AMENDMENT IN THE NATURE OF A SUBSTITUTE
TO H.R. 1
OFFERED BY MR. BRADY OF TEXAS

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE; ETC.

(a) SHORT TITLE.—This Act may be cited as the "Tax Cuts and Jobs Act".

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

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

SEC. 1005. CONFORMING AMENDMENTS RELATED TO SIMPLIFICATION OF INDIVIDUAL INCOME TAX RATES.

(a) AMENDMENTS RELATED TO MODIFICATION OF INFLATION ADJUSTMENT.—

(1) Section 32(b)(2)(B)(ii)(II) is amended by striking " section 1(f)(3) for the calendar year in which the taxable year begins determined by substituting 'calendar year 2008' for 'calendar year 1992' in subparagraph (B) thereof" and inserting "section 1(c)(2)(A) for the calendar year in which the taxable year begins determined by substituting 'calendar year 2008' for 'calendar year 2016' in clause (ii) thereof".

(2) Section 32(j)(1)(B) is amended—

(A) in the matter preceding clause (i), by striking "section 1(f)(3)" and inserting "section 1(c)(2)(A)",

(B) in clause (i), by striking "for 'calendar 15 year 1992' in subparagraph (B) thereof" and inserting "for 'calendar year 2016' in clause (ii) thereof", and

(C) in clause (ii), by striking "for 'calendar 4 year 1992' in subparagraph (B) of such section 5 1" and inserting "for 'calendar year 2016' in 6 clause (ii) thereof".

(~~1~~3) Section 36B(b)(3)(A)(ii)(II) is amended by striking "consumer price index" and inserting "C-CPI-U (as defined in section 1(c))".

(~~2~~4) Section 41(e)(5)(C) is amended to read as follows:

"(C) COST-OF-LIVING ADJUSTMENT DEFINED.—

"(i) IN GENERAL.—The cost-of-living adjustment for any calendar year is the cost-of-living adjustment for such calendar year determined under section 1(c)(2)(A), by substituting 'calendar year

1987' for 'calendar year 2016' in clause (ii) thereof.

"(ii) SPECIAL RULE WHERE BASE PERIOD ENDS IN A CALENDAR YEAR OTHER THAN 1983 OR 1984.—If the base period of any taxpayer does not end in 1983 or 1984, clause (i) shall be applied by substituting the calendar year in which such base period ends for 1987.".

(~~3~~5) Section 42(e)(3)(D)(ii) is amended by striking "section 1(f)(3) for such calendar year by substituting 'calendar year 2008' for 'calendar year 1992' in subparagraph (B) thereof" and inserting "section 1(c)(2)(A) for such calendar year by substituting 'calendar year 2008' for 'calendar year 2016' in clause (ii) thereof".

(~~4~~6) Section 42(h)(3)(H)(i)(II) is amended by striking "section 1(f)(3) for such calendar year by substituting 'calendar year 2001' for 'calendar year 1992' in subparagraph (B) thereof" and inserting "section 1(c)(2)(A) for such calendar year by substituting 'calendar year 2001' for 'calendar year 2016' in clause (ii) thereof".

(~~5~~7) Section 45R(d)(3)(B)(ii) is amended by striking "section 1(f)(3) for the calendar year, determined by substituting 'calendar year 2012' for 'calendar year 1992' in subparagraph (B) thereof" and inserting " 'section 1(c)(2)(A) for such calendar year, determined by substituting "calendar year 2012" for "calendar year 2016" in clause (ii) thereof' ".

(~~6~~8) Section 125(i)(2) is amended—

(A) by striking "section 1(f)(3) for the calendar year in which the taxable year begins by substituting 'calendar year 2012' for 'calendar year 1992' in subparagraph (B) thereof" in subparagraph (B) and inserting "section 1(c)(2)(A) for the calendar year in which the taxable year begins", and

(B) by striking "$50" both places it appears in the last sentence and inserting "$100".

(~~7~~9) Section 162(o)(3) is amended by inserting "as in effect before enactment of the Tax Cuts and Jobs Act" after "section 1(f)(5)".

(~~8~~10) Section 220(g)(2) is amended by striking "section 1(f)(3) for the calendar year in which the taxable year begins by substituting 'calendar year 1997' for 'calendar year 1992' in subparagraph (B) thereof" and inserting "section 1(c)(2)(A) for the calendar year in which the taxable year begins, determined by substituting 'calendar year 1997' for 'calendar year 2016' in clause (ii) thereof".

(~~9~~11) Section 223(g)(1) is amended by striking all that follows subparagraph (A) and inserting the following:

"(B) the cost-of-living adjustment determined under section 1(c)(2)(A) for the calendar year in which the taxable year begins, determined—

"(i) by substituting for 'calendar year 2016' in clause (ii) thereof—

"(I) except as provided in clause (ii), 'calendar year 1997', and

"(II) in the case of each dollar amount in subsection (c)(2)(A), 'calendar year 2003', and

"(ii) by substituting 'March 31' for 'August 31' in paragraphs (5)(B) and (6)(B) of section 1(c).

The Secretary shall publish the dollar amounts as adjusted under this subsection for taxable years beginning in any calendar year no later than June 1 of the preceding calendar year.".

(~~10~~12) Section 430(c)(7)(D)(vii)(II) is amended by striking "section 1(f)(3) for the calendar year, determined by substituting 'calendar year 2009'

for ‘calendar year 1992’ in subparagraph (B) thereof’’ and inserting “section 1(c)(2)(A) for the calendar year, determined by substituting ‘calendar year 2009’ for ‘calendar year 2016’ in clause (ii) thereof’’.

(~~11~~13) Section 512(d)(2)(B) is amended by striking “section 1(f)(3) for the calendar year in which the taxable year begins, by substituting ‘calendar year 1994’ for ‘calendar year 1992’ in subparagraph (B) thereof’’ and inserting “section 1(c)(2)(A) for the calendar year in which the taxable year begins, determined by substituting ‘calendar year 1994’ for ‘calendar year 2016’ in clause (ii) thereof’’.

(~~12~~14) Section 513(h)(2)(C)(ii) is amended by striking “section 1(f)(3) for the calendar year in which the taxable year begins by substituting ‘calendar year 1987’ for ‘calendar year 1992’ in subparagraph (B) thereof’’ and inserting “section 1(c)(2)(A) for the calendar year in which the taxable year begins, determined by substituting ‘calendar year 1987’ for ‘calendar year 2016’ in clause (ii) thereof’’.

(~~13~~15) Section 831(b)(2)(D)(ii) is amended by striking “section 1(f)(3) for such calendar year by substituting ‘calendar year 2013’ for ‘calendar year 1992’ in subparagraph (B) thereof’’ and inserting “section 1(c)(2)(A) for such calendar year by substituting ‘calendar year 2013’ for ‘calendar year 2016’ in clause (ii) thereof’’.

(~~14~~16) Section 877A(a)(3)(B)(i)(II) is amended by striking “section 1(f)(3) for the calendar year in which the taxable year begins, by substituting ‘calendar year 2007’ for ‘calendar year 1992’ in subparagraph (B) thereof’’ and inserting “section 1(c)(2)(A) for the calendar year in which the taxable year begins, determined by substituting ‘calendar year 2007’ for ‘calendar year

2016' in clause (ii) thereof".

(~~15~~17) Section 911(b)(2)(D)(ii)(II) is amended by striking "section 1(f)(3) for the calendar year in which the taxable year begins, determined by substituting '2004' for '1992' in subparagraph (B) thereof" and inserting "section 1(c)(2)(A) for the calendar year in which the taxable year begins, determined by substituting 'calendar year 2004' for 'calendar year 2016' in clause (ii) thereof".

(~~16~~18) Section 1274A(d)(2) is amended to read as follows:

"(2) INFLATION ADJUSTMENT.—

"(A) IN GENERAL.—In the case of any debt instrument arising out of a sale or exchange during any calendar year after 2018, each adjusted dollar amount shall be increased by an amount equal to—

"(i) such adjusted dollar amount, multiplied by

"(ii) the cost-of-living adjustment determined under section 1(c)(2)(A) for such calendar year, determined by substituting 'calendar year 2017' for 'calendar year 2016' in clause (ii) thereof.

"(B) ADJUSTED DOLLAR AMOUNTS.—For purposes of this paragraph, the term 'adjusted dollar amount' means the dollar amounts in subsections (b) and (c), in each case as in effect for calendar year 2018.

"(C) ROUNDING.—Any increase under subparagraph (A) shall be rounded to the nearest multiple of $100.".

(~~17~~19) Section 2010(c)(3)(B)(ii) is amended by striking "section 1(f)(3) for such calendar year by substituting 'calendar year 2010' for 'calendar year 1992' in subparagraph (B) thereof" and inserting "section 1(c)(2)(A) for such

calendar year, determined by substituting 'calendar year 2010' for 'calendar year 2016' in clause (ii) thereof''.

(~~18~~20) Section 2032A(a)(3)(B) is amended by striking "section 1(f)(3) for such calendar year by substituting 'calendar year 1997' for 'calendar year 1992' in subparagraph (B) thereof'' and inserting "section 1(c)(2)(A) for such calendar year, determined by substituting 'calendar year 1997' for 'calendar year 2016' in clause (ii) thereof''.

(~~19~~21) Section 2503(b)(2)(B) is amended by striking "section 1(f)(3) for such calendar year by substituting 'calendar year 1997' for 'calendar year 1992' in subparagraph (B) thereof'' and inserting "section 1(c)(2)(A) for the calendar year, determined by substituting 'calendar year 1997' for 'calendar year 2016' in clause (ii) thereof''.

(~~20~~22) Section 4161(b)(2)(C)(i)(II) is amended by striking "section 1(f)(3) for such calendar year, determined by substituting '2004' for '1992' in subparagraph (B) thereof'' and inserting "section 1(c)(2)(A) for such calendar year, determined by substituting 'calendar year 2004' for 'calendar year 2016' in clause (ii) thereof''.

(~~21~~23) Section 4261(e)(4)(A)(ii) is amended by striking "section 1(f)(3) for such calendar year by substituting the year before the last nonindexed year for 'calendar year 1992' in subparagraph (B) thereof'' and inserting "section 1(c)(2)(A) for such calendar year, determined by substituting the year before the last nonindexed year for 'calendar year 2016' in clause (ii) thereof''.

(~~22~~24) Section 4980I(b)(3)(C)(v)(II) is amended

(A) by striking "section 1(f)(3)" and inserting "section 1(c)(2)(A)",

(B) by striking "subparagraph (B)" and inserting "clause (ii)", and

(C) by striking "1992" and inserting "2016".

(~~23~~25) Section 5000A(c)(3)(D)(ii) is amended—

(A) by striking "section 1(f)(3)" and inserting "section 1(c)(2)(A)",

(B) by striking "subparagraph (B)" and inserting "clause (ii)", and

(C) by striking "1992" and inserting "2016".

(~~24~~26) Section 6039F(d) is amended by striking "section 1(f)(3), except that subparagraph (B) thereof" and inserting "section 1(c)(2)(A), except that clause (ii) thereof".

(~~25~~27) Section 6323(i)(4)(B) is amended by striking "section 1(f)(3) for the calendar year, determined by substituting 'calendar year 1996' for 'calendar year 1992' in subparagraph (B) thereof" and inserting "section 1(c)(2)(A) for the calendar year, determined by substituting 'calendar year 1996' for 'calendar year 2016' in clause (ii) thereof".

(~~26~~28) Section 6334(g)(1)(B) is amended by striking "section 1(f)(3) for such calendar year, by substituting 'calendar year 1998' for 'calendar year 1992' in subparagraph (B) thereof" and inserting "section 1(c)(2)(A) for such calendar year, determined by substituting 'calendar year 1999' for 'calendar year 2016' in clause (ii) thereof".

(~~27~~29) Section 6601(j)(3)(B) is amended by striking "section 1(f)(3) for such calendar year by substituting 'calendar year 1997' for 'calendar year 1992' in subparagraph (B) thereof" and inserting "section 1(c)(2)(A) for such calendar year by substituting 'calendar year 1997' for 'calendar year 2016' in clause (ii) thereof".

(~~28~~30) Section 6651(i)(1) is amended by striking "section 1(f)(3) determined

by substituting 'calendar year 2013' for 'calendar year 1992' in subparagraph (B) thereof'' and inserting "section 1(c)(2)(A) determined by substituting 'calendar year 2013' for 'calendar year 2016' in clause (ii) thereof''.

