEAT would apply to any taxpayer with average gross receipts in excess of $500 million.
- Repeals the increased BEAT rate that applies to banks and securities dealers beginning in 2025.
- Any taxpayer subject to the BEAT in any taxable year beginning after Dec. 31, 2021, is treated as continuing to be subject to the BEAT (including its successor) in each of the succeeding 10 taxable years.
- Impact: Acceleration of the BEAT tax rate, repeal of the application threshold and inclusion on inventory markups will increase the number of taxpayers that are subject to BEAT. However, the exclusion of base erosion payments that are subject to U.S. tax or a sufficient tax in the foreign jurisdiction will likely provide relief for many taxpayers currently subject to BEAT. In addition, the changes suggest the BEAT will act more like a top-up tax (similar to the undertaxed payment rule in the OECD’s Pillar 2).

Subpart E— Other Business Tax Provisions

Section 138141. Credit for Clinical Testing of Orphan Drugs Limited to First Use or Indication.

- Limits the credit for qualified clinical testing expenses to expenses related to the first use or indication for an orphan drug under section 526 of the Federal Food, Drug and Cosmetic Act, or if the drug is a biologic, the date that a license is first issued.
- Clarifies that clinical testing expenses for a drug that has already received a marketing approval for other uses or indications will not qualify toward the credit.
- Effective beginning after Dec. 31, 2021.
- Impact: Limits the use of qualified clinical testing expenses for drugs used to treat rare diseases to those involving the first use or indication.

Section 138142. Modifications to Treatment of Certain Losses.

- Amends section 165(g) to provide that losses with respect to securities are treated as realized on the day worthlessness is established (instead of the last day of the taxable year).
- Expands the rules relating to worthless securities to include certain securities issued by partnerships (bonds, debentures, notes or certificates, or other forms of indebtedness with interest coupons or in registered form), and treats a loss on a worthless partnership interest as a sale or exchange of a partnership interest.
- Defers losses in complete taxable liquidations of corporate subsidiaries when the corporations are members of the same controlled group. No loss may be recognized by any

member of the control group until all property received by members of the control group in connection with the liquidation had been transferred to persons.
- The partnership provisions apply to taxable years beginning after Dec. 31, 2021. The liquidation provisions apply to transactions on and after the effective date of the bill.
- Impact: This provision accelerates the timing of the loss resulting from a worthless security, provides capital treatment (subject to section 751) for worthless partnership interests, and delays loss recognition of taxable liquidations of corporate subsidiaries until the liquidated property is sold to a third party.

Section 138143. Adjusted Basis Limitation for Divisive Reorganization.

- The provision amends section 361(b) to provide that a distributing corporation recognizes gain in a divisive reorganization under sections 368(a)(1)(D) and 355 to the extent the amount of debt securities received by the distributing corporation and transferred to its creditors in connection with the reorganization exceeds the aggregate adjusted basis of the assets transferred, as reduced by the total amount of (1) liabilities of the distributing corporation assumed by the controlled corporation, and (2) money and fair market value of other property received by the distributing corporation from the controlled corporation.
- The provision applies to reorganizations occurring on or after the date of enactment other than a transaction that is made pursuant to a written agreement binding on the date of enactment and all times thereafter, described in a ruling request submitted on or before the date of enactment or in a public announcement or filing with the SEC on or prior to the date of enactment.
- Impact: This provision limits the amount of debt securities of the controlled corporation that the distributing corporation may transfer to its creditors without gain recognition.

Section 138145. Modifications To Exemption For Portfolio Interest.

- Amends definition of 10% shareholder to include, in the case of an obligation issued by a corporation, any person who owns 10% or more of the total value of the stock of such corporation.
- Applies to obligations issued after the date of enactment.
- Impact: Expands interest payments to nonresident alien individual shareholders that are subject to withholding tax by requiring the shareholder to own less than 10% of the stock, measured by vote and value, in order to qualify for the portfolio interest exemption.

Section 138147. Adjustments to Earnings and Profits of Controlled Foreign Corporations.

- Aligns the general rule for determining the earnings and profits (E&P) applicable to controlled foreign corporations (CFC) with the rules for purposes of determining its Subpart F inclusion. Specifically, the E&P of a CFC is determined without regard to the LIFO inventory adjustments, installment sales and the completed contract method of accounting.
- Applies generally to taxable years ending after the date of the date of enactment.
- Impact: Requires the E&P of a CFC generally to follow the income-tax treatment for domestic corporations.

