

# Summary of Tax Provisions in Bipartisan Budget Act of 2018

## DIVISION B – DISASTER RELIEF

### SUBDIVISION 2 – TAX RELIEF AND MEDICAID CHANGES RELATING TO CERTAIN DISASTERS

#### TITLE I – CALIFORNIA FIRES

- **Sec. 101 – Sec. 104. California Fire Provisions.** Provides disaster tax relief benefits with respect to individuals and businesses affected by California wildfires. These benefits are special rules allowing access to retirement funds, temporary suspension of limits on deductions for charitable contributions, allowance of deductions for personal casualty disaster losses, special rules for measurement of earned income for purposes of qualification for tax credits, and a special credit for employee retention.

#### TITLE II – TAX RELIEF FOR HURRICANES HARVEY, IRMA, AND MARIA

- **Sec. 201. Tax Relief for Hurricanes Harvey, Irma, and Maria.** Makes conforming and technical changes to the Disaster Tax Relief and Airport and Airway Extension Act of 2017, including extending the tax relief provided for in that legislation to cover disaster areas with respect to Hurricanes Harvey, Irma, and Maria that were declared between September 21 and October 17, 2017.

## DIVISION D – REVENUE MEASURES

#### TITLE I – EXTENSION OF EXPIRING PROVISIONS

*Generally extends the expiring provisions for 2017 only. Also provides for the extension and phase down of certain energy tax credits.*

#### SUBTITLE A – TAX RELIEF FOR FAMILIES AND INDIVIDUALS

- **Sec. 40201. Extension of exclusion from gross income of discharge of qualified principal residence indebtedness.** Extends the exclusion from an individual's gross income for a discharge of indebtedness on a principal residence.
- **Sec. 40202. Extension of mortgage insurance premiums treated as qualified residence interest.** Extends the deduction for mortgage insurance premiums, which are treated as interest for purposes of the mortgage interest deduction.
- **Sec. 40203. Extension of above-the-line deduction for qualified tuition and related expenses.** Extends the above-the-line deduction for qualified tuition and related expenses for higher education. The deduction is capped at \$4,000 for individuals with adjusted

gross income (AGI) up to \$65,000 (\$130,000 for joint filers) and \$2,000 for individuals with AGI up to \$80,000 (\$160,000 for joint filers).

## **SUBTITLE B – INCENTIVES FOR GROWTH, JOBS, INVESTMENT, AND INNOVATION**

- **Sec. 40301. Extension of Indian employment tax credit.** Extends the Indian employment tax credit, which provides a 20-percent credit to employers for wages and healthcare expenses associated with employing certain members of an Indian tribe.
- **Sec. 40302. Extension of railroad track maintenance credit.** Extends the railroad track maintenance tax credit, which provides a 50-percent credit to medium- and short-line railroads for amounts spent on track maintenance.
- **Sec. 40303. Extension of mine rescue team training credit.** Extends the mine rescue team tax credit, which provides a 20-percent credit to employers at U.S.-based mines for wages paid to mine rescue team employees.
- **Sec. 40304. Extension of classification of certain race horses as 3-year property.** Extends the rules providing for a 3-year recovery period for race horses for depreciation and expensing purposes.
- **Sec. 40305. Extension of 7-year recovery period for motorsports entertainment complexes.** Extends the rules providing for a 7-year recovery period for motorsport entertainment complexes for depreciation and expensing purposes.
- **Sec. 40306. Extension of accelerated depreciation for business property on an Indian reservation.** Extends accelerated depreciation (through the provision of shortened recovery periods such as 3 years instead of 5 years and 12 years instead of 20 years) for qualified Indian reservation property, subject to a provision allowing taxpayers to elect out of accelerated depreciation.
- **Sec. 40307. Extension of election to expense mine safety equipment.** Extends the election to expense 50 percent of the cost of certain mine safety equipment property.
- **Sec. 40308. Extension of special expensing rules for certain productions.** Extends special rules for expensing with respect to qualified film and television productions.
- **Sec. 40309. Extension of deduction allowable with respect to income attributable to domestic production activities in Puerto Rico.** Extends the application of the Section 199 deduction to domestic production activities occurring in Puerto Rico.
- **Sec. 40310. Extension of special rule relating to qualified timber gain.** Extends the provision of a special 23.8 percent tax rate for qualified timber gains of C corporations.

