Amendment to the Amendment in the Nature of a Substitute to H.R. 1
Offered by Mr. Brady of Texas

The amendment makes improvements to the amendment in the nature of a substitute relating to the exclusion from income for employer-provided dependent care assistance, protects the integrity of the Earned Income Tax Credit program, focuses the excise tax on net investment income of educational institutions on application to institutions with endowment assets of at least $250,000 per student, ensures that other changes in the bill do not disturb the characterization for tax purposes of income earned by songwriters when they sell their catalogue of compositions, ensures that employees of start-up companies can share in the success of the business they are helping to build by better aligning the recognition of stock-based compensation for tax purposes, imposes an additional holding period requirement with respect to gains on a carried interest, and better tailors the bill's international base erosion rules.

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

In section 1005(a), redesignate paragraphs (1) through (37) as paragraphs (3) through (39), respectively, and insert before such paragraph (3) (as so redesignated) the following:

1 (1) Section 32(b)(2)(B)(ii)(II) is amended by
2 striking " section 1(f)(3) for the calendar year in
3 which the taxable year begins determined by sub-
4 stituting 'calendar year 2008' for 'calendar year
5 1992' in subparagraph (B) thereof" and inserting
6 "section 1(c)(2)(A) for the calendar year in which
7 the taxable year begins determined by substituting
8 'calendar year 2008' for 'calendar year 2016' in
9 clause (ii) thereof".
10 (2) Section 32(j)(1)(B) is amended—
11 (A) in the matter preceding clause (i), by
12 striking "section 1(f)(3)" and inserting "section
13 1(c)(2)(A)",
14 (B) in clause (i), by striking "for 'calendar
15 year 1992' in subparagraph (B) thereof" and

1 inserting "for 'calendar year 2016' in clause (ii)
2 thereof", and
3 (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".

Page 76, after line 20, insert the following:

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

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

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

1 "(i) EMPLOYER REPORTING OF WAGES.—Every per-
2 son required to deduct and withhold from an employee a
3 tax under section 3101 or 3402 shall include on each re-
4 turn or statement submitted with respect to such tax, the
5 name and address of such employee and the amount of
6 wages for such employee on which such tax was with-
7 held.".

8 (c) EFFECTIVE DATE.—

9 (1) IN GENERAL.—Except as provided in para-
10 graph (2), the amendments made by this section
11 shall apply to taxable years ending after the date of
12 the enactment of this Act.

13 (2) REPORTING.—The Secretary of the Treas-
14 ury, or his designee, may delay the application of the
15 amendment made by subsection (b) for such period
16 as such Secretary (or designee) determines to be
17 reasonable to allow persons adequate time to modify
18 electronic (or other) systems to permit such person
19 to comply with the requirements of such amend-
20 ment.

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

23 (a) SUBSTANTIATION REQUIREMENT.—Section 32 is
24 amended by adding at the end the following new sub-
25 section:

1 "(n) INCONSISTENT INCOME REPORTING.—If the
2 earned income of a taxpayer claimed on a return for pur-
3 poses of this section is not substantiated by statements
4 or returns under sections 6051, 6052, 6041(a), or 6050W
5 with respect to such taxpayer, the Secretary may require
6 such taxpayer to provide books and records to substantiate
7 such income, including for the purpose of preventing
8 fraud.".

9 (b) EXCLUSION OF UNSUBSTANTIATED AMOUNT
10 FROM EARNED INCOME.—Section 32(c)(2) is amended by
11 adding at the end the following new subparagraph:

12 "(C) EXCLUSION.—In the case of a tax-
13 payer with respect to which there is an incon-
14 sistency described in subsection (n) who fails to
15 substantiate such inconsistency to the satisfac-
16 tion of the Secretary, the term 'earned income'
17 shall not include amounts to the extent of such
18 inconsistency.".

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

Page 138, strike line 19, and all that follows through page 139, line 24, and insert the following:

1 **SEC. 1404. SUNSET OF EXCLUSION FOR DEPENDENT CARE**
2 **ASSISTANCE PROGRAMS.**

3 (a) IN GENERAL.—Section 129 is amended by adding
4 at the end the following new subsection:

5 "(f) TERMINATION.—Subsection (a) shall not apply
6 to taxable years beginning after December 31, 2022.".

7 (b) EFFECTIVE DATE.—The amendment made by
8 this section shall take effect on the date of the enactment
9 of this Act.

Page 246, strike lines 7 through 20, and insert the following:

10 (b) CONFORMING AMENDMENT.—Section
11 1231(b)(1)(C) is amended by inserting "a patent, inven-
12 tion, model or design (whether or not patented), a secret
13 formula or process," before "a copyright".