(~~29~~31) Section 6721(f)(1) is amended—

(A) by striking "section 1(f)(3)" and inserting "section 1(c)(2)(A)",

(B) by striking "subparagraph (B)" and inserting "clause (ii)", and

(C) by striking "1992" and inserting "2016".

(~~30~~32) Section 6722(f)(1) is amended—

(A) by striking "section 1(f)(3)" and inserting "section 1(c)(2)(A)",

(B) by striking "subparagraph (B)" and inserting "clause (ii)", and

(C) by striking "1992" and inserting "2016".

(~~31~~33) Section 6652(c)(7)(A) is amended by striking "section 1(f)(3) determined by substituting 'calendar year 2013' for 'calendar year 1992' in subparagraph (B) thereof'' and inserting "section 1(c)(2)(A) determined by substituting 'calendar year 2013' for 'calendar year 2016' in clause (ii) thereof''.

(~~32~~34) Section 6695(h)(1) is amended by striking "section 1(f)(3) determined by substituting 'calendar year 2013' for 'calendar year 1992' in subparagraph (B) thereof'' and inserting "section 1(c)(2)(A) determined by substituting 'calendar year 2013' for 'calendar year 2016' in clause (ii) thereof''.

(~~33~~35) Section 6698(e)(1) is amended by striking " section 1(f)(3) determined by substituting 'calendar year 2013' for 'calendar year 1992' in subparagraph (B) thereof'' and inserting "section 1(c)(2)(A) determined by

substituting 'calendar year 2013' for 'calendar year 2016' in clause (ii) thereof''.

(~~34~~36) Section 6699(e)(1) is amended by striking "section 1(f)(3) determined by substituting 'calendar year 2013' for 'calendar year 1992' in subparagraph (B) thereof'' and inserting "section 1(c)(2)(A) determined by substituting 'calendar year 2013' for 'calendar year 2016' in clause (ii) thereof''.

(~~35~~37) Section 7345(f)(2) is amended by striking "section 1(f)(3) for the calendar year, determined by substituting 'calendar year 2015' for 'calendar year 1992' in subparagraph (B) thereof'' and inserting "section 1(c)(2)(A) for the calendar year, determined by substituting 'calendar year 2015' for 'calendar year 2016' in clause (ii) thereof''.

(~~36~~38) Section 7430(c)(1) is amended by striking "section 1(f)(3) for such calendar year, by substituting 'calendar year 1995' for 'calendar year 1992' in subparagraph (B) thereof'' in the flush text at the end and inserting "section 1(c)(2)(A) for such calendar year, determined by substituting 'calendar year 1995' for 'calendar year 2016' in clause (ii) thereof''.

(~~37~~39) Section 7872(g)(5) is amended to read as follows:

"(5) INFLATION ADJUSTMENT.—

"(A) IN GENERAL.—In the case of any loan made during any calendar year after 2018 to which paragraph (1) applies, the adjusted dollar amount shall be increased by an amount equal to—

"(i) such adjusted dollar amount, multiplied by

"(ii) the cost-of-living adjustment determined under section

1(c)(2)(A) for such calendar year, determined by substituting 'calendar year 2017' for 'calendar year 2016' in clause (ii) thereof.

"(B) ADJUSTED DOLLAR AMOUNT.—For purposes of this paragraph, the term 'adjusted dollar amount' means the dollar amount in paragraph (2) as in effect for calendar year 2018.

"(C) ROUNDING.—Any increase under subparagraph (A) shall be rounded to the nearest multiple of $100.".

(b) OTHER CONFORMING AMENDMENTS.—

(1) Section 36B(b)(3)(B)(ii)(I)(aa) is amended to read as follows:

"(aa) who is described in section 1(b)(1)(B) and who does not have any dependents for the taxable year,".

(2) Section 486B(b)(1) is amended—

(A) by striking "maximum rate in effect" and inserting "highest rate specified", and

(B) by striking "section 1(e)" and inserting "section 1".

(3) Section 511(b)(1) is amended by striking "section 1(e)" and inserting "section 1".

(4) Section 641(a) is amended by striking "section 1(e) shall apply to the taxable income" and inserting "section 1 shall apply to the taxable income".

(5) Section 641(c)(2)(A) is amended to read as follows:

"(A) Except to the extent provided in section 1(h), the rate of tax shall be treated as being the highest rate of tax set forth in section 1(a).".

(6) Section 646(b) is amended to read as follows:

"(b) TAXATION OF INCOME OF TRUST.—Except as provided in subsection (f)(1)(B)(ii), there is hereby imposed on the taxable income of an electing Settlement Trust a tax at the rate specified in section 1(a)(1). Such tax shall be in lieu of the income tax otherwise imposed by this chapter on such income.".

(7) Section 685(c) is amended by striking "Section 1(e)" and inserting "Section 1".

(8) Section 904(b)(3)(E)(ii)(I) is amended by striking "set forth in subsection (a), (b), (c), (d), or (e) of section 1 (whichever applies)" and inserting "the highest rate of tax specified in section 1".

(9) Section 1398(c)(2) is amended by striking "subsection (d) of".

(10) Section 3402(p)(1)(B) is amended by striking "any percentage applicable to any of the 3 lowest income brackets in the table under section 1(c)," and inserting "12 percent, 25 percent,".

(11) Section 3402(q)(1) is amended by striking "the product of third lowest rate of tax applicable under section 1(c) and" and inserting "25 percent of".

(12) Section 3402(r)(3) is amended by striking "the amount of tax which would be imposed by section 1(c) (determined without regard to any rate of tax in excess of the fourth lowest rate of tax applicable under section 1(c)) on an amount of taxable income equal to" and inserting "an amount equal to the product of 25 percent multiplied by".

(13) Section 3406(a)(1) is amended by striking "the product of the fourth lowest rate of tax applicable under section 1(c) and" and inserting "25 percent of".

(14) Section 6103(e)(1)(A)(iii) is amended by inserting "section 1(g) (as in effect on the day before the date of enactment of the Tax Cuts and Jobs Act)" after "section 1(g)".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 2017.

SEC. 1104. PROCEDURES TO REDUCE IMPROPER CLAIMS OF EARNED INCOME CREDIT.

(a) CLARIFICATION REGARDING DETERMINATION OF SELF-EMPLOYMENT INCOME WHICH IS TREATED AS EARNED INCOME.—Section 32(c)(2)(B) is amended by striking ''and'' at the end of clause (v), by striking the period at the end of clause (vi) and inserting '', and'', and by adding at the end the following new clause: ''(vii) in determining the taxpayer's net earnings from self-employment under subparagraph (A)(ii) there shall not fail to be taken into account any deduction which is allowable to the taxpayer under this subtitle.''.

(b) REQUIRED QUARTERLY REPORTING OF WAGES OF EMPLOYEES.—Section 6011 is amended by adding at the end the following new subsection:

''(i) EMPLOYER REPORTING OF WAGES.—Every person required to deduct and withhold from an employee a tax under section 3101 or 3402 shall include on each return or statement submitted with respect to such tax, the name and address of such employee and the amount of wages for such employee on which such tax was withheld.''.

(c) EFFECTIVE DATE.—(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section shall apply to taxable years ending after the date of the enactment of this Act.

(2) REPORTING.—The Secretary of the Treasury, or his designee, may delay the application of the amendment made by subsection (b) for such period as such Secretary (or designee) determines to be reasonable to allow

persons adequate time to modify electronic (or other) systems to permit such person to comply with the requirements of such amendment.

SEC. 1105. CERTAIN INCOME DISALLOWED FOR PURPOSES OF THE EARNED INCOME TAX CREDIT.

(a) SUBSTANTIATION REQUIREMENT.—Section 32 is amended by adding at the end the following new subsection: "(n) INCONSISTENT INCOME REPORTING.—If the earned income of a taxpayer claimed on a return for purposes of this section is not substantiated by statements or returns under sections 6051, 6052, 6041(a), or 6050W with respect to such taxpayer, the Secretary may require such taxpayer to provide books and records to substantiate such income, including for the purpose of preventing fraud.".

(b) EXCLUSION OF UNSUBSTANTIATED AMOUNT FROM EARNED INCOME.—Section 32(c)(2) is amended by adding at the end the following new subparagraph: "(C) EXCLUSION.—In the case of a taxpayer with respect to which there is an inconsistency described in subsection (n) who fails to substantiate such inconsistency to the satisfaction of the Secretary, the term 'earned income' shall not include amounts to the extent of such inconsistency.".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years ending after the date of the enactment of this Act.

SEC. 1404. ~~REPEAL~~SUNSET OF EXCLUSION FOR DEPENDENT CARE ASSISTANCE PROGRAMS.

~~(a) IN GENERAL.—Part III of subchapter B of chapter 1 is amended by striking section 129 (and by striking the item relating to such section in the table of sections for such part).~~

~~(b) CONFORMING AMENDMENTS.—~~

(a) IN GENERAL.—Section 129 is amended by adding at the end the following new subsection: '(f) TERMINATION.—Subsection (a) shall not apply to taxable years beginning after December 31, 2022.''.

~~(1) Section 414(n)(3)(C) is amended by striking ", 129".~~

~~(2) Section 414(r)(1) is amended by striking "sections 129(d)(8) and" and inserting "section".~~

~~(3) Section 414(t)(2) is amended by striking ", 129".~~

~~(4) Section 125(j)(6) is amended—~~

~~(A) by inserting "or" before "section 105(h)", and~~

~~(B) by striking ", or paragraph (2), (3), (4), or (8) of section 129(d)".~~

~~(5) Section 3121(a)(18) is amended by striking "129,".~~

~~(6) Section 3306(b)(13) is amended by striking "129,".~~

~~(7) Section 3401(a)(18) is amended by striking "129,".~~

~~(8) Section 6039D(d)(1) is amended by striking ", 129".~~

~~(9) Section 6051(a) is amended by striking paragraph (9).~~

(~~c~~b) EFFECTIVE DATE.—The ~~amendments~~amendment made by this section shall ~~apply to taxable years beginning after December 31, 2017~~take effect on the date of the enactment of this Act.

SEC. 3311. CERTAIN SELF-CREATED PROPERTY NOT TREATED AS A CAPITAL ASSET.

(a) PATENTS, ETC.—Section 1221(a)(3) is amended by inserting "a patent, invention, model or design (whether or not patented), a secret formula or process," before "a copyright".

~~(b) SELF-CREATED MUSICAL WORKS.—Section 1221(b) is amended by striking paragraph (3) and redesignating paragraph (4) as paragraph (3).~~

~~(c) CONFORMING AMENDMENTS.—~~

~~(1) Section 170(e)(1)(A) is amended by striking "(determined without regard to section 1221(b)(3))".~~

(~~2~~b) CONFORMING AMENDMENT.—Section 1231(b)(1)(C) is amended by inserting "~~"~~"a patent, invention, model or design (whether or not patented), a secret formula or process,~~"~~" before "~~"~~"a copyright~~"~~".

(~~d~~c) EFFECTIVE DATE.—The amendments made by this section shall apply to

dispositions after December 31, 2017.

(a) IN GENERAL.—Part IV of subchapter O of chapter 1 is amended—

(1) by redesignating section 1061 as section 1062, and

(2) by inserting after section 1060 the following new section:

"SEC. 1061. PARTNERSHIP INTERESTS HELD IN CONNECTION WITH PERFORMANCE OF SERVICES.

"(a) IN GENERAL.—If one or more applicable partnership interests are held by a taxpayer at any time during the taxable year, the excess (if any) of—

"(1) the taxpayer's net long-term capital gain with respect to such interests for such taxable year,

over

"(2) the taxpayer's net long-term capital gain with respect to such interests for such taxable year computed by applying paragraphs (3) and (4) of sections 1222 by substituting '3 years' for '1 year', shall be treated as short-term capital gain.

"(b) SPECIAL RULE.—To the extent provided by the Secretary, subsection (a) shall not apply to income or gain attributable to any asset not held for portfolio investment on behalf of third party investors.

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

"(1) IN GENERAL.—Except as provided in this paragraph or paragraph (4), the term 'applicable partnership interest' means any interest in a partnership which, directly or indirectly, is transferred to (or is held by) the taxpayer in connection with the performance of substantial services by the taxpayer, or any other related person, in any applicable trade or business. The previous sentence shall not apply to an interest held by a person who is employed by another entity that

is conducting a trade or business (other than an applicable trade or business) and only provides services to such other entity.