Section 138148. Certain Dividends from Controlled Foreign Corporations to United States Shareholders Treated as Extraordinary Dividends.

- Treats dividends received from a controlled foreign corporation that are attributable to earnings before the shareholder owned the foreign corporation or attributable to periods before the payor was a controlled foreign corporation as extraordinary dividends. To the extent it is nontaxable, the extraordinary dividend may reduce the shareholder's basis in the foreign corporation.
- Excludes partnerships and trusts from being treated as U.S. shareholders for purposes of section 1059.
- Applies to distributions made after the date of enactments.
- Impact: Provides a potentially favorable rule for taxpayers that receive dividends that reflect earnings attributable to periods prior to the shareholder's ownership of the corporation.

Section 138149. Limitation on Certain Special Rules for Section 1202 Gains.

- Amends section 1202(a) to limit the 75% and 100% exclusion rates for gains realized from certain qualified small business stock to taxpayers with adjusted gross income of less than $400,000 that are not trusts or estates. The 75% and 100% exclusion also does not apply to trusts or estates.
- Applies to sales and exchanges after Sept. 13, 2021, unless the sale or exchange is made pursuant to a written binding contract that was in effect on Sept. 13, 2021, and is not materially modified thereafter.
- Impact: For any 1202 stock acquired after Feb. 17, 2009, taxpayers with adjusted gross income equal to or greater than $400,000, as well as all trusts and estates, may only exclude 50% of the gain.

Section 138150. Constructive Sales.

- Adds certain digital assets to the definition of appreciated financial position subject to the constructive sales rules so that a taxpayer must recognize gain as if the position with respect to the digital asset were sold, assigned or otherwise terminated at its fair market value on the date of the constructive sale.
- Applies to sales and other dispositions after Dec. 31, 2021.
- Impact: Expands constructive sales rules to certain digital assets.

Section 138151. Rules Relating to Common Control.

- The aggregation rules of section 52(a) are amended to provide that all employees of all corporations that are component members of the same controlled group of corporations shall be treated as employed by a single employer.
- A component member has the same meaning as in section 1563(b) except that the determination is made without regard to whether such member is an excluded member (as defined in section 1563(b)(2)).
- Clarifies that the amount of the work opportunity tax credit for each member shall be its proportionate share of wages giving rise to the credit.
- For purposes of the aggregation rules of section 52(b), a trade or business includes any activity treated as a trade or business under section 469(c)(5) (activity involving research or experimentation) or section 469(c)(6) (certain investment activity determined without regard to the phrase "to the extent provided in the regulations").
- Applies to taxable years beginning after Dec. 31, 2021.

- Impact: The changes to what constitutes a trade or business for purposes of Section 52 may adversely impact taxpayers in areas where Section 52 is referenced, including the application of the small business exception under section 163(j) and the proposed book minimum tax on corporations.

Section 138152. Modification Of Wash Sale Rules.

- Expands wash sale rules to certain commodities, currencies and digital assets to taxpayers (and related parties) in order to prevent taxpayers from claiming tax losses while retaining an interest in the loss asset.
- Expands wash sale rules to acquisition of substantially identical specified assets by a related party.
- The basis of the particular substantially identical specified assets is not adjusted to include the disallowed loss and the basis of the particular specified assets is increased by the amount of the disallowed loss. The eligibility for basis adjustment requires that the particular substantially identified specific asset be repurchased by the taxpayer (or the taxpayer's spouse), but not a related party like a tax-deferred retirement account.
- Provides a business-needs and hedging exception for certain foreign currencies and commodities.
- Effective for taxable years beginning after Dec. 31, 2021.
- Impact: Expands wash sales rules to digital and other assets as well as acquisition of substantially identical assets.

PART 2—TAX INCREASES FOR HIGH-INCOME INDIVIDUALS

Section 138201. Application of Net Investment Income Tax to Trade or Business Income of Certain High-Income Individuals.