14 (c) EFFECTIVE DATE.—The amendments made by
15 this section shall apply to dispositions after December 31,
16 2017.

Page 248, after line 3, insert the following:

1 **SEC. 3314. RECHARACTERIZATION OF CERTAIN GAINS IN**
2 **THE CASE OF PARTNERSHIP PROFITS INTER-**
3 **ESTS HELD IN CONNECTION WITH PERFORM-**
4 **ANCE OF INVESTMENT SERVICES.**

5 (a) IN GENERAL.—Part IV of subchapter O of chap-
6 ter 1 is amended—

7 (1) by redesignating section 1061 as section
8 1062, and

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

11 **"SEC. 1061. PARTNERSHIP INTERESTS HELD IN CONNEC-**
12 **TION WITH PERFORMANCE OF SERVICES.**

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

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

19 "(2) the taxpayer's net long-term capital gain
20 with respect to such interests for such taxable year
21 computed by applying paragraphs (3) and (4) of sec-
22 tions 1222 by substituting '3 years' for '1 year',

23 shall be treated as short-term capital gain.

24 "(b) SPECIAL RULE.—To the extent provided by the
25 Secretary, subsection (a) shall not apply to income or gain

1 attributable to any asset not held for portfolio investment
2 on behalf of third party investors.
3 "(c) APPLICABLE PARTNERSHIP INTEREST.—For
4 purposes of this section—
5 "(1) IN GENERAL.—Except as provided in this
6 paragraph or paragraph (4), the term 'applicable
7 partnership interest' means any interest in a part-
8 nership which, directly or indirectly, is transferred to
9 (or is held by) the taxpayer in connection with the
10 performance of substantial services by the taxpayer,
11 or any other related person, in any applicable trade
12 or business. The previous sentence shall not apply to
13 an interest held by a person who is employed by an-
14 other entity that is conducting a trade or business
15 (other than an applicable trade or business) and
16 only provides services to such other entity.
17 "(2) APPLICABLE TRADE OR BUSINESS.—The
18 term 'applicable trade or business' means any activ-
19 ity conducted on a regular, continuous, and substan-
20 tial basis which, regardless of whether the activity is
21 conducted in one or more entities, consists, in whole
22 or in part, of—
23 "(A) raising or returning capital, and
24 "(B) either—

1 "(i) investing in (or disposing of)
2 specified assets (or identifying specified as-
3 sets for such investing or disposition), or
4 "(ii) developing specified assets.
5 "(3) SPECIFIED ASSET.—The term 'specified
6 asset' means securities (as defined in section
7 475(c)(2) without regard to the last sentence there-
8 of), commodities (as defined in section 475(e)(2)),
9 real estate held for rental or investment, cash or
10 cash equivalents, options or derivative contracts with
11 respect to any of the foregoing, and an interest in
12 a partnership to the extent of the partnership's pro-
13 portionate interest in any of the foregoing.
14 "(4) EXCEPTIONS.—The term 'applicable part-
15 nership interest' shall not include—
16 "(A) any interest in a partnership directly
17 or indirectly held by a corporation, or
18 "(B) any capital interest in the partner-
19 ship which provides the taxpayer with a right to
20 share in partnership capital commensurate
21 with—
22 "(i) the amount of capital contributed
23 (determined at the time of receipt of such
24 partnership interest), or

1 "(ii) the value of such interest subject
2 to tax under section 83 upon the receipt or
3 vesting of such interest.
4 "(5) THIRD PARTY INVESTOR.—The term 'third
5 party investor' means a person who—
6 "(A) holds an interest in the partnership
7 which does not constitute property held in con-
8 nection with an applicable trade or business;
9 and
10 "(B) is not (and has not been) actively en-
11 gaged, and is (and was) not related to a person
12 so engaged, in (directly or indirectly) providing
13 substantial services described in paragraph (1)
14 for such partnership or any applicable trade or
15 business.
16 "(d) TRANSFER OF APPLICABLE PARTNERSHIP IN-
17 TEREST TO RELATED PERSON.—
18 "(1) IN GENERAL.—If a taxpayer transfers any
19 applicable partnership interest, directly or indirectly,
20 to a person related to the taxpayer, the taxpayer
21 shall include in gross income (as short term capital
22 gain) the excess (if any) of—
23 "(A) so much of the taxpayer's long-term
24 capital gains with respect to such interest for
25 such taxable year attributable to the sale or ex-