"(2) APPLICABLE TRADE OR BUSINESS.—The term 'applicable trade or business' means any activity conducted on a regular, continuous, and substantial basis which, regardless of whether the activity is conducted in one or more entities, consists, in whole or in part, of—

"(A) raising or returning capital, and

"(B) either—

"(i) investing in (or disposing of) specified assets (or identifying specified assets for such investing or disposition), or

"(ii) developing specified assets.

"(3) SPECIFIED ASSET.—The term 'specified asset' means securities (as defined in section 475(c)(2) without regard to the last sentence thereof), commodities (as defined in section 475(e)(2)), real estate held for rental or investment, cash or cash equivalents, options or derivative contracts with respect to any of the foregoing, and an interest in a partnership to the extent of the partnership's proportionate interest in any of the foregoing.

"(4) EXCEPTIONS.—The term 'applicable partnership interest' shall not include—

"(A) any interest in a partnership directly or indirectly held by a corporation, or

"(B) any capital interest in the partnership which provides the taxpayer with a right to share in partnership capital commensurate with—

"(i) the amount of capital contributed (determined at the time of receipt of such partnership interest), or

"(ii) the value of such interest subject to tax under section 83 upon the receipt or vesting of such interest.

"(5) THIRD PARTY INVESTOR.—The term 'third party investor' means a person who—

"(A) holds an interest in the partnership which does not constitute property held in connection with an applicable trade or business; and

"(B) is not (and has not been) actively engaged, and is (and was) not related to a person so engaged, in (directly or indirectly) providing substantial services described in paragraph (1) for such partnership or any applicable trade or business.

"(d) TRANSFER OF APPLICABLE PARTNERSHIP INTEREST TO RELATED PERSON.—

"(1) IN GENERAL.—If a taxpayer transfers any applicable partnership interest, directly or indirectly, to a person related to the taxpayer, the taxpayer shall include in gross income (as short term capital gain) the excess (if any) of—

"(A) so much of the taxpayer's long-term capital gains with respect to such interest for such taxable year attributable to the sale or exchange of any asset held for not more than 3 years as is allocable to such interest, over

"(B) any amount treated as short term capital gain under subsection (a) with respect to the transfer of such interest.

"(2) RELATED PERSON.—For purposes of this paragraph, a person is related to the taxpayer if—

"(A) the person is a member of the tax- payer's family within the meaning of section 318(a)(1), or

"(B) the person performed a service within the current calendar year or the preceding three calendar years in any applicable trade or business in which or for which the taxpayer performed a service.

"(e) REPORTING.—The Secretary shall require such reporting (at the time and in the manner prescribed by the Secretary) as is necessary to carry out the purposes of this section.

"(f) REGULATIONS.—The Secretary shall issue such regulations or other guidance as is necessary or appropriate to carry out the purposes of this section".

(b) COORDINATION WITH SECTION 83.—Subsection (e) of section 83 is amended by striking "or" at the end of paragraph (4), by striking the period at the end of paragraph (5) and inserting ", or", and by adding at the end the following new paragraph:

"(6) a transfer of an applicable partnership interest to which section 1061 applies.".

(c) CLERICAL AMENDMENT.—The table of sections for part IV of subchapter O of chapter 1 is amended by striking the item relating to 1061 and inserting the following new items:

"Sec. 1061. Partnership interests held in connection with performance of services.

"Sec. 1062. Cross references.".

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to

taxable years beginning after December 31, 2017.

SEC. 3804. TREATMENT OF QUALIFIED EQUITY GRANTS.

(a) IN GENERAL.—

(1) ELECTION TO DEFER INCOME.—Section 83 is amended by adding at the end the following new subsection:

"(i) QUALIFIED EQUITY GRANTS.—

"(1) IN GENERAL.—For purposes of this subtitle, if qualified stock is transferred to a qualified employee who makes an election with respect to such stock under this subsection—

"(A) except as provided in subparagraph (B), no amount shall be included in income under subsection (a) for the first taxable year in which the rights of the employee in such stock are transferable or are not subject to a substantial risk of forfeiture, whichever is applicable, and

"(B) an amount equal to the amount which would be included in income of the employee under subsection (a) (determined without regard to this subsection) shall be included in income for the taxable year of the employee which includes the earliest of—

"(i) the first date such qualified stock becomes transferable (including transferable to the employer),

"(ii) the date the employee first becomes an excluded employee,

"(iii) the first date on which any stock of the corporation which issued the qualified stock becomes readily tradable on an

established securities market (as determined by the Secretary, but not including any market unless such market is recognized as an established securities market by the Secretary for purposes of a provision of this title other than this subsection),

"(iv) the date that is 5 years after the first date the rights of the employee in such stock are transferable or are not subject to a substantial risk of forfeiture, whichever occurs earlier, or

"(v) the date on which the employee revokes (at such time and in such manner as the Secretary may provide) the election under this subsection with respect to such stock.

"(2) QUALIFIED STOCK.—

"(A) IN GENERAL.—For purposes of this subsection, the term 'qualified stock' means, with respect to any qualified employee, any stock in a corporation which is the employer of such employee, if—

"(i) such stock is received—

"(I) in connection with the exercise of an option, or

"(II) in settlement of a restricted stock unit, and

"(ii) such option or restricted stock unit was provided by the corporation—

"(I) in connection with the performance of services as an employee, and

"(II) during a calendar year in which such corporation was an eligible corporation.

"(B) LIMITATION.—The term 'qualified stock' shall not include any stock if the employee may sell such stock to, or otherwise receive cash in lieu of stock from, the corporation at the time that the rights of the employee in such stock

first become transferable or not subject to a substantial risk of forfeiture.

"(C) ELIGIBLE CORPORATION.—For purposes of subparagraph (A)(ii)(II)—

"(i) IN GENERAL.—The term 'eligible corporation' means, with respect to any calendar year, any corporation if—

"(I) no stock of such corporation (or any predecessor of such corporation) is readily tradable on an established securities market (as determined under paragraph (1)(B)(iii)) during any preceding calendar year, and

"(II) such corporation has a written plan under which, in such calendar year, not less than 80 percent of all employees who provide services to such corporation in the United States (or any possession of the United States) are granted stock options, or restricted stock units, with the same rights and privileges to receive qualified stock.

"(ii) SAME RIGHTS AND PRIVILEGES.—For purposes of clause (i)(II)— '

'(I) except as provided in sub-clauses (II) and (III), the determination of rights and privileges with respect to stock shall be determined in a similar manner as provided under section 423(b)(5), "(II) employees shall not fail to be treated as having the same rights and privileges to receive qualified stock solely because the number of shares available to all employees is not equal in amount, so long as the number of shares available to each employee is more than a de minimis amount, and

"(III) rights and privileges with respect to the exercise of an

option shall not be treated as the same as rights and privileges with respect to the settlement of a restricted stock unit.

"(iii) EMPLOYEE.—For purposes of clause (i)(II), the term 'employee' shall not include any employee described in section 4980E(d)(4) or any excluded employee.

"(iv) SPECIAL RULE FOR CALENDAR YEARS BEFORE 2018.—In the case of any calendar year beginning before January 1, 2018, clause (i)(II) shall be applied without regard to whether the rights and privileges with respect to the qualified stock are the same.

"(3) QUALIFIED EMPLOYEE; EXCLUDED EMPLOYEE.—For purposes of this subsection—

"(A) IN GENERAL.—The term 'qualified employee' means any individual who—

"(i) is not an excluded employee, and

"(ii) agrees in the election made under this subsection to meet such requirements as determined by the Secretary to be necessary to ensure that the withholding requirements of the corporation under chapter 24 with respect to the qualified stock are met.

"(B) EXCLUDED EMPLOYEE.—The term 'excluded employee' means, with respect to any corporation, any individual—

"(i) who was a 1-percent owner (within the meaning of section 416(i)(1)(B)(ii)) at any time during the 10 preceding calendar years,

"(ii) who is or has been at any prior time—

"(I) the chief executive officer of such corporation or an individual acting in such a capacity, or

"(II) the chief financial officer of such corporation or an individual acting in such a capacity,

"(iii) who bears a relationship described in section 318(a)(1) to any individual described in subclause (I) or (II) of clause (ii), or

"(iv) who has been for any of the 10 preceding taxable years one of the 4 highest compensated officers of such corporation determined with respect to each such taxable year on the basis of the shareholder disclosure rules for compensation under the Securities Exchange Act of 1934 (as if such rules applied to such corporation).

"(4) ELECTION.—

"(A) TIME FOR MAKING ELECTION.—An election with respect to qualified stock shall be made under this subsection no later than 30 days after the first time the rights of the employee in such stock are transferable or are not subject to a substantial risk of forfeiture, whichever occurs earlier, and shall be made in a manner similar to the manner in which an election is made under subsection (b).

"(B) LIMITATIONS.—No election may be made under this section with respect to any qualified stock if—

"(i) the qualified employee has made an election under subsection (b) with respect to such qualified stock,

"(ii) any stock of the corporation which issued the qualified stock is readily tradable on an established securities market (as determined under paragraph (1)(B)(iii)) at any time before the election is made, or

"(iii) such corporation purchased any of its outstanding stock in the calendar year preceding the calendar year which includes the first

time the rights of the employee in such stock are transferable or are not subject to a substantial risk of forfeiture, unless—

"(I) not less than 25 percent of the total dollar amount of the stock so purchased is deferral stock, and

"(II) the determination of which individuals from whom deferral stock is purchased is made on a reasonable basis.

"(C) DEFINITIONS AND SPECIAL RULES RELATED TO LIMITATION ON STOCK REDEMPTIONS.—

"(i) DEFERRAL STOCK.—For purposes of this paragraph, the term 'deferral stock' means stock with respect to which an election is in effect under this subsection.

"(ii) DEFERRAL STOCK WITH RESPECT TO ANY INDIVIDUAL NOT TAKEN INTO ACCOUNT IF INDIVIDUAL HOLDS DEFERRAL STOCK WITH LONGER DEFERRAL PERIOD.—Stock purchased by a corporation from any individual shall not be treated as deferral stock for purposes of clause (iii) if such individual (immediately after such purchase) holds any deferral stock with respect to which an election has been in effect under this subsection for a longer period than the election with respect to the stock so purchased.

"(iii) PURCHASE OF ALL OUTSTANDING DEFERRAL STOCK.—The requirements of subclauses (I) and (II) of subparagraph (B)(iii) shall be treated as met if the stock so purchased includes all of the corporation's outstanding deferral stock.

"(iv) REPORTING.—Any corporation which has outstanding deferral stock as of the beginning of any calendar year and which purchases any of its outstanding stock during such calendar year shall include on its return of tax for the taxable year in which, or with which, such calendar year ends the total dollar amount of its outstanding stock so purchased during such calendar year and such other information as the Secretary may require for purposes of administering this paragraph.

"(5) CONTROLLED GROUPS.—For purposes of this subsection, all corporations which are members of the same controlled group of corporations (as defined in section 1563(a)) shall be treated as one corporation.

"(6) NOTICE REQUIREMENT.—Any corporation that transfers qualified stock to a qualified employee shall, at the time that (or a reasonable period before) an amount attributable to such stock would (but for this subsection) first be includible in the gross income of such employee—

"(A) certify to such employee that such stock is qualified stock, and

"(B) notify such employee—

"(i) that the employee may elect to defer income on such stock under this subsection, and

"(ii) that, if the employee makes such an election—

"(I) the amount of income recognized at the end of the deferral period will be based on the value of the stock at the time at which the rights of the employee in such stock first become transferable or not subject to substantial risk of forfeiture, notwithstanding whether the value of the stock has declined during the deferral period,

"(II) the amount of such income recognized at the end of the deferral period will be subject to withholding under section 3401(i) at the rate determined under section 3402(t), and

"(III) the responsibilities of the employee (as determined by the Secretary under paragraph (3)(A)(ii)) with respect to such withholding."

(2) DEDUCTION BY EMPLOYER.—Subsection (h) of section 83 is amended by striking "or (d)(2)" and inserting "(d)(2), or (i)".

(b) WITHHOLDING.—

(1) TIME OF WITHHOLDING.—Section 3401 is amended by adding at the end the following new subsection:

"(i) QUALIFIED STOCK FOR WHICH AN ELECTION IS IN EFFECT UNDER SECTION 83(i).—For purposes of subsection (a), qualified stock (as defined in section 83(i)) with respect to which an election is made under section 83(i) shall be treated as wages—

"(1) received on the earliest date described in section 83(i)(1)(B), and

"(2) in an amount equal to the amount included in income under section 83 for the taxable year which includes such date.".