- Applies the 3.8% Medicare tax to the greater of net investment income or specified net income derived in the ordinary course of a trade or business for the taxpayer, regardless of whether such taxpayer materially participates in the trade or business, when modified adjusted gross income is greater than $250,000 (for married individuals filing separately), $500,000 (joint filers and surviving spouses), and $400,000 (any other case).
- The 3.8% Medicare tax also applies to trusts and estates, applying at the lesser of (1) the greater of undistributed specified net income or undistributed net investment income, or (2) the excess of adjusted gross income over the dollar amount at which the highest income tax bracket applicable to an estate or trust begins.
- Specified net income, reduced by deductions properly allocable to such income, is the sum of: (1) gross income from interest, dividends, annuities, royalties and rents, (2) other gross income from a trade or business, and (3) net gain attributable to the disposition of property.
- Clarifies net investment income does not include wages received for work performed outside of the United States for a foreign employer, or for wages subject to taxes imposed by sections 1401(b), 3101(b) and 3201(a).
- Wages already subject to FICA, amounts subject to SECA, and net operating losses are not considered in determining net investment income. Foreign income under sections 951, 951A, 1293 and 1296, however, is included when determining net investment income.
- Applies to taxable years beginning after Dec. 31, 2021, subject to transition rules to be provided by regulation or other guidance regarding the determination of net investment income for taxable years beginning on or before Dec. 31, 2021.

- Impact: Closes the loophole for certain high-income individuals with respect to the application of the 3.8% Medicare tax to net investment income.

Section 138202. Limitations on Excess Business Losses of Noncorporate Taxpayers.

- Makes the section 461(l) excess business loss limitation for non-corporate taxpayers permanent.
- Modifies section 461(l)(2) to allow disallowed losses for a particular year to be carried forward to the next taxable year as part of the aggregate deductions allowed under this section for the next taxable year.
- A special rule upon termination of an estate or trust allows an excess business loss carryover to be allowed as a deduction to the beneficiaries succeeding to the property of the estate or trust.
- Repeals the limitation on excess farm losses under section 461(j).
- Effective for tax years beginning after Dec. 31, 2020.
- Impact: Makes limitations on excess business losses for noncorporate taxpayers permanent.

Section 138203. Surcharge on High-Income Individuals, Estates and Trusts.

- Imposes a 5% surcharge on the modified adjusted gross income that exceeds $5 million (married filing separately), $200,000 (estate or trust), and $10 million in all other cases.
- Imposes an additional 3% surcharge on the modified adjusted gross income that exceeds $12.5 million (married filing separately), $500,000 (estate or trust), and $25 million in all other cases.
- Defines "modified adjusted gross income" for individuals as adjusted gross income, including any business interest income as defined by 163(j), reduced by any deduction not considered for investment interest. For estates and trusts, the regular rules for determining adjusted gross income apply.
- In the case of a nonresident alien (except in the case of alien resident of Puerto Rico, Guam, American Samoa, the Northern Mariana Islands, or individuals who expatriate to avoid tax as defined by section 877), the tax only applies to the extent the individual has effectively connected income.
- The provision does not apply to a charitable remainder trust if all the remainder interests are devoted to charitable purposes.
- Electing small business trusts will be treated as a single trust for purposes of determining adjusted gross income.
- Applies to tax years beginning after Dec. 31, 2021.
- Impact: Creates a new income tax bracket for amounts that exceed the thresholds. Combined with the expansion of the 3.8% net investment tax, this would mean a top rate of 48.8%.

PART 3—MODIFICATIONS OF RULES RELATING TO RETIREMENT PLANS

Subpart A—Limitations On High-Income Taxpayers With Large Retirement Account Balances

Section 138301. Contribution Limit for Individual Retirement Plans of High-Income Taxpayers with Large Account Balances.

- Limits contributions when combined defined contribution plan and IRA account balances exceed $10 million (indexed).
- Rollover contributions and inherited IRAs count toward the $10 million threshold that triggers the limit on additional IRA contributions.
- Applies to taxpayers with taxable income above $400,000 ($425,000 for head of household and $450,000 if married filing jointly) (indexed).
- A 6% excise tax is imposed on contributions in excess of the limit.
- Requires IRS reporting by plan administrators for defined contribution accounts of $2.5 million or more, including reporting participant's identity and account balance.
- Effective tax years beginning after Dec. 31, 2028.
- Impact: After 2028, high-income individuals will no longer be permitted to contribute to an IRA when the individual's aggregate balance in their defined contribution accounts and IRAs reaches $10 million.