- **Sec. 40311. Extension of empowerment zone tax incentives.** Extends tax benefits relating to tax-exempt bonds, employment credits, increased expensing, and gain exclusion from the sale of certain small-business stock for business activities conducted in empowerment zones.
- **Sec. 40312. Extension of American Samoa economic development credit.** Extends the credit under section 30A for domestic corporations that are engaged in qualified production activities in American Samoa. The credit is capped at 60 percent of wages (including employee fringe benefit expenses), plus 15 percent of the depreciation allowances for short-life property, 40 percent of the depreciation allowances for medium-life property, and 65 percent of the depreciation allowances for long-life property.

#### **SUBTITLE C– INCENTIVES FOR ENERGY PRODUCTION AND CONSERVATION:**

- **Sec. 40401. Extension of credit for nonbusiness energy property.** Extends the credit for 10 percent of amounts paid for qualified energy efficiency improvements (*e.g.*, energy-saving roofs, windows, skylights, and doors) and 100 percent of amounts paid for qualified energy property (*e.g.*, high-efficiency water heaters, air conditioning units, and furnaces), with respect to the taxpayer’s principal residence.
- **Sec. 40402. Extension and modification of credit for residential energy property.** Extends and phases down the temporary components of the section 25D residential energy property credit for fuel cells, distributed wind property, and geothermal heat pumps. This matches the extension and phase down for solar property that was provided for in the 2015 PATH Act.
- **Sec. 40403. Extension of credit for new qualified fuel cell motor vehicles.** Extends the \$4,000-\$40,000 credit for purchases of new qualified fuel cell motor vehicles (*i.e.*, hydrogen fuel-cell vehicles).
- **Sec. 40404. Extension of credit for alternative fuel vehicle refueling property.** Extends the credit for 30 percent of amounts paid for new qualified alternative fuel vehicle refueling property (*e.g.*, electric car charging stations), up to \$30,000 for depreciable property and \$1,000 otherwise.
- **Sec. 40405. Extension of credit for 2-wheeled plug-in electric vehicles.** Extends the credit for 10 percent of amounts paid for new qualified 2-wheeled plug-in electric vehicles, up to \$2,500.
- **Sec. 40406. Extension of second generation biofuel producer credit.** Extends the \$1.01 per gallon credit for second generation biofuel (*e.g.*, certain liquid fuel derived from renewable lignocellulosic matter).

- **Sec. 40407. Extension of biodiesel and renewable diesel incentives.** Extends the \$1.00 per gallon credit for biodiesel used or sold by the taxpayer or blended with diesel to produce a biodiesel mixture used or sold by the taxpayer.
- **Sec. 40408. Extension of production credit for Indian coal facilities.** Extends the \$2.387 per ton credit for coal produced from coal reserves owned by or on behalf of an Indian tribe on June 14, 2005.
- **Sec. 40409. Extension of credits with respect to facilities producing energy from certain renewable resources.** Extends the credit of 2.4 cents per kilowatt hour (1.2 cents per kilowatt hour for certain technologies) for electricity produced at a qualified closed- or open-loop biomass, geothermal energy, landfill gas, trash, hydropower, or marine and hydrokinetic renewable energy facility.
- **Sec. 40410. Extension of credit for energy-efficient new homes.** Extends the \$1,000-\$2,000 credit for construction and sale of qualified new energy-efficient homes.
- **Sec. 40411. Extension and modification of section 48 energy credit.** Extends the temporary components of the section 48 investment tax credit for fuel cells, microturbines, combined heat and power property, fiber-optic-distributed solar property, and geothermal heat pumps. This matches the extension and phase down for solar property that was provided for in the 2015 PATH Act.
- **Sec. 40412. Extension of special allowance for second generation biofuel plant property.** Extends 50-percent bonus depreciation for property used in the United States solely to produce second generation biofuel that does not otherwise qualify for bonus depreciation.
- **Sec. 40413. Extension of energy efficient commercial buildings deduction.** Extends the deduction for the cost, up to \$1.80 per square foot, of energy-efficient commercial building property (*e.g.*, certain depreciable interior lighting, heating, cooling, ventilation, and hot water systems). The deduction allows certain tax-exempt and government entities to allocate the deduction to taxable project partners, effectively matching the cost recovery treatment provided by expensing for entities like public universities and state governments.
- **Sec. 40414. Extension of special rule for sales or dispositions to implement FERC or State electric restructuring policy for qualified electric utilities.** Extends the election to recognize over an 8-year period gains on sales of electric transmission services property to independent transmission companies, except to the extent the taxpayer purchased certain utility property during the preceding 4-year period.
- **Sec. 40415. Extension of excise tax credits relating to alternative fuels.** Extends the \$0.50 per gallon credit for alternative fuel (*e.g.*, liquefied petroleum gas, natural gas, hydrogen, or gas or fuel derived from biomass) used or sold by the taxpayer.