(2) AMOUNT OF WITHHOLDING.—Section 3402 is amended by adding at the end the following new subsection: "(t) RATE OF WITHHOLDING FOR CERTAIN STOCK.—In the case of any qualified stock (as defined section 83(i)) with respect to which an election is made under section 83(i)—

"(1) the rate of tax under subsection (a) shall not be less than the

maximum rate of tax in effect under section 1, and

"(2) such stock shall be treated for purposes of section 3501(b) in the same manner as a non-cash fringe benefit.".

(c) COORDINATION WITH OTHER DEFERRED COMPENSATION RULES.—

(1) ELECTION TO APPLY DEFERRAL TO STATUTORY OPTIONS.—

(A) INCENTIVE STOCK OPTIONS.—Section 422(b) is amended by adding at the end the following: "Such term shall not include any option if an election is made under section 83(i) with respect to the stock received in connection with the exercise of such option.".

(B) EMPLOYEE STOCK PURCHASE PLANS.—Section 423(a) is amended by adding at the end the following flush sentence:

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"The preceding sentence shall not apply to any share of stock with respect to which an election is made under section 83(i).".

(2) EXCLUSION FROM DEFINITION OF NONQUALIFIED DEFERRED COMPENSATION PLAN.—Section 409B(b), as added by this Act, is amended by adding at the end the following new paragraph:

"(8) TREATMENT OF QUALIFIED STOCK.—An arrangement under which an employee may receive qualified stock (as defined in section 83(i)(2)) shall not be treated as a nonqualified deferred compensation plan.".

(d) INFORMATION REPORTING.—Section 6051(a) Is amended by striking "and" at the end of paragraph (13), by striking the period at the end of paragraph (14) and inserting a comma, and by inserting after paragraph (14) the following new paragraphs:

"(15) the amount excludable from gross income under subparagraph (A) of section 83(i)(1)

(16) the amount includible in gross income under subparagraph (B) of section 83(i)(1) with respect to an event described in such subparagraph which occurs in such calendar year, and

"(17) the aggregate amount of income which is being deferred pursuant to elections under section 83(i), determined as of the close of the calendar year.".

(e) PENALTY FOR FAILURE OF EMPLOYER TO PROVIDE NOTICE OF TAX CONSEQUENCES.—Section 6652 amended by adding at the end the following new subsection:

"(o) FAILURE TO PROVIDE NOTICE UNDER SECTION 83(i).—In the case of each failure to provide a notice as required by section 83(i)(6), at the time prescribed there for, unless it is shown that such failure is due to reasonable cause and not to willful neglect, there shall be paid, on notice and demand of the Secretary and in the same manner as tax, by the person failing to provide such notice , an amount equal to $100 for each such failure, but the total amount imposed on such person for all such failures during any calendar year shall not exceed $50,000.".

(f) EFFECTIVE DATES.—

(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section shall apply to stock attributable to options exercised, or restricted stock units settled, after December 31, 2017.

(2) REQUIREMENT TO PROVIDE NOTICE.—The amendments made by subsection (e) shall apply to failures after December 31, 2017.

(g) TRANSITION RULE.—Until such time as the Secretary (or the Secretary's

delegate) issue regulations or other guidance for purposes of implementing the requirements of paragraph (2)(C)(i)(II) of section 83(i) of the Internal Revenue Code of 1986 (as added by this section), or the requirements of paragraph (6) of such section, a corporation shall be treated as being in compliance with such requirements (respectively) if such corporation com plies with a reasonable good faith interpretation of such requirements.

"SEC. 965. TREATMENT OF DEFERRED FOREIGN INCOME UPON TRANSITION TO PARTICIPATION EXEMPTION SYSTEM OF TAXATION.

"(a) TREATMENT OF DEFERRED FOREIGN INCOME AS SUBPART F INCOME.—In the case of the last taxable year of a deferred foreign income corporation which begins before January 1, 2018, the subpart F income of such foreign corporation (as otherwise determined for such taxable year under section 952) shall be increased by the greater of—

"(1) the accumulated post-1986 deferred foreign income of such corporation determined as of November 2, 2017, or

"(2) the accumulated post-1986 deferred foreign income of such corporation determined as of December 31, 2017.

"(b) REDUCTION IN AMOUNTS INCLUDED IN GROSS INCOME OF UNITED STATES SHAREHOLDERS OF SPECIFIED FOREIGN CORPORATIONS WITH DEFICITS IN EARNINGS AND PROFITS.—

"(1) IN GENERAL.—In the case of a taxpayer which is a United States shareholder with respect to at least one deferred foreign income corporation and at least one E&P deficit foreign corporation, the amount which would (but for this subsection) be taken into account under section 951(a)(1) by reason of subsection (a) as such United States share-holder's pro rata share of the subpart F income of each deferred foreign income corporation shall be reduced (but not below zero) by the amount of such United States shareholder's aggregate foreign E&P deficit which is allocated under paragraph (2) to such deferred foreign income corporation.

"(2) ALLOCATION OF AGGREGATE FOREIGN E&P DEFICIT.—The aggregate foreign E&P deficit of any United States shareholder

shall be allocated among the deferred foreign income corporations of such United States shareholder in an amount which bears the same proportion to such aggregate as—

"(A) such United States shareholder's pro rata share of the accumulated post-1986 deferred foreign income of each such deferred foreign income corporation, bears to

"(B) the aggregate of such United States shareholder's pro rata share of the accumulated post-1986 deferred foreign income of all deferred foreign income corporations of such United States shareholder.

"(3) DEFINITIONS RELATED TO E&P DEFICITS.—For purposes of this subsection—

"(A) AGGREGATE FOREIGN E&P DEFICIT.—The term 'aggregate foreign E&P deficit' means, with respect to any United States shareholder, the aggregate of such shareholder's pro rata shares of the specified E&P deficits of the E&P deficit foreign corporations of such shareholder.

"(B) E&P DEFICIT FOREIGN CORPORATION.—The term 'E&P deficit foreign corporation' means, with respect to any taxpayer, any specified foreign corporation with respect to which such taxpayer is a United States shareholder, if—

"(i) such specified foreign corporation has a deficit in post-1986 earnings and profits, and

"(ii) as of November 2, 2017—

"(I) such corporation was a specified foreign corporation, and

"(II) such taxpayer was a United States shareholder of such corporation.

"(C) SPECIFIED E&P DEFICIT.—The term 'specified E&P deficit' means, with

respect to any E&P deficit foreign corporation, the amount of the deficit referred to in subparagraph (B).

"(4) NETTING AMONG UNITED STATES SHAREHOLDERS IN SAME AFFILIATED GROUP.—

"(A) IN GENERAL.—In the case of any affiliated group which includes at least one E&P net surplus shareholder and one E&P net deficit shareholder, the amount which would (but for this paragraph) be taken into account under section 951(a)(1) by reason of subsection (a) by each such E&P net surplus shareholder shall be reduced (but not below zero) by such share-holder's applicable share of the affiliated group's aggregate unused E&P deficit.

"(B) E&P NET SURPLUS SHARE-HOLDER.—For purposes of this paragraph, the term 'E&P net surplus shareholder' means any United States shareholder which would (determined without regard to this paragraph) take into account an amount greater than zero under section 951(a)(1) by reason of subsection (a).

"(C) E&P NET DEFICIT SHAREHOLDER.— For purposes of this paragraph, the term 'E&P net deficit shareholder' means any United States shareholder if—

"(i) the aggregate foreign E&P deficit with respect to such shareholder (as defined in paragraph (3)(A)), exceeds

"(ii) the amount which would (but for this subsection) be taken into account by such shareholder under section 951(a)(1) by reason of subsection (a).

"(D) AGGREGATE UNUSED E&P DEFICIT.— For purposes of this paragraph—

"(i) IN GENERAL.—The term 'aggregate unused E&P deficit' means, with respect to any affiliated group, the lesser of—

"(I) the sum of the excesses described in subparagraph (C),

determined with respect to each E&P net deficit shareholder in such group, or

"(II) the amount determined under subparagraph (E)(ii).

"(ii) REDUCTION WITH RESPECT TO E&P NET DEFICIT SHAREHOLDERS WHICH ARE NOT WHOLLY OWNED BY THE AFFILIATED GROUP.—If the group ownership percentage of any E&P net deficit shareholder is less than 100 percent, the amount of the excess described in subparagraph (C) which is taken into account under clause (i)(I) with respect to such E&P net deficit shareholder shall be such group ownership percentage of such amount.

"(E) APPLICABLE SHARE.—For purposes of this paragraph, the term 'applicable share' means, with respect to any E&P net surplus shareholder in any affiliated group, the amount which bears the same proportion to such group's aggregate unused E&P deficit as—

"(i) the product of—

"(I) such shareholder's group ownership percentage, multiplied by

"(II) the amount which would (but for this paragraph) be taken into account under section 951(a)(1) by reason of subsection (a) by such shareholder, bears to

"(ii) the aggregate amount determined under clause (i) with respect to all E&P net surplus shareholders in such group.

"(F) GROUP OWNERSHIP PERCENTAGE.— For purposes of this paragraph, the term 'group ownership percentage' means, with respect to any United States shareholder in any affiliated group, the percentage of the value of the stock of such United States shareholder which is held by other includible corporations in such affiliated group. Notwithstanding the preceding sentence, the group

ownership percentage of the common parent of the affiliated group is 100 percent. Any term used in this subparagraph which is also used in section 1504 shall have the same meaning as when used in such section.

"(c) APPLICATION OF PARTICIPATION EXEMPTION TO INCLUDED INCOME.—

"(1) IN GENERAL.—In the case of a United States shareholder of a deferred foreign income corporation, there shall be allowed as a deduction for the taxable year in which an amount is included in the gross income of such United States shareholder under section 951(a)(1) by reason of this section an amount equal to the sum of—

"(A) the United States shareholder's 5 percent rate equivalent percentage of the excess (if any) of—

"(i) the amount so included as gross income, over

"(ii) the amount of such United States shareholder's aggregate foreign cash position, plus

"(B) the United States shareholder's 12 percent rate equivalent percentage of so much of the amount described in subparagraph (A)(ii) as does not exceed the amount described in subparagraph (A)(i).

"(2) 5 AND 12 PERCENT RATE EQUIVALENT PERCENTAGES.—For purposes of this subsection—

"(A) 5 PERCENT RATE EQUIVALENT PERCENTAGE.—The term '5 percent rate equivalent percentage' means, with respect to any United States shareholder for any taxable year, the percentage which would result in the amount to which such percentage applies being subject to a 5 percent rate of tax determined by only taking into account a deduction equal to such percentage of such amount and the highest rate of tax specified in

section 11 for such taxable year. In the case of any taxable year of a United States shareholder to which section 15 applies, the highest rate of tax under section 11 before the effective date of the change in rates and the highest rate of tax under section 11 after the effective date of such change shall each be taken into account under the preceding sentence in the same proportions as the portion of such taxable year which is before and after such effective date, respectively.

"(B) 12 PERCENT RATE EQUIVALENT PERCENTAGE.—The term '12 percent rate equivalent percentage' means, with respect to any United States shareholder for any taxable year, the percentage determined under subparagraph (A) applied by substituting '12 percent rate of tax' for '5 percent rate of tax'.

"(3) AGGREGATE FOREIGN CASH POSITION.— For purposes of this subsection—

"(A) IN GENERAL.—The term 'aggregate foreign cash position' means, with respect to any United States shareholder, one-third of the sum of—

"(i) the aggregate of such United States shareholder's pro rata share of the cash position of each specified foreign corporation of such United States shareholder determined as of November 2, 2017,

"(ii) the aggregate described in clause (i) determined as of the close of the last taxable year of each such specified foreign corporation which ends before November 2, 2017, and

"(iii) the aggregate described in clause (i) determined as of the close of the taxable year of each such specified foreign corporation which precedes the taxable year referred to in clause (ii).

In the case of any foreign corporation which did not exist as of the

determination date described in clause (ii) or (iii), this subparagraph shall be applied separately to such foreign corporation by not taking into account such clause and by substituting 'one-half (100 percent in the case that both clauses (ii) and (iii) are disregarded)' for 'one-third'.

"(B) CASH POSITION.—For purposes of this paragraph, the cash position of any specified foreign corporation is the sum of—

"(i) cash held by such foreign corporation,

"(ii) the net accounts receivable of such foreign corporation, plus

"(iii) the fair market value of the following assets held by such corporation:

"(I) Actively traded personal property for which there is an established financial market.

"(II) Commercial paper, certificates of deposit, the securities of the Federal government and of any State or foreign government.

"(III) Any foreign currency.