Section 138302. Increase in Minimum Required Distributions for High-Income Taxpayers with Large Retirement Account Balances.

- Generally requires the excess of the high-income taxpayer's Roth balances over $20 million (2 x $10 million) to be distributed.
- Requires 50% of the excess of the account balances over $10 million to be distributed, reduced by the required distributions from the Roth balances above.
- The distributions must be made regardless of the taxpayer's age.
- The current 50% excise tax that applies to required minimum distributions that are not timely made also applies to distributions required by this provision.
- Distributions from non-Roth accounts are subject to mandatory 35% federal tax withholding.
- Additional 10% tax on early distributions does not apply to these distributions.
- Distributions from Roth accounts are treated as Qualified Roth Distributions.
- Effective tax years beginning after Dec. 31, 2028.
- Impact: After 2028, high-income individuals with Roth accounts would be required to distribute all amounts above $20 million each year. Fifty percent of amounts above $10 million in all defined contribution accounts and IRAs must also be distributed, less the Roth distributions.

Subpart B—Other Provisions Relating To Individual Retirement Plans

Section 138311. Tax Treatment of Rollovers to Roth IRAs and Accounts.

- No taxpayer, regardless of income level, can convert employee after-tax contributions in eligible retirement plans or traditional IRAs to a designated Roth account or a Roth IRA after 2021.
- High-income taxpayers cannot do a Roth conversion with respect to any distributions or transfers from, or contributions to, eligible retirement plans or IRAs after 2031. For this purpose, high-income taxpayers are single taxpayers (or taxpayers married filing separately) with taxable income over $400,000; married taxpayers filing jointly with taxable

income over $450,000; and heads of households with taxable income over $425,000 (all indexed for inflation).
- Impact: Closes the "back-door" Roth IRA strategies that had become available in 2010.

Section 138312. Statute of Limitations with Respect to IRA Noncompliance.

- Extends the deadline by which the IRS may assess taxes for (i) any substantial error in reported values of investment assets of IRAs or (ii) prohibited transactions involving section 401(a) and 403(a) retirement plans, IRA arrangements, Archer MSAs, HSAs, and Coverdell educational savings accounts.
- The new deadline is six years after the date on which the plan's applicable tax return is filed.
- Has some retroactive application as this provision applies to all affected plans for which the pre-amendment three-year limitations period ends after 2021.
- Impact: This lengthens the time that the IRS has to investigate and pursue penalty taxes for these two specific noncompliance violations.

Section 138313. IRA Owners Treated as Disqualified Persons for Purposes of Prohibited Transactions Rules.

- Clarifies that, for purposes of applying the section 4975 prohibited transaction rules with respect to an IRA after 2021, (i) the IRA owner (including an individual who inherits an IRA as beneficiary after the IRA owner's death); (ii) a family member of the IRA owner; (iii) a corporation, partnership or trust or estate in which an interest of 50% or more is held directly or indirectly by the IRA owner; and (iv) a 10% or more (in capital or profits) partnership or joint venture of the IRA owner is a disqualified person with respect to the IRA.
- Impact: Applies the prohibited transaction rules to the IRA owner.

PART 4—FUNDING THE INTERNAL REVENUE SERVICE AND IMPROVING TAXPAYER COMPLIANCE

Section 138401. Enhancement of Internal Revenue Service Resources.

- Appropriates a sum of $1.9 billion in addition funding to the Internal Revenue Service (IRS) to remain available until Sept. 30, 2031. IRS may use the funding to provide taxpayer services such as filing and accounting services and taxpayer advocacy services.
- Appropriates a sum of $44.8 billion to the IRS to remain available until Sept. 30, 2031. IRS may use this funding for tax enforcement activities to determine and collect owed taxes, conduct criminal investigations, monitor cryptocurrency compliance and to enforce criminal statutes related to violations of internal revenue laws.
- Appropriates a sum of $27.3 billion to the IRS to remain available until Sept. 30, 2031. IRS may use this funding for necessary support services such as rent, printing, research and statistics of income, information technology and other administrative purposes.
- Appropriates $4.7 billion for the IRS's business systems modernization program to develop call-back technology and other customer service improvements.
- Establishes a task force to design an IRS-run free "direct e-file" tax return system. The task force will report to Congress on the cost of developing and running such a system, taxpayer

opinions about such a system, and the opinions of independent third parties on the feasibility of such a system.