- **Sec. 40416. Extension of Oil Spill Liability Trust Fund financing rate.** Extends the oil spill liability trust fund financing rate beginning with the first calendar month following the date of enactment.

## **SUBTITLE D – MODIFICATIONS OF ENERGY INCENTIVES**

- **Sec. 40501. Modifications of Credit for Production from Advanced Nuclear Power Facilities.** Modifies the section 45J credit for electricity produced at qualifying advanced nuclear power facilities, which applies to a maximum of 6,000 megawatts of national capacity, by clarifying the credit re-allocation process in the event any credits are not fully utilized and allowing certain public entity credit recipients to make an election to transfer advanced nuclear production tax credits to other project participants.

## **TITLE II – MISCELLANEOUS PROVISIONS**

- **Sec. 41102. Modification to Rum Cover Over.** Under current law, up to \$10.50 of federal excise tax imposed on each proof gallon of rum imported into the United States is covered over to the treasuries of Puerto Rico and the Virgin Islands. For distilled spirits brought into the United States before January 1, 2017, this amount is increased to \$13.25 per proof gallon. The provision extends this increase to \$13.25 per proof gallon to apply to distilled spirits brought into the United States before January 1, 2022. The provision also clarifies that the amounts covered over may exceed the amounts collected to the extent tax of less than \$13.25 per proof gallon is imposed.
- **Sec. 41103. Extension of Waiver of Limitations with Respect to Excluding From Gross Income Amounts Received by Wrongfully Incarcerated Individuals.** A wrongfully incarcerated individual can exclude from his or her gross income civil damages, restitution, or other monetary award (including compensatory or statutory damages and restitution imposed in a criminal matter) relating to the wrongful incarceration. During a specified period, individuals were permitted to claim a credit for, or refund of, any overpayment of tax resulting from this exclusion, even if such claim would otherwise be disallowed because the statute of limitations has expired, if the filing of the claim for credit or refund meets certain requirements. The provision would extend the period during which this waiver of the statute of limitations for filing a claim for a credit or refund of an overpayment of tax resulting from this exclusion is available.
- **Sec. 41104. Individuals Held Harmless on Improper Levy on Retirement Plans.** Under the provision, if an amount withdrawn from an IRA (“original IRA”) or employer sponsored plan pursuant to a levy is returned to an individual by the IRS, the individual is allowed to contribute the amount returned, and any interest thereon, either to the original IRA or to the employer-sponsored plan, if permissible, or to a different IRA to which a rollover from the original IRA or employer-sponsored plan would be permitted. The contribution is allowed without regard to the normally applicable limits on IRA contributions and rollovers.

- **Sec. 41105. Modification of User Fee Requirements for Installment Agreements.** The IRS and taxpayers may enter into written agreements under which the taxpayer agrees to pay taxes owed in installments over an agreed schedule, if the IRS determines that doing so will facilitate collection of these amounts. If the IRS approves a taxpayer's request for an installment agreement, the IRS charges a user fee. This provision generally prohibits the IRS from increasing this user fee. For low-income taxpayers (those whose income falls below 250 percent of the Federal poverty guidelines), the provision alleviates the user-fee requirement in two ways. First, it waives the user fee if the low-income taxpayer enters into an installment agreement and agrees to make automated installment payments through a debit account. Second, it provides that low-income taxpayers who do not make payments electronically through a debit account are still initially subject to the user fee, but the fee is reimbursed upon completion of the installment agreement.
- **Sec. 41106. Form 1040SR for Seniors.** This provision requires the IRS to publish a simplified income tax return form that can be used by taxpayers who are 65 or older. The form, Form 1040SR, would be as similar as possible to the Form 1040EZ, but its use is not to be restricted because of the amount of taxable income shown on the return or because of the fact that the income to be reported for the taxable year includes social security benefits, distributions from qualified retirement plans, annuities or other such deferred payment arrangements, interest and dividends, or capital gains and losses taken into account in determining adjusted net capital gain.
- **Sec. 41107. Attorneys' Fees Relating to Awards to Whistleblowers.** An above-the-line deduction is available for attorneys' fees and court costs paid by, or on behalf of, a whistleblower in connection with any action involving a claim under the IRS Whistleblower program. This provision provides an above-the-line deduction for attorneys' fees and court costs paid by, or on behalf of, a taxpayer in connection with any action involving a claim under State False Claims Acts, the SEC whistleblower program, and the Commodity Futures Trading Commission whistleblower program.
- **Sec. 41108. Clarification of Whistleblower Awards.** Current law provides that, if the IRS institutes an administrative or judicial action against a taxpayer and collects proceeds as a result of information provided by a whistleblower, the whistleblower will be monetarily rewarded with a portion of the collected proceeds. This provision modifies the definition of collected proceeds eligible for awards to include: (1) penalties, interest, additions to tax, and additional amounts; and (2) any proceeds under enforcement programs for which the Treasury has delegated to the IRS the authority to administer, enforce, or investigate, including criminal fines and civil forfeitures, and violations of reporting requirements. This definition also is to be used to determine eligibility for the enhanced reward program under which proceeds and additional amounts in dispute exceed \$2,000,000. Collected proceeds amounts are determined without regard to whether such proceeds are available to the IRS.