"(IV) Any obligation with a term of less than one year.

"(V) Any asset which the Secretary identifies as being economically equivalent to any asset described in this subparagraph.

"(C) NET ACCOUNTS RECEIVABLE.—For purposes of this paragraph, the term 'net accounts receivable' means, with respect to any specified foreign corporation, the excess (if any) of—

"(i) such corporation's accounts receivable, over

"(ii) such corporation's accounts payable (determined consistent with the rules of section 461).

"(D) PREVENTION OF DOUBLE COUNTING.—

"(i) IN GENERAL.—The applicable percentage of each specified cash position of a specified foreign corporation shall not be taken into account by—

"(I) the United States shareholder referred to in clause (ii) with respect to such position, or

"(II) any United States shareholder which is an includible corporation in the same affiliated group as such United States shareholder referred to in clause (ii).

"(ii) SPECIFIED CASH POSITION.—For purposes of this subparagraph, the term 'specified cash position' means—

"(I) amounts described in subparagraph (B)(ii) to the extent such amounts are receivable from another specified foreign corporation with respect to any United States shareholder,

"(II)amounts described in subparagraph (B)(iii)(I) to the extent such amounts consist of an equity interest in another specified foreign corporation with respect to any United States shareholder, and

"(III) amounts described in subparagraph (B)(iii)(IV) to the extent that another specified foreign corporation with respect to any United States shareholder is obligated to repay such amount.

"(iii) APPLICABLE PERCENTAGE.— For purposes of this subparagraph, the term 'applicable percentage' means—

"(I) with respect to each specified cash position described in sub-clause (I) or (III) of clause (ii), the pro rata share of the United States shareholder referred to in clause (ii) with respect to the specified foreign corporation referred to in such clause, and

"(II) with respect to each specified cash position described in clause (ii)(II), the ratio (expressed as a percentage and not in excess of 100 percent) of the United States share-holder's pro rata share of the cash position of the specified foreign corporation referred to in such clause divided by the amount of such specified cash position.

For purposes of this subparagraph, a separate applicable percentage shall be determined under each of subclauses (I) and (II) with respect to each specified foreign corporation referred to in clause (ii) with respect to which a specified cash position is determined for the specified foreign corporation referred to in clause (i).

"(iv) REDUCTION WITH RESPECT TO AFFILIATED GROUP MEMBERS NOT WHOLLY OWNED BY THE AFFILIATED GROUP.—

For purposes of clause (i)(II), in the case of an includible corporation the group ownership percentage of which is less than 100 percent (as determined under subsection (b)(4)(F)), the amount not take into account by reason of such clause shall be the group ownership percentage of such amount (determined without regard to this clause).

"(E) CERTAIN BLOCKED ASSETS NOT TAKEN INTO ACCOUNT.—A cash position of a specified foreign corporation shall not be taken into account under subparagraph (A) if such position could not (as of the date that it would otherwise have been taken into account under clause (i), (ii), or (iii) of subparagraph (A)) have been distributed by such specified foreign corporation to United States shareholders of such specified foreign corporation because of currency or other restrictions or limitations imposed under the laws of any foreign country (within the meaning of section 964(b)).

"(F) CASH POSITIONS OF CERTAIN NON-CORPORATE ENTITIES TAKEN INTO ACCOUNT.—

An entity (other than a domestic corporation) shall be treated as a specified foreign corporation of a United States shareholder for purposes of determining such United States share-holder's aggregate foreign cash position if any interest in such entity is held by a specified foreign corporation of such United States shareholder (determined after application of this subparagraph) and such entity would be a specified foreign corporation of such United States shareholder if such entity were a foreign corporation

"(G) TIME OF CERTAIN DETERMINATIONS.—For purposes of this paragraph, the determination of whether a person is a United States shareholder, whether a person is a specified foreign corporation, and the pro rata share of a United States shareholder with respect to a specified foreign corporation, shall be determined as of the end of the taxable year described in subsection (a).

"(H) ANTI-ABUSE.—If the Secretary determines that the principal purpose of any transaction was to reduce the aggregate foreign cash position taken into account under this subsection, such transaction shall be disregarded for purposes of this subsection.

"(d) DEFERRED FOREIGN INCOME CORPORATION; ACCUMULATED POST-1986 DEFERRED FOREIGN IN-COME.—For purposes of this section—

"(1) DEFERRED FOREIGN INCOME CORPORATION.—The term 'deferred foreign income corporation' means, with respect to any United States shareholder, any specified foreign corporation of such United States shareholder which has accumulated post-1986 deferred foreign income (as of the date

referred to in paragraph (1) or (2) of subsection (a), whichever is applicable with respect to such foreign corporation) greater than zero.

"(2) ACCUMULATED POST-1986 DEFERRED FOREIGN INCOME.—The term 'accumulated post-1986 deferred foreign income' means the post-1986 earnings and profits except to the extent such earnings—

"(A) are attributable to income of the specified foreign corporation which is effectively connected with the conduct of a trade or business within the United States and subject to tax under this chapter, or

"(B) if distributed, would be excluded from the gross income of a United States shareholder under section 959.

To the extent provided in regulations or other guidance prescribed by the Secretary, in the case of any controlled foreign corporation which has shareholders which are not United States shareholders, accumulated post-1986 deferred foreign income shall be appropriately reduced by amounts which would be described in subparagraph (B) if such shareholders were United States shareholders.

"(3) POST-1986 EARNINGS AND PROFITS.—The term 'post-1986 earnings and profits' means the earnings and profits of the foreign corporation (computed in accordance with sections 964(a) and 986) accumulated in taxable years beginning after December 31, 1986, and determined—

"(A) as of the date referred to in paragraph (1) or (2) of subsection (a), whichever is applicable with respect to such foreign corporation,

"(B) without diminution by reason of dividends distributed during the

taxable year ending with or including such date, and

"(C) increased by the amount of any qualified deficit (within the meaning of section 952(c)(1)(B)(ii)) arising before January 1, 2018, which is treated as a qualified deficit (within the meaning of such section as amended by the Tax Cuts and Jobs Act) for purposes of such foreign corporation's first taxable year beginning after December 31, 2017.

"(e) SPECIFIED FOREIGN CORPORATION.—

"(1) IN GENERAL.—For purposes of this section, the term 'specified foreign corporation' means—

"(A) any controlled foreign corporation, and

"(B) any foreign corporation with respect to which one or more domestic corporations is a United States shareholder (determined without regard to section 958(b)(4)).

"(2) APPLICATION TO CERTAIN FOREIGN CORPORATIONS.—For purposes of sections 951 and 961, a foreign corporation described in paragraph (1)(B) shall be treated as a controlled foreign corporation solely for purposes of taking into account the subpart F income of such corporation under subsection (a) (and for purposes of applying subsection (f)).

"(3) EXCEPTION FOR PASSIVE FOREIGN INVESTMENT COMPANIES.—The term 'specified foreign corporation' shall not include any passive foreign investment company (within the meaning of subpart D of part VI of subchapter P) that is not a controlled foreign corporation.

"(f) DETERMINATIONS OF PRO RATA SHARE.—For purposes of this section, the

determination of any United States shareholder's pro rata share of any amount with respect to any specified foreign corporation shall be determined under rules similar to the rules of section 951(a)(2) by treating such amount in the same manner as subpart F income (and by treating such specified foreign corporation as a controlled foreign corporation).

"(g) DISALLOWANCE OF FOREIGN TAX CREDIT, ETC.—

"(1) IN GENERAL.—No credit shall be allowed under section 901 for the applicable percentage of any taxes paid or accrued (or treated as paid or accrued) with respect to any amount for which a deduction is allowed under this section.

"(2) APPLICABLE PERCENTAGE.—For purposes of this subsection, the term 'applicable percentage' means the amount (expressed as a percentage) equal to the sum of—

"(A) 85.7 percent of the ratio of—

"(i) the excess to which subsection (c)(1)(A) applies, divided by

"(ii) the sum of such excess plus the amount to which subsection (c)(1)(B) applies, plus

"(B) 65.7 percent of the ratio of—

"(i) the amount to which subsection (c)(1)(B) applies, divided by

"(ii) the sum described in subparagraph (A)(ii).

"(3) DENIAL OF DEDUCTION.—No deduction shall be allowed under this chapter for any tax for which credit is not allowable under section 901

by reason of paragraph (1) (determined by treating the taxpayer as having elected the benefits of subpart A of part III of subchapter N).

~~"(4) COORDINATION WITH SECTION 78.—Section 78 shall not apply to any tax for which credit is not allowable under section 901 by reason of paragraph (1).~~

"(4) COORDINATION WITH SECTION 78.— With respect to the taxes treated as paid or accrued by a domestic corporation with respect to amounts which are includible in gross income of such domestic corporation by reason of this section, section 78 shall apply only to so much of such taxes as bears the same proportion to the amount of such taxes as—

"(A) the excess of—

"(i) the amounts which are includible in gross income of such domestic corpora tion by reason of this section, over

"(ii) the deduction allowable under subsection (c) with respect to such amounts, bears to"(B) such amounts."

"(5) EXTENSION OF FOREIGN TAX CREDIT CARRYOVER PERIOD.—With respect to any taxes paid or accrued (or treated as paid or accrued) with respect to any amount for which a deduction is allowed under this section, section 904(c) shall be applied by substituting 'first 20 succeeding taxable years' for 'first 10 succeeding taxable years'.

"(h) ELECTION TO PAY LIABILITY IN INSTALLMENTS.—

"(1) IN GENERAL.—In the case of a United States shareholder of a deferred foreign income corporation, such United States shareholder may elect to pay the net tax liability under this section in 8 equal installments.

"(2) DATE FOR PAYMENT OF INSTALLMENTS.— If an election is made under paragraph (1), the first installment shall be paid on the due date (determined without regard to any extension of time for filing the return) for the return of tax for the taxable year described in subsection (a) and each succeeding installment shall be paid on the due date (as so determined) for the return of tax for the taxable year following the taxable year with respect to which the preceding installment was made.

"(3) ACCELERATION OF PAYMENT.—If there is an addition to tax for failure to timely pay any installment required under this subsection, a liquidation or sale of substantially all the assets of the taxpayer (including in a title 11 or similar case), a cessation of business by the taxpayer, or any similar circumstance, then the unpaid portion of all remaining installments shall be due on the date of such event (or in the case of a title 11 or similar case, the day before the petition is filed). The preceding sentence shall not apply to the sale of substantially all the assets of a taxpayer to a buyer if such buyer enters into an agreement with the Secretary under which such buyer is liable for the remaining installments due under this subsection in the same manner as if such buyer were the taxpayer.

"(4) PRORATION OF DEFICIENCY TO INSTALLMENTS.—If an election is made under paragraph (1) to pay the net tax liability under this section in installments and a deficiency has been assessed with respect to such net tax liability, the deficiency shall be prorated to the installments payable under paragraph (1). The part of the deficiency so prorated to any installment the date for payment of which has not arrived shall be collected at the same time as, and as a part of, such installment. The part of the deficiency so prorated to any installment the

date for payment of which has arrived shall be paid upon notice and demand from the Secretary. This subsection shall not apply if the deficiency is due to negligence, to intentional disregard of rules and regulations, or to fraud with intent to evade tax.

"(5) ELECTION.—Any election under paragraph (1) shall be made not later than the due date for the return of tax for the taxable year described in subsection (a) and shall be made in such manner as the Secretary may provide.

"(6) NET TAX LIABILITY UNDER THIS SECTION.—For purposes of this subsection—

"(A) IN GENERAL.—The net tax liability under this section with respect to any United States shareholder is the excess (if any) of—

"(i) such taxpayer's net income tax for the taxable year in which an amount is included in the gross income of such United States shareholder under section 951(a)(1) by reason of this section, over

"(ii) such taxpayer's net income tax for such taxable year determined—

"(I) without regard to this section, and

"(II) without regard to any income, deduction, or credit, properly attributable to a dividend received by such United States shareholder from any deferred foreign income corporation.

"(B) NET INCOME TAX.—The term 'net income tax' means the regular tax liability reduced by the credits allowed under subparts A, B, and D of part IV of subchapter A.

"(i) SPECIAL RULES FOR S CORPORATION SHAREHOLDERS.—

"(1) IN GENERAL.—In the case of any S corporation which is a United

States shareholder of a deferred foreign income corporation, each shareholder of such S corporation may elect to defer payment of such shareholder's net tax liability under this section with respect to such S corporation until the shareholder's taxable year which includes the triggering event with respect to such liability. Any net tax liability payment of which is deferred under the preceding sentence shall be assessed on the return as an addition to tax in the shareholder's taxable year which includes such triggering event.