- Appropriates a sum of $403 million for the Treasury Inspector General for Tax Administration (TIGTA) to be available until Sept. 30, 2031, to carry out the duties of the office.
- Appropriates a sum of $104 million to the Office of Tax Policy to remain available until Sept. 30, 2031, to carry out functions related to promulgating regulations.
- Appropriates a sum of $153 million to the United States Tax Court for necessary expenses.
- IRS will provide Congress with a plan on how the funds will be spent over the 10-year period. Failure to submit a plan will result in a $100,000 reduction in appropriations for each day that the report has not been submitted.
- Impact: The increased funding will allow IRS to recruit and hire more personnel and expand its enforcement activities. It is unclear how much revenue the increased funding will raise. Some have estimated it to raise $400 billion in revenue over 10 years, while the Treasury Department's own estimate states it would bring in $320 billion over the same period.

Section 138402. Application of Backup Withholding With Respect to Third Party Network Transactions.

- Requires payment settlement entities (e.g., Venmo, PayPal, Cash App, etc.) to report payments for services where the aggregate for the calendar year is $600 or more.
- Entities will only be required to report payments if the aggregate to the payee during the calendar year is equal to or exceeds $600, or if the third-party settlement organization was required to file a return under section 6050W for the preceding calendar year.
- The effective date is Dec. 31, 2021. For payments made during calendar year 2022, third-party settlement organizations need only report activity with respect to participating payees with more than 200 transactions during the calendar year.
- Impact: This section increases compliance activities and requires increased reporting for income processed through third-party payment apps.

Section 138403. Modification of Procedural Requirements Relating to Assessment of Penalties.

- Strikes the approval of assessment requirement and replaces it with a quarterly certification of compliance.
- The quarterly certification will be submitted by the appropriate supervisor to the Commissioner of the IRS.
- The quarterly certification of compliance requirement will take effect upon the date of enactment.
- Impact: This section simplifies the procedural requirements for assessing a penalty upon a taxpayer.

PART 5—OTHER PROVISIONS

Section 138501. Modifications to Limitation on Deduction of Excessive Employee Remuneration.

- Accelerates the American Rescue Plan Act (ARPA)'s expansion of section 162(m). As a result, up to 10 individuals, including the principal executive officer, principal financial officer and the next eight highest-paid employees, may be covered employees and subject to limitation on the deductibility of compensation.
- Clarifies the definition of applicable employee remuneration to include performance-based compensation, commissions, post-termination compensation, and beneficiary payments, regardless of whether or not such remuneration is paid directly by the publicly held corporation.
- Adds aggregation rules for purposes of determining who is the employer.
- Provides the Secretary with authority to issue anti-avoidance guidance, including guidance that would address avoidance through the performance of services other than as an employee or by providing compensation through a passthrough or other entity.
- Effective for taxable years beginning after Dec. 31, 2021.
- Impact: Accelerates the expansion of denying the deduction for compensation above $1 million for certain highly compensated employees.

Section 138502. Extension of Tax to Fund Black Lung Disability Trust Fund.

- Extends the temporary increase termination date for the coal excise taxes that fund the Black Lung Disability Trust Fund to Dec. 31, 2025. The higher rate of tax continues to apply to coal sales after Dec. 31, 2021.
- Impact: Allows the increased tax rate to apply to sales of coal for an additional four years.

Section 138503. Prohibited Transactions Relating to Holding DISC or FSC in Individual Retirement Account.

- Amends the definition of prohibited transaction under section 4975 to include an IRA that holds a direct or indirect interest in a domestic international sales corporation (DISC) or a foreign sales corporation (FSC) that, in each case, receives any commission or other payment from an entity that is at least 10% owned by the individual for whose benefit the IRA is maintained.
- Provides that the exception from the excise taxes under section 4975, which ordinarily applies to prohibited transactions involving an IRA that loses its tax-favored status, does not apply to an IRA that engages in a prohibited transaction involving a DISC or FSC.
- This new prohibited transaction rule applies to stock and other interests acquired or held by an IRA after 2021 and also applies to accounts that lose tax-exempt status as an IRA.
- Impact: This provision seeks to close a path through which some individuals have attempted to bypass the Roth IRA contribution limits by shifting value into Roth IRA-owned corporations.