- **Sec. 41109. Clarification Regarding Excise Tax Based on Investment Income of Private Colleges and Universities.** This provision amends the 1.4-percent “endowment tax” on private colleges and universities to apply only to applicable education institutions that have at least 500 tuition-paying students and have more than 50 percent of their tuition-paying students located in the United States.
- **Sec. 41110. Exception from Private Foundation Excess Business Holding Tax for Independently-Operated Philanthropic Business Holdings.** This provision would exempt a private foundation from the excess business holding tax for a taxable year if the private foundation meets the following requirements: (1) it is independently operated; (2) it distributes all of its profits to charity; and (3) it owns 100 percent of the business enterprise at all times throughout the year. For purposes of this rule, the private foundation cannot have acquired the ownership interests in the business enterprise through purchase.
- **Sec. 41111. Rule of Construction for Craft Beverage Modernization and Tax Reform.** This provision clarifies that no provision in the craft beverage rules enacted with the *Tax Cuts and Jobs Act* preempts, supersedes, or otherwise limits or restricts any state, local, or tribal law that prohibits or regulates the production or sale of distilled spirits, wine, or malt beverages.
- **Sec. 41112. Simplification of Rules Regarding Records, Statements, and Returns.** This provision amends applicable record-keeping requirements to allow taxpayers subject to excise tax under section 5051 to use a “unified system” of record-keeping.
- **Sec 41113. Modification of Rules Governing Hardship Distributions.** This provision requires the IRS to change its administrative guidance to allow employees taking hardship distributions from a retirement plan to continue making contributions to the plan.
- **Sec. 41114. Modification of Rules Relating to Hardship Withdrawals from Cash or Deferred Arrangements.** This provision permits employers to choose to allow hardship distributions from retirement plans to include account earnings and employer contributions.
- **Sec. 41115. Opportunity Zones Rule for Puerto Rico.** Under the opportunity zone provisions enacted with the *Tax Cuts and Jobs Act*, capital gains are subject to deferred recognition if the related sales proceeds are reinvested in certain funds that invest in qualified opportunity zone property. Up to 25 percent of the low-income community population census tracts in each state and U.S. territory may be designated and certified as qualified opportunity zones. The provision expands eligibility for this incentive in Puerto Rico by treating all low-income community population census tracts in Puerto Rico as qualified opportunity zones.
- **Sec. 41116. Tax Home of Certain Citizens or Residents of the United States Living Abroad.** This provision ensures that a U.S. citizen or resident serving in support of the

U.S. Armed Forces who has a foreign tax home located in a designated combat zone may qualify for the foreign earned income exclusion, even if the individual has a U.S. abode.

- **Sec. 41117. Treatment of Foreign Persons for Returns Relating to Payments Made in Settlement of Payment Card and Third Party Network Transactions.** This provision exempts any domestic payment settlement entity from having to comply with backup withholding rules for foreign merchants under limited circumstances.
- **Sec. 41118. Repeal of Shift in Time of Payment of Corporate Estimated Taxes.** This provision repeals the 8 percent increase in the amount of any required installment of corporate estimated tax payments due in July, August, or September of 2020 for corporations with assets in excess of \$1 billion.
- **Sec. 41119. Enhancement of Carbon Dioxide Sequestration Credit.** This provision modifies the existing credit for carbon dioxide sequestration. The scope of eligible facilities is modified to include smaller facilities and direct air capture facilities that do not qualify under current law, but only facilities for which construction begins before 2024. With respect to carbon capture equipment placed in service on or after the date of enactment, the amount of the credit is increased over time, the credit is allowed over a 12-year period instead of being subject to a national cap, and the credit is available to taxpayers that contractually ensure the capture of the carbon oxide. Certain elections are provided to facilitate access to the credit.