"(2) TRIGGERING EVENT.—

"(A) IN GENERAL.—In the case of any shareholder's net tax liability under this section with respect to any S corporation, the triggering event with respect to such liability is whichever of the following occurs first:

"(i) Such corporation ceases to be an S corporation (determined as of the first day of the first taxable year that such corporation is not an S corporation).

"(ii) A liquidation or sale of substantially all the assets of such S corporation (including in a title 11 or similar case), a cessation of business by such S corporation, such S corporation ceases to exist, or any similar circumstance.

"(iii) A transfer of any share of stock in such S corporation by the taxpayer (including by reason of death, or otherwise).

"(B) PARTIAL TRANSFERS OF STOCK.—In the case of a transfer of less than all of the tax-payer's shares of stock in the S corporation, such transfer shall only be a triggering event with respect to so much of the taxpayer's net tax liability

under this section with respect to such S corporation as is properly allocable to such stock.

"(C) TRANSFER OF LIABILITY.—A transfer described in clause (iii) shall not be treated as a triggering event if the transferee enters into an agreement with the Secretary under which such transferee is liable for net tax liability with respect to such stock in the same manner as if such transferee were the taxpayer.

"(3) NET TAX LIABILITY.—A shareholder's net tax liability under this section with respect to any S corporation is the net tax liability under this section which would be determined under subsection (h)(6) if the only subpart F income taken into account by such shareholder by reason of this section were allocations from such S corporation.

"(4) ELECTION TO PAY DEFERRED LIABILITY IN INSTALLMENTS.—In the case of a taxpayer which elects to defer payment under paragraph (1)—

"(A) subsection (h) shall be applied separately with respect to the liability to which such election applies,

"(B) an election under subsection (h) with respect to such liability shall be treated as timely made if made not later than the due date for the return of tax for the taxable year in which the triggering event with respect to such liability occurs,

"(C) the first installment under subsection (h) with respect to such liability shall be paid not later than such due date (but determined without regard to any extension of time for filing the return), and

"(D) if the triggering event with respect to any net tax liability is described in paragraph (2)(A)(ii), an election under subsection (h) with

respect to such liability may be made only with the consent of the Secretary.

"(5) JOINT AND SEVERAL LIABILITY OF S CORPORATION.—If any shareholder of an S corporation elects to defer payment under paragraph (1), such S corporation shall be jointly and severally liable for such payment and any penalty, addition to tax, or additional amount attributable thereto.

"(6) EXTENSION OF LIMITATION ON COLLECTION.—Notwithstanding any other provision of law, any limitation on the time period for the collection of a liability deferred under this subsection shall not be treated as beginning before the date of the triggering event with respect to such liability.

"(7) ANNUAL REPORTING OF NET TAX LIABILITY.—

"(A) IN GENERAL.—Any shareholder of an S corporation which makes an election under paragraph (1) shall report the amount of such shareholder's deferred net tax liability on such shareholder's return of tax for the taxable year for which such election is made and on the return of tax for each taxable year thereafter until such amount has been fully assessed on such returns.

"(B) DEFERRED NET TAX LIABILITY.— For purposes of this paragraph, the term 'deferred net tax liability' means, with respect to any taxable year, the amount of net tax liability payment of which has been deferred under paragraph (1) and which has not been assessed on a return of tax for any prior taxable year.

"(C) FAILURE TO REPORT.—In the case of any failure to report any amount required to be reported under subparagraph (A) with respect to any taxable year before the due date for the return of tax for such taxable

year, there shall be assessed on such return as an addition to tax 5 percent of such amount.

"(8) ELECTION.—Any election under paragraph (1)—

"(A) shall be made by the shareholder of the S corporation not later than the due date for such shareholder's return of tax for the taxable year which includes the close of the taxable year of such S corporation in which the amount described in subsection (a) is taken into account, and

"(B) shall be made in such manner as the Secretary may provide.

"(j) REPORTING BY S CORPORATION.—Each S corporation which is a United States shareholder of a deferred foreign income corporation shall report in its return of tax under section 6037(a) the amount includible in its gross income for such taxable year by reason of this section and the amount of the deduction allowable by subsection (c). Any copy provided to a shareholder under section 6037(b) shall include a statement of such share-holder's pro rata share of such amounts.

"(k) INCLUSION OF DEFERRED FOREIGN INCOME UNDER THIS SECTION NOT TO TRIGGER RECAPTURE OF OVERALL FOREIGN LOSS, ETC.—For purposes of sections 904(f)(1) and 907(c)(4), in the case of a United States shareholder of a deferred foreign income corporation, such United States shareholder's taxable income from sources without the United States and combined foreign oil and gas income shall be determined without regard to this section.

"(l) REGULATIONS.—The Secretary may prescribe such regulations or other guidance as may be necessary or appropriate to carry out the provisions of this section.".

(b) CLERICAL AMENDMENT.—The table of section for subpart F of part III of

subchapter N of chapter 1 is amended by striking the item relating to section 965 and inserting the following:

> "Sec. 965. Treatment of deferred foreign income upon transition to participation exemption system of taxation.".

to taxable years of United States shareholders with or within which such taxable years of foreign corporations end.

Subtitle D—Prevention of Base Erosion

SEC. 4301. CURRENT YEAR INCLUSION BY UNITED STATES SHAREHOLDERS WITH FOREIGN HIGH RETURNS.

(a) IN GENERAL.—Subpart F of part III of subchapter N of chapter 1 is amended by inserting after section 951 the following new section:

"SEC. 951A. FOREIGN HIGH RETURN AMOUNT INCLUDED IN GROSS INCOME OF UNITED STATES SHAREHOLDERS.

"(a) IN GENERAL.—Each person who is a United States shareholder of any controlled foreign corporation for any taxable year of such United States shareholder shall include in gross income for such taxable year 50 percent of such shareholder's foreign high return amount for such taxable year.

"(b) FOREIGN HIGH RETURN AMOUNT.—For purposes of this section—

"(1) IN GENERAL.—The term 'foreign high return amount' means, with respect to any United States shareholder for any taxable year of such United States shareholder, the excess (if any) of—

"(A) such shareholder's net CFC tested income for such taxable year, over

"(B) the excess (if any) of—

"(i) the applicable percentage of the aggregate of such shareholder's pro rata share of the qualified business asset investment of each controlled foreign corporation with respect to which such shareholder is a United States shareholder for such

taxable year (determined for each taxable year of each such controlled foreign corporation which ends in or with such taxable year of such United States shareholder), over

"(ii) the amount of interest expense taken into account under subsection (c)(2)(A)(ii) in determining the share-holder's net CFC tested income for the taxable year.

"(2) APPLICABLE PERCENTAGE.—The term 'applicable percentage' means, with respect to any taxable year, the Federal short-term rate (determined under section 1274(d) for the month in which or with which such taxable year ends) plus 7 percentage points.

"(c) NET CFC TESTED INCOME.—For purposes of this section—

"(1) IN GENERAL.—The term 'net CFC tested income' means, with respect to any United States shareholder for any taxable year of such United States shareholder, the excess (if any) of—

"(A) the aggregate of such shareholder's pro rata share of the tested income of each controlled foreign corporation with respect to which such shareholder is a United States shareholder for such taxable year of such United States shareholder (determined for each taxable year of such controlled foreign corporation which ends in or with such taxable year of such United States shareholder), over

"(B) the aggregate of such shareholder's pro rata share of the tested loss of each controlled foreign corporation with respect to which such shareholder is a United States shareholder for such taxable year of such United States shareholder (determined for

each taxable year of such controlled foreign corporation which ends in or with such taxable year of such United States shareholder).

"(2) TESTED INCOME; TESTED LOSS.—For purposes of this section—

"(A) TESTED INCOME.—The term 'tested income' means, with respect to any controlled foreign corporation for any taxable year of such controlled foreign corporation, the excess (if any) of—

"(i) the gross income of such corporation determined without regard to—

"(I) any item of income which is effectively connected with the conduct by such corporation of a trade or business within the United States if subject to tax under this chapter,

"(II) any gross income taken into account in determining the subpart F income of such corporation,

"(III) except as otherwise provided by the Secretary, any amount excluded from the foreign personal holding company income (as defined in section 954) of such corporation by reason of section 954(c)(6) but only to the extent that any deduction allowable for the payment or accrual of such amount does not result in a reduction in the foreign high return amount of any United States shareholder (determined without regard to this subclause),

"(IV) any gross income excluded from the foreign personal holding company income (as defined in section 954) of such corporation by reason of subsection subsection (c)(2)(C), (h), or (i) of section 954,

"(V) any gross income excluded from the insurance income (as defined in section 953) of such corporation by reason of section 953(a)(2),

"(VI) any gross income excluded from foreign base company income (as defined in section 954) or insurance income (as defined in section 953) of such corporation by reason of section 954(b)(4),

"(VII) any dividend received from a related person (as defined in section 954(d)(3)), and

"(VIII) any commodities gross income of such corporation, over

"(ii) the deductions (including taxes) properly allocable to such gross income under rules similar to the rules of section 954(b)(5) (or which would be so properly allocable if such corporation had such gross income).

"(B) TESTED LOSS.—The term 'tested loss' means, with respect to any controlled foreign corporation for any taxable year of such controlled foreign corporation, the excess (if any) of the amount described in subparagraph (A)(ii) over the amount described in subparagraph (A)(i).

"(d) QUALIFIED BUSINESS ASSET INVESTMENT.— For purposes of this section—

"(1) IN GENERAL.—The term 'qualified business asset investment' means, with respect to any controlled foreign corporation for any taxable year of such controlled foreign corporation, the aggregate of the corporation's adjusted bases (determined as of the close of such taxable year and after any adjustments with respect to such taxable year) in specified tangible property—

"(A) used in a trade or business of the corporation, and

"(B) of a type with respect to which a deduction is allowable under section 168.

"(2) SPECIFIED TANGIBLE PROPERTY.—The term 'specified tangible property' means any tangible property to the extent such property is used in the production of tested income or tested loss.

"(3) PARTNERSHIP PROPERTY.—For purposes of this subsection, if a controlled foreign corporation holds an interest in a partnership at the close of such taxable year of the controlled foreign corporation, such controlled foreign corporation shall take into account under paragraph (1) the controlled foreign corporation's distributive share of the aggregate of the partnership's adjusted bases (determined as of such date in the hands of the partnership) in tangible property held by such partnership to the extent such property—

"(A) is used in the trade or business of the partnership, and

"(B) is used in the production of tested income or tested loss (determined with respect to such controlled foreign corporation's distributive share of income or loss with respect to such property).

For purposes of this paragraph, the controlled foreign corporation's distributive share of the adjusted basis of any property shall be the controlled foreign corporation's distributive share of income and loss with respect to such property.

"(4) DETERMINATION OF ADJUSTED BASIS.— For purposes of this subsection, the adjusted basis in any property shall be determined without regard to any provision of this title (or any other provision of law) which is enacted after the date of the enactment of this section.

"(5) REGULATIONS.—The Secretary shall issue such regulations or other

guidance as the Secretary determines appropriate to prevent the avoidance of the purposes of this subsection, including regulations or other guidance which provide for the treatment of property if—

"(A) such property is transferred, or held, temporarily, or

"(B) the avoidance of the purposes of this paragraph is a factor in the transfer or holding of such property.

"(e) COMMODITIES GROSS INCOME.—For purposes of this section—

" (1) COMMODITIES GROSS INCOME.—The term 'commodities gross income' means, with respect to any corporation, ~~the~~

''(A) gross income of such corporation from the disposition of commodities which are produced or extracted by such corporation~~.~~ (or a partnership in which such corporation is a partner), and

''(B) gross income of such corporation from the disposition of property which gives rise to income described in subparagraph (A).''.

"(2) COMMODITY.—The term 'commodity' means any commodity described in section 475(e)(2)(A) or section 475(e)(2)(D) (determined without regard to clause (i) thereof and by substituting 'a commodity described in subparagraph (A)' for 'such a commodity' in clause (ii) thereof).

"(f) TAXABLE YEARS FOR WHICH PERSONS ARE TREATED AS UNITED STATES SHAREHOLDERS OF CONTROLLED FOREIGN CORPORATIONS.—For purposes of this section—

"(1) IN GENERAL.—A United States shareholder of a controlled foreign

corporation shall be treated as a United States shareholder of such controlled foreign corporation for any taxable year of such United States shareholder if—

"(A) a taxable year of such controlled foreign corporation ends in or with such taxable year of such person, and

"(B) such person owns (within the meaning of section 958(a)) stock in such controlled foreign corporation on the last day, in such taxable year of such foreign corporation, on which the foreign corporation is a controlled foreign corporation.