Section 138504. Clarification of Treatment of DISC Gains and Distributions of Certain Foreign Shareholders.

- Provides that foreign shareholders of DISCs and FSCs are deemed to have a permanent establishment in the U.S., from which any DISC or FSC gains or distributions are derived.
- States that these clarifications do not create any inference whether there was proper application of rules to gains and distributions before Jan. 1, 2022.
- Effective for gains and distributions after Dec. 31, 2021.
- Impact: Provides clarity on the treatment of certain gains and distributions to foreign shareholders.

Section 138505. Treatment of Certain Qualified Sound Recording Productions.

- Allows sound recording productions produced and recorded in the United States to elect to deduct the costs of the production, as film, television and theatrical productions are currently able to do.
- Sound recording productions may deduct up to $150,000 in production costs in a taxable year.
- Sound recording productions that take advantage of this deduction are not allowed to claim depreciation or amortization deductions.
- Sound recording productions will be treated as qualified property for purposes of bonus depreciation and will be deemed to be placed in service at the time of the initial release or broadcast.
- This provision sunsets after Dec. 31, 2025.
- Impact: This section places sound recording productions on par with other film, television or theatrical productions for purposes of deducting production expenses.

Section 138506. Payment to Certain Individuals Who Dye Fuel.

- Creates a new mechanism for refunds, without interest, to taxpayers who remove eligible indelibly dyed diesel fuel or kerosene from a terminal for non-taxable use. The taxpayer must establish to the satisfaction of the Treasury Department that the tax for the fuel (under section 4081) has already been paid.
- Defines eligible indelibly dyed diesel fuel or kerosene as a diesel fuel or kerosene with respect to which tax was paid under section 4081, but that is exempt from tax under section 4082.
- Applies to eligible indelibly dyed diesel fuel or kerosene removed on or after the day that is 180 days after the date of enactment.
- Impact: provides relief for taxpayers utilizing diesel fuel and kerosene for non-taxable uses.

Section 138507. Treatment of Financial Guaranty Insurance Companies as Qualifying Insurance Corporations under Passive Foreign Investment Company Rules.

- Amends section 1297 to provide special rules of financial guaranty insurance companies under the current passive foreign investment company (PFIC) rules.
- Defines applicable insurance liabilities to include unearned premium reserves, subject to specific guidelines.
- Applies generally to taxable years beginning after 2017.
- Impact: Provides limited relief from the PFIC rules for investments in financial guaranty insurance companies.

Section 138508. Extension of Period of Limitation for Certain Legally Married Couples.

- For same-sex couples who were considered married for federal tax purposes as of Sept. 16, 2013, but did not file a joint-return for taxable years ending before that date because such holdings were not effective at the time of filing, such returns will be treated as spouses filing separately with the option to file jointly.
- For same-sex couples who filed joint returns for taxable years ending prior to Sept. 13, 2013, the period for filing a claim for credit or refund is extended for the period prescribed

by law as if the return were filed for the taxable year during the date of enactment of this act.
- Impact: Same-sex couples who were married prior to Sept. 2013 but did not file joint returns before that date may go back and refile those returns jointly. Same-sex couples who filed jointly during that time will have three years from the date of enactment to file a claim for a credit or refund.

Section 138514. Allowance of Deduction for Certain Expenses of the Trade or Business of Being an Employee.

- Allows individuals to deduct up to $250 from gross income for dues paid to a labor organization (i.e., labor union).
- Expenses must be attributable to the performance of services by a taxpayer as an employee, and the taxpayer must remain a member of the union through the end of the year.
- Applies to taxable years beginning after Dec. 31, 2021, and before Jan. 1, 2026.
- Impact: Promotes membership in labor organizations by subsidizing the costs of annual dues.

Section 138515. Temporary Increase in Employer-Provided Child Care Credit.

- Increases the credit for qualified child care expenditures from 25% to 50% and the dollar limitation from $150,000 to $500,000. The maximum credit amount is now $250,000.
- Places a $1.5 million limitation on qualified child care resource and referral expenditures and maintains the 10% credit.
- This provision is effective for taxable years beginning after Dec. 31, 2021, and before Jan. 1, 2026.
- Impact: Increases the credit amount an employer may receive for qualified child care expenditures and qualified resource and referral expenditures.

Section 138516. Payroll Credit for Compensation of Local News Journalists.

- Provides a refundable employment tax credit for the hospital insurance (HI) amount, 1.45%, to a local news organization or qualifying broadcast station for employing local news journalists.
- The wages paid to any local news journalist cannot exceed $12,500 for any calendar quarter.
- The local news journalist must provide services not less than 30 hours a week and must reside within 50 miles of the local community. Services provided can include print or digital publications, preparing, directing, producing, reporting, writing or publishing original local community news for dissemination to the local community. The employer of a local news journalist must employ at least one local news journalist during any calendar quarter and cannot employ more than 1,500 employees for the credit to apply.
- The payroll credit equals 50% of the wages for the first four calendar quarters and 30% of wages for each calendar quarter thereafter.
- The payroll credit does not apply to the federal government or any state or political subdivision.
- The Treasury Secretary shall issue forms, instructions, regulations and guidance to implement this section, including the application of the credit to third-party payors, such as

professional employer organizations, certified professional employer organizations or agents.
- The section shall apply to calendar quarters beginning after date of enactment.
- Impact: Permits local newspapers and broadcasters to claim a refundable HI employment tax credit for employing local news journalists.

Section 138517. Above-The-Line Deduction for Employee Uniforms.
- Allows individuals to deduct up to $250 in costs related to work clothes and uniforms.
- Work clothes and uniforms are defined as items that are required to be worn as a condition of employment and which are not suitable for everyday wear.
- This provision only applies to taxable years beginning after Dec. 31, 2021, and before Jan. 1, 2025.
- Impact: This section allows individuals to deduct $250 in costs for employee uniforms from their adjusted gross income.

Section 138518. Expenses in Contingency Fee Cases.

- Allows legal expenses paid or incurred in contingency fee cases to be deducted as ordinary trade or business expenses in the year they are incurred, without regard to whether the expense will be repaid.
- Income attributable to any contingency fee recovery will not be reduced by the amount paid or incurred in the ordinary course of practicing law.
- Impact: Allows plaintiff lawyers to deduct legal expenses as business expenses in contingency fee cases, even if those expenses will eventually be repaid.

Section 138519. Increase in Research Credit Against Payroll Tax for Small Businesses.

- Increases the research credit against the payroll tax for small businesses from $250,000 to $500,000 for taxable years beginning after Dec. 31, 2021.
- Impact: This section increases the research and development credits for small businesses.

Section 138520. Imposition of Tax on Nicotine.

- Imposes a tax on nicotine and defines "taxable nicotine" as including nicotine that has been extracted, concentrated or synthesized, that is manufactured or imported into the United States. Products that have been approved by the Food and Drug Administration (FDA), or have an investigational use exemption from the FDA, or are combination products, are exempt from taxation.
- The rate of tax is the greater of (i) the dollar amount specified for small cigarettes, or (ii) $50.33 per 1,810 milligrams of nicotine (including proportional tax on fractional parts).
- Treats taxable nicotine as a tobacco product for purposes of I.R.C. Sec. 5702(c).
- Effective date is for articles removed in calendar quarters beginning 180 days after the date of enactment.
- Impact: Imposes a new tax on taxable nicotine.

Section 138521. Termination of Employer Credit for Paid Family and Medical Leave.
- Accelerates the termination of the employer credit for paid family and medical leave so that it does not apply to wages paid after Dec. 31, 2023.
- The credit was originally set to sunset after Dec. 31, 2025.

- Impact: Sunsets the employer credit for paid family and medical leave early since the credit is replaced by the new paid leave program in Subtitle A.

THIS DOCUMENT IS INTENDED TO PROVIDE YOU WITH GENERAL INFORMATION REGARDING CERTAIN PROVISIONS IN THE BUILD BACK BETTER ACT. THE CONTENTS OF THIS DOCUMENT ARE NOT INTENDED TO PROVIDE SPECIFIC LEGAL ADVICE. IF YOU HAVE ANY QUESTIONS ABOUT THE CONTENTS OF THIS DOCUMENT OR IF YOU NEED LEGAL ADVICE AS TO AN ISSUE, PLEASE CONTACT THE ATTORNEYS LISTED OR YOUR REGULAR BROWNSTEIN HYATT FARBER SCHRECK, LLP ATTORNEY. THIS COMMUNICATION MAY BE CONSIDERED ADVERTISING IN SOME JURISDICTIONS

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