"(2) TREATMENT AS A CONTROLLED FOREIGN CORPORATION.—Except for purposes of paragraph (1)(B) and the application of section 951(a)(2) to this section pursuant to subsection (g), a foreign corporation shall be treated as a controlled foreign corporation for any taxable year of such foreign corporation if such foreign corporation is a controlled foreign corporation at any time during such taxable year.

"(g) DETERMINATION OF PRO RATA SHARE.—For purposes of this section, pro rata shares shall be determined under the rules of section 951(a)(2) in the same manner as such section applies to subpart F income.

"(h) COORDINATION WITH SUBPART F.—

"(1) TREATMENT AS SUBPART F INCOME FOR CERTAIN PURPOSES.—Except as otherwise provided by the Secretary any foreign high return amount included in gross income under subsection (a) shall be treated in the same manner as an amount included under section 951(a)(1)(A) for purposes of applying sections 168(h)(2)(B), 535(b)(10), 851(b),

904(h)(1), 959, 961, 962(c), 962(d), 993(a)(1)(E), 996(f)(1), 1248(b)(1), 1248(d)(1), 6501(e)(1)(C), 6654(d)(2)(D), and 6655(e)(4).

"(2) ENTIRE FOREIGN HIGH RETURN AMOUNT TAKEN INTO ACCOUNT FOR PURPOSES OF CERTAIN SECTIONS.—For purposes of applying paragraph (1) with respect to sections 168(h)(2)(B), 851(b), 959, 961, 962(c), 962(d), 1248(b)(1), and 1248(d)(1), the foreign high return amount included in gross income under subsection (a) shall be determined by substituting '100 percent' for '50 percent' in such subsection.

"(3) ALLOCATION OF FOREIGN HIGH RETURN AMOUNT TO CONTROLLED FOREIGN CORPORATIONS.—For purposes of the sections referred to in paragraph (1), with respect to any controlled foreign corporation any pro rata amount from which is taken into account in determining the foreign high return amount included in gross income of a United States shareholder under subsection (a), the portion of such foreign high return amount which is treated as being with respect to such controlled foreign corporation is—

"(A) in the case of a controlled foreign corporation with tested loss, zero, and

"(B) in the case of a controlled foreign corporation with tested income, the portion of such foreign high return amount which bears the same ratio to such foreign high return amount as—

"(i) such United States shareholder's pro rata amount of the tested income of such controlled foreign corporation, bears to

"(ii) the aggregate amount determined under subsection (c)(1)(A) with respect to such United States shareholder.

"(4) COORDINATION WITH SUBPART F TO DENY DOUBLE BENEFIT OF LOSSES.—In the

case of any United States shareholder of any controlled foreign corporation, the amount included in gross income under section 951(a)(1)(A) shall be determined by increasing the earnings and profits of such controlled foreign corporation (solely for purposes of determining such amount) by an amount that bears the same ratio (not greater than 1) to such shareholder's pro rata share of the tested loss of such controlled foreign corporation as—

"(A) the aggregate amount determined under subsection (c)(1)(A) with respect to such shareholder, bears to

"(B) the aggregate amount determined under subsection (c)(1)(B) with respect to such shareholder.".

(b) FOREIGN TAX CREDIT.—

(1) APPLICATION OF DEEMED PAID FOREIGN TAX CREDIT.—Section 960, as amended by the preceding provisions of this Act, is amended by redesignating subsections (d) and (e) as subsections (e) and (f), respectively, and by inserting after subsection (c) the following new subsection:

"(d) DEEMED PAID CREDIT FOR TAXES PROPERLY ATTRIBUTABLE TO TESTED INCOME.—

"(1) IN GENERAL.—For purposes of this subpart, if any amount is includible in the gross income of a domestic corporation under section 951A, such domestic corporation shall be deemed to have paid foreign income taxes equal to 80 percent of—

"(A) such domestic corporation's foreign high return percentage, multiplied by

"(B) the aggregate tested foreign income taxes paid or accrued by

controlled foreign corporations with respect to which such domestic corporation is a United States shareholder.

"(2) FOREIGN HIGH RETURN PERCENTAGE.— For purposes of paragraph (1), the term 'foreign high return percentage' means, with respect to any domestic corporation, the ratio (expressed as a percentage) of—

"(A)such corporation's foreign high return amount (as defined in section 951A(b)), divided by

"(B) the aggregate amount determined under section 951A(c)(1)(A) with respect to such corporation.

"(3) TESTED FOREIGN INCOME TAXES.—For purposes of paragraph (1), the term 'tested foreign income taxes' means, with respect to any domestic corporation which is a United States shareholder of a controlled foreign corporation, the foreign income taxes paid or accrued by such foreign corporation which are properly attributable to gross income described in section 951A(c)(2)(A)(i).".

(2) APPLICATION OF FOREIGN TAX CREDIT LIMITATION.—

(A) SEPARATE BASKET FOR FOREIGN HIGH RETURN AMOUNT.—Section 904(d)(1) is amended by redesignating subparagraphs (A) and (B) as subparagraphs (B) and (C), respectively, and by inserting before subparagraph (B) (as so redesignated) the following new subparagraph:

"(A) any amount includible in gross income under section 951A,".

(B) NO CARRYOVER OF EXCESS TAXES.— Section 904(c) is amended by adding at the end the following: "This subsection shall not apply to taxes paid or accrued with respect to amounts described in subsection (d)(1)(A)."

(3) GROSS UP FOR DEEMED PAID FOREIGN TAX CREDIT.—Section 78, as amended by the preceding provisions of this Act, is amended—

(A) by striking "any taxable year, an amount" and inserting "any taxable year—

"(1) an amount", and

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

"(2) an amount equal to the taxes deemed to be paid by such corporation under section 960(d) for such taxable year (determined by substituting '100 percent' for '80 percent' in such section) shall be treated for purposes of this title (other than sections 959, 960, and 961) as an increase in the foreign high return amount of such domestic corporation under section 951A for such taxable year.".

(c) CONFORMING AMENDMENTS.—

(1) Section 170(b)(2)(D) is amended by striking "computed without regard to" and all that follows and inserting "computed—

"(i) without regard to—

"(I) this section,

"(II) part VIII (except section 248),

"(III) any net operating loss carryback to the taxable year under section 172,

"(IV) any capital loss carryback to the taxable year under section 1212(a)(1), and

"(ii) by substituting '100 percent' for '50 percent' in section 951A(a).".

(2) Section 246(b)(1) is amended by—

(A) striking “and without regard to” and inserting “without regard to”, and

(B) by striking the period at the end and inserting “, and by substituting ‘100 percent’ for ‘50 percent’ in section 951A(a).”.

(3) Section 469(i)(3)(F) is amended by striking “determined without regard to” and all that follows and inserting “determined—

“(i) without regard to—

“(I) any amount includible in gross income under section 86,

“(II) the amounts allowable as a deduction under section 219, and

“(III) any passive activity loss or any loss allowable by reason of subsection (c)(7), and

“(ii) by substituting ‘100 percent’ for ‘50 percent’ in section 951A(a).”.

(4) Section 856(c)(2) is amended by striking “and” at the end of subparagraph (H), by adding “and” at the end of subparagraph (I), and by inserting after subparagraph (I) the following new subparagraph:

“(J) amounts includible in gross income under section 951A(a);”.

(5) Section 856(c)(3)(D) is amended by striking “dividends or other distributions on, and gain”

and inserting “dividends, other distributions on, amounts includible in gross income under section 951A(a) with respect to, and gain”.

(6) The table of sections for subpart F of part III of subchapter N of chapter 1 is amended by inserting after the item relating to section 951 the following new item:

"Sec. 951A. Foreign high return amount included in gross income of United States shareholders.".

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years of foreign corporations beginning after December 31, 2017, and to taxable years of United States shareholders in which or with which such taxable years of foreign corporations end.

SEC. 4303. EXCISE TAX ON CERTAIN PAYMENTS FROM DOMESTIC CORPORATIONS TO RELATED FOREIGN CORPORATIONS; ELECTION TO TREAT SUCH PAYMENTS AS EFFECTIVELY CONNECTED INCOME.

(a) EXCISE TAX ON CERTAIN AMOUNTS FROM DOMESTIC CORPORATIONS TO FOREIGN AFFILIATES.—

(1) IN GENERAL.—Chapter 36 is amended by adding at the end the following new subchapter:

"Subchapter E—Tax on Certain Amounts to Foreign Affiliates

"Sec. 4491. Imposition of tax on certain amounts from domestic corporations to foreign affiliates.

"SEC. 4491. IMPOSITION OF TAX ON CERTAIN AMOUNTS FROM DOMESTIC CORPORATIONS TO FOREIGN AFFILIATES.

"(a) IN GENERAL.—There is hereby imposed on each specified amount paid or incurred by a domestic corporation to a foreign corporation which is a member of the same international financial reporting group as such domestic corporation a tax equal to the highest rate of tax in effect under section 11 multiplied by such amount.

"(b) BY WHOM PAID.—The tax imposed by subsection (a) shall be paid by the domestic corporation described in such subsection.

"(c) EXCEPTION FOR EFFECTIVELY CONNECTED IN-COME.—Subsection (a) shall not apply to so much of any specified amount as is effectively connected with the conduct of a trade or business within the United States if such amount is subject to tax under chapter 1. In the case of any amount which is treated as effectively connected with the conduct of a trade or business within the United States by reason of section 882(g), the preceding sentence shall apply to such amount only if the domestic corporation provides to the Secretary (at such time and in such form and manner as the Secretary may provide) a copy of the election made under section 882(g) by the foreign corporation referred to in subsection (a).

"(d) DEFINITIONS AND SPECIAL RULES.—Terms used in this section that are also used in section 882(g) shall have the same meaning as when used in such section and rules similar to the rules of paragraphs (5) and (6) of such section shall apply for purposes of this section.".

(2) DENIAL OF DEDUCTION FOR TAX IM-POSED.—Section 275(a) is amended by inserting after paragraph (6) the following new paragraph:

"(7) Taxes imposed by section 4491.".

(3) CLERICAL AMENDMENT.—The table of subchapters for chapter 36 is

amended by adding at the end the following new item:

"SUBCHAPTER E. TAX ON CERTAIN AMOUNTS TO FOREIGN AFFILIATES.".

(b) ELECTION TO TREAT CERTAIN PAYMENTS FROM DOMESTIC CORPORATIONS TO RELATED FOREIGN CORPORATIONS AS EFFECTIVELY CONNECTED INCOME.—Section 882 is amended by adding at the end the following new subsection:

"(g) ELECTION TO TREAT CERTAIN PAYMENTS FROM DOMESTIC CORPORATIONS TO RELATED FOREIGN CORPORATIONS AS EFFECTIVELY CONNECTED INCOME.— "(1) IN GENERAL.—In the case of any specified amount paid or incurred by a domestic corporation, or with respect to, to a foreign corporation which is a member of the same international financial reporting group as such domestic corporation and which has elected to be subject to the provisions of this subsection—

"(A) such amount shall be taken into account (other than for purposes of sections 245, 245A, and 881) in the taxable year of such foreign corporation during which the amount is paid or incurred as if such foreign corporation were engaged in a trade or business within the United States and had a permanent establishment in the United States during the taxable year and as if such payment were income effectively connected with the conduct of a trade or business within the United States and were attributable to such permanent establishment,

"(B) for purposes of subsection (c)(1)(A), no deduction shall be allowed with respect to such amount and such subsection shall be applied without regard to such amount, and

"(C) the foreign corporation shall be allowed a deduction for the taxable year referred to in subparagraph (A) equal to the ~~deemed expenses with respect such amount.~~product of—

"(i) the sum of 104 percent plus the annual Federal short-term rate (determined under section 1274(d)) for the last month ending before the beginning of the taxable year, multiplied by

"(ii) the deemed expenses with respect to such amount.".

"(2) SPECIFIED AMOUNT.—For purposes of this subsection—

"(A) IN GENERAL.—The term 'specified amount' means any amount which is, with respect to the payor, allowable as a deduction or includible in costs of goods sold, inventory, or the basis of a depreciable or amortizable asset.

"(B) EXCEPTIONS.—The term 'specified amount' shall not include—

"(i) interest,

"(ii) any amount paid or incurred for the acquisition of any ~~commodity~~security described in section 475~~(e)(2)(A) or section 475(e)(2)(D) (determined without regard to subclause (i) thereof)~~(c)(2) or any commodity described in section 475(e)(2),''.

"(iii) except as provided in subparagraph (C), any amount with respect to which tax is imposed under section 881(a), and

"(iv) in the case of a payor which has elected to use a services cost method for purposes of section 482, any amount paid or incurred for services if such amount is the total services cost with no markup.

"(C) AMOUNTS NOT TREATED AS EFFECTIVELY CONNECTED TO EXTENT OF ~~GROSS-BASIS~~

GROSS BASIS TAX.—Subparagraph (B)(iii) shall ~~not~~only apply to so much of any specified amount ~~to~~as bears the ~~extent of the same~~ proportion ~~of~~to such amount as—".

"(i) the rate of tax imposed under section 881(a) with respect to such amount, bears to

"(ii) 30 percent.

"(3) DEEMED EXPENSES.—

"(A) IN GENERAL.—The deemed expenses with respect to any specified amount received by a foreign corporation during any reporting year is the amount of expenses such that the net income ratio of such foreign corporation with respect to such amount (taking into account only such specified amount and deemed expenses) is equal to the net income ratio of the international financial reporting group determined for such reporting year with respect to the product line to which the specified amount relates.

"(B) NET INCOME RATIO.—For purposes of this paragraph, the term 'net income ratio' means the ratio of—

"(i) net income determined without regard to interest income, interest expense, and income taxes, divided by

"(ii) revenues.

"(C) METHOD OF DETERMINATION.— Amounts described in subparagraph (B) shall be determined with respect to the international financial reporting group on the basis of the consolidated financial statements referred to in paragraph (4)(A)(i) and the ~~book~~books and records of the ~~internal~~members of the international financial reporting group which are used in preparing such statements~~.~~, taking into account only revenues and expenses of the members of such group (other than the members of such group which are treated as

domestic for purposes of this subsection) derived from, or incurred with respect to—

''(i) persons who are not members of such group, and

''(ii) members of such group which are treated as a domestic corporation for purposes of this subsection.''.

"(4) INTERNATIONAL FINANCIAL REPORTING GROUP.—For purposes of this subsection—

"(A) IN GENERAL.—The term 'international financial reporting group' means any group of entities, with respect to any specified amount, if such amount is paid or incurred during a reporting year of such group with respect to which—

"(i) such group prepares consolidated financial statements (within the meaning of section 163(n)(4)) with respect to such year, and

"(ii) the average annual aggregate payment amount of such group for the 3-reporting-year period ending with such reporting year exceeds $100,000,000.

"(B) ANNUAL AGGREGATE PAYMENT AMOUNT.—The term 'annual aggregate payment amount' means, with respect to any reporting year of the group referred to in subparagraph (A)(i), the aggregate specified amounts to which paragraph (1) applies (or would apply if such group were an international financial reporting group).

"(C) APPLICATION OF CERTAIN RULES.— Rules similar to the rules of subparagraphs (A), (B), and (D) of section 448(c)(3) shall apply for purposes of this paragraph.

"(5) TREATMENT OF PARTNERSHIPS.—Any specified amount paid, incurred, or received by a partnership which is a member of any international financial

reporting group (and any amount treated as paid, incurred, or received by a partnership under this paragraph) shall be treated for purposes of this subsection as amounts paid, incurred, or received, respectively, by each partner of such partnership in an amount equal to such partner's distributive share of the items of income, gain, deduction, or loss to which such amounts relate.

"(6) TREATMENT OF AMOUNTS IN CONNECTION WITH UNITED STATES TRADE OR BUSINESS.—Any

specified amount paid, incurred, or received by a foreign corporation in connection with the conduct of a trade or business within the United States (other than a trade or business it is deemed to conduct pursuant to this subsection) shall be treated for purposes of this subsection as an amount paid, incurred, or received, respectively, by a domestic corporation. For purposes of the preceding sentence, a foreign corporation shall be deemed to pay, incur, and receive amounts with respect to a trade or business it conducts within the United States (other than a trade or business it is deemed to conduct pursuant to this subsection) to the extent such foreign corporation would be treated as paying, incurring, or receiving such amounts from such trade or business if such trade or business were a domestic corporation.

"(7) JOINT AND SEVERAL LIABILITY OF MEMBERS OF INTERNAL FINANCIAL REPORTING GROUP.—In the case of any underpayment with respect to any taxable year of a foreign corporation which is a member of an international financial accounting group, each domestic corporation which is a member of such group at any time during such taxable year shall be jointly and severally liable for—

"(A) so much of such underpayment as does not exceed the excess (if any) of such underpayment over the amount of such underpayment determined without regard to this subsection, and

"(B) any penalty, addition to tax, or additional amount attributable to the amount described in subparagraph (A).

"(8) ~~D~~ISALLOWANCETREATMENT OF FOREIGN ~~TAX CREDIT, ETC~~TAXES.—

"(A) ALLOWANCE OF CREDIT.—In the case of any foreign corporation which receives specified amounts to which paragraph (1) applies during any taxable year, there shall be allowed as a credit against the tax imposed by this chapter for such taxable year an amount equal to the product of—

"(i) the excess (if any) of—

"(I) the aggregate specified amounts received by such foreign corporation to which paragraph (1) applies for such taxable year, over

"(II) the aggregate amount of deductions allowed under paragraph (1)(C) with respect to such foreign corporation for such taxable year multiplied by

"(ii) the lesser of—

"(I) 50 percent of the international financial reporting group's effective foreign tax rate for the reporting year during which or with which such taxable year ends, or "

(II) 20 percent.

"~~"~~(~~A~~B) ~~IN GENERAL~~DISALLOWANCE OF FOREIGN TAX CREDIT.—No credit shall be allowed under section 901 for any taxes paid or accrued (or treated as paid or accrued) with respect to any specified amount to which paragraph (1) applies.

"~~"~~(~~B~~C) DENIAL OF DEDUCTION.—No deduction shall be allowed under this chapter for any tax for which credit is not allowable under section 901 by reason of

~~paragraph~~subparagraph (~~1~~B) (determined by treating the taxpayer as having elected the benefits of subpart A of part III of subchapter N).

"(D) EFFECTIVE FOREIGN TAX RATE.— For purposes of this paragraph, the term 'effective foreign tax rate' means, with respect to any reporting year of any international financial reporting group, the ratio (expressed as a percentage and not less than zero) of—"(i) the foreign income taxes paid by the international financial reporting group during such reporting year, divided by"(ii) the net income of the international financial reporting group determined without regard to interest income, interest expense, and income taxes.

Amounts described in this subparagraph shall be determined as provided in paragraph (3)(C)

"(E) FOREIGN INCOME TAXES.—For purposes of this paragraph, the term 'foreign income taxes' means any income, war profits, or excess profits taxes paid to any foreign country or possession of the United States.".

"(9) RULES RELATED TO ELECTION.—Any election under paragraph (1) shall—

"(A) be made at such time and in such form and manner as the Secretary may provide, and

"(B) apply for the taxable year for which the election is made and all subsequent taxable years unless revoked with the consent of the Secretary.

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

"(A) to provide for the proper determination of product lines, and

"(B) to prevent the avoidance of the purposes of this subsection through

the use of conduit transactions or by other means.”.

(c) REPORTING REQUIREMENTS.—

(1) REPORTING BY FOREIGN CORPORATION.— Section 6038C(b) is amended to read as follows: “(b) REQUIRED INFORMATION.—

“(1) IN GENERAL.—The information described in this subsection is—

“(A) the information described in section 6038A(b), and

“(B) such other information as the Secretary may prescribe by regulations relating to any item not directly connected with a transaction for which information is required under subparagraph (A).

“(2) CERTAIN PAYMENTS FROM RELATED DOMESTIC CORPORATIONS.—

“(A) IN GENERAL.—In the case of any reporting corporation that receives during the taxable year any amount to which section 882(g)(1) applies, the information described in this subsection shall include, with respect to each member of the international financial reporting group from which any such amount is received—

“(i) the name and taxpayer identification number of such member,

“(ii) the aggregate amounts received from such member,

“(iii) the product lines to which such amounts relate, the aggregate amounts relating to each such product line, and the net income ratio for each such product line (determined under section 882(g)(3)(B) with respect to the international financial reporting group), and

“(iv) a summary of any changes in financial accounting methods that affect the computation of any net income ratio described in clause (iii).

"(B) DEFINITIONS AND SPECIAL RULES.—

Terms used in this paragraph that are also used in section 882(g) shall have the same meaning as when used in such section and rules similar to the rules of paragraphs (5) and (6) of such section shall apply for purposes of this paragraph.".

(2) REPORTING BY DOMESTIC GROUP MEMBERS.—

(A) IN GENERAL .—Subpart A of part III of subchapter A of chapter 61 is amended by inserting after section 6038D the following new section:

"SEC. 6038E. INFORMATION WITH RESPECT TO CERTAIN PAYMENTS FROM DOMESTIC CORPORATIONS TO RELATED FOREIGN CORPORATIONS.

"(a) IN GENERAL.—In the case of any domestic corporation which pays or incurs any amount to which section 882(g)(1) applies, such person shall—

"(1) make a return according to the forms and regulations prescribed the Secretary, setting forth the information described in subsection (b), and

"(2) maintain (at the location, in the manner, and to the extent prescribed in regulations) such records as may be appropriate to determine liability for tax pursuant to paragraphs (1) and (7) of section 882(g).

"(b) REQUIRED INFORMATION.—The information described in this subsection is—

"(1) the name and taxpayer identification number of the common parent of the international financial reporting group in which such domestic corporation is a member, and

"(2) with respect to any person who receives an amount described in subsection (a) from such domestic corporation—

"(A) the name and taxpayer identification number of such person,

"(B) the aggregate amounts received by such person,

"(C) the product lines to which such amounts relate, the aggregate amounts relating to each such product line, and the net income ratio for each such product line (determined under section 882(g)(3)(B) with respect to the international financial reporting group), and

"(D) a summary of any changes in financial accounting methods that affect the computation of any net income ratios described in subparagraph (C).

"(c) DEFINITIONS AND SPECIAL RULES.—Terms used in this paragraph that are also used in section 882(g) shall have the same meaning as when used in such section and rules similar to the rules of paragraphs (5) and (6) of such section shall apply for purposes of this paragraph.".

(B) CLERICAL AMENDMENT.—The table of sections for subpart A of part III of subchapter A of chapter 61 is amended by inserting after the item relating to section 6038D the following new item:

"Sec. 6038E. Information with respect to certain payments from domestic corporations to related foreign corporations.".

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to amounts paid or incurred after December 31, 2018.

SEC. 5103. EXCISE TAX BASED ON INVESTMENT INCOME OF PRIVATE COLLEGES AND UNIVERSITIES.

(a) IN GENERAL.—Chapter 42 is amended by adding at the end the following new subchapter:

"Subchapter H—Excise Tax Based on Investment Income of Private Colleges and Universities

"SEC. 4969. EXCISE TAX BASED ON INVESTMENT INCOME OF PRIVATE COLLEGES AND UNIVERSITIES.

"(a) TAX IMPOSED.—There is hereby imposed on each applicable educational institution for the taxable year a tax equal to 1.4 percent of the net investment income of such institution for the taxable year.

"(b) APPLICABLE EDUCATIONAL INSTITUTION.—For purposes of this subchapter—

"(1) IN GENERAL.—The term 'applicable educational institution' means an eligible educational institution (as defined in section 25A(e)(3))—

"(A) which has at least 500 students during the preceding taxable year,

"(B) which is not described in the first sentence of section 511(a)(2)(B), and

"(C) the aggregate fair market value of the assets of which at the end of the preceding taxable year (other than those assets which are used directly in carrying out the institution's exempt purpose) is at least $~~100,000~~250,000 per student of the institution.

"(2) STUDENTS.—For purposes of paragraph (1), the number of students of an institution shall be based on the daily average number of full-time students attending such institution (with part-time students taken into account on a full-time student equivalent basis).

"(c) NET INVESTMENT INCOME.—For purposes of this section, net investment income shall be determined under rules similar to the rules of section 4940(c).".

(b) CLERICAL AMENDMENT.—The table of subchapters for chapter 42 is amended by adding at the end the following new item:

"SUBCHAPTER H—EXCISE TAX BASED ON INVESTMENT INCOME OF PRIVATE COLLEGES AND UNIVERSITIES".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to

taxable years beginning after December 31, 2017.