1 change of any asset held for not more than 3
2 years as is allocable to such interest, over
3 "(B) any amount treated as short term
4 capital gain under subsection (a) with respect
5 to the transfer of such interest.
6 "(2) RELATED PERSON.—For purposes of this
7 paragraph, a person is related to the taxpayer if—
8 "(A) the person is a member of the tax-
9 payer's family within the meaning of section
10 318(a)(1), or
11 "(B) the person performed a service within
12 the current calendar year or the preceding three
13 calendar years in any applicable trade or busi-
14 ness in which or for which the taxpayer per-
15 formed a service.
16 "(e) REPORTING.—The Secretary shall require such
17 reporting (at the time and in the manner prescribed by
18 the Secretary) as is necessary to carry out the purposes
19 of this section.
20 "(f) REGULATIONS.—The Secretary shall issue such
21 regulations or other guidance as is necessary or appro-
22 priate to carry out the purposes of this section".
23 (b) COORDINATION WITH SECTION 83.—Subsection
24 (e) of section 83 is amended by striking "or" at the end
25 of paragraph (4), by striking the period at the end of para-

1 graph (5) and inserting ", or", and by adding at the end
2 the following new paragraph:
3 "(6) a transfer of an applicable partnership in-
4 terest to which section 1061 applies.".
5 (c) CLERICAL AMENDMENT.—The table of sections
6 for part IV of subchapter O of chapter 1 is amended by
7 striking the item relating to 1061 and inserting the fol-
8 lowing new items:

"Sec. 1061. Partnership interests held in connection with performance of services.
"Sec. 1062. Cross references.".

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

Page 309, after line 21, insert the following:

12 **SEC. 3804. TREATMENT OF QUALIFIED EQUITY GRANTS.**
13 (a) IN GENERAL.—
14 (1) ELECTION TO DEFER INCOME.—Section 83
15 is amended by adding at the end the following new
16 subsection:
17 "(i) QUALIFIED EQUITY GRANTS.—
18 "(1) IN GENERAL.—For purposes of this sub-
19 title, if qualified stock is transferred to a qualified
20 employee who makes an election with respect to such
21 stock under this subsection—

1 "(A) except as provided in subparagraph
2 (B), no amount shall be included in income
3 under subsection (a) for the first taxable year
4 in which the rights of the employee in such
5 stock are transferable or are not subject to a
6 substantial risk of forfeiture, whichever is appli-
7 cable, and
8 "(B) an amount equal to the amount
9 which would be included in income of the em-
10 ployee under subsection (a) (determined without
11 regard to this subsection) shall be included in
12 income for the taxable year of the employee
13 which includes the earliest of—
14 "(i) the first date such qualified stock
15 becomes transferable (including transfer-
16 able to the employer),
17 "(ii) the date the employee first be-
18 comes an excluded employee,
19 "(iii) the first date on which any stock
20 of the corporation which issued the quali-
21 fied stock becomes readily tradable on an
22 established securities market (as deter-
23 mined by the Secretary, but not including
24 any market unless such market is recog-
25 nized as an established securities market

1 by the Secretary for purposes of a provi-
2 sion of this title other than this sub-
3 section),
4 "(iv) the date that is 5 years after the
5 first date the rights of the employee in
6 such stock are transferable or are not sub-
7 ject to a substantial risk of forfeiture,
8 whichever occurs earlier, or
9 "(v) the date on which the employee
10 revokes (at such time and in such manner
11 as the Secretary may provide) the election
12 under this subsection with respect to such
13 stock.
14 "(2) QUALIFIED STOCK.—
15 "(A) IN GENERAL.—For purposes of this
16 subsection, the term 'qualified stock' means,
17 with respect to any qualified employee, any
18 stock in a corporation which is the employer of
19 such employee, if—
20 "(i) such stock is received—
21 "(I) in connection with the exer-
22 cise of an option, or
23 "(II) in settlement of a restricted
24 stock unit, and

1 "(ii) such option or restricted stock
2 unit was provided by the corporation—
3 "(I) in connection with the per-
4 formance of services as an employee,
5 and
6 "(II) during a calendar year in
7 which such corporation was an eligible
8 corporation.
9 "(B) LIMITATION.—The term 'qualified
10 stock' shall not include any stock if the em-
11 ployee may sell such stock to, or otherwise re-
12 ceive cash in lieu of stock from, the corporation
13 at the time that the rights of the employee in
14 such stock first become transferable or not sub-
15 ject to a substantial risk of forfeiture.
16 "(C) ELIGIBLE CORPORATION.—For pur-
17 poses of subparagraph (A)(ii)(II)—
18 "(i) IN GENERAL.—The term 'eligible
19 corporation' means, with respect to any
20 calendar year, any corporation if—
21 "(I) no stock of such corporation
22 (or any predecessor of such corpora-
23 tion) is readily tradable on an estab-
24 lished securities market (as deter-
25 mined under paragraph (1)(B)(iii))

1 during any preceding calendar year,
2 and
3 "(II) such corporation has a writ-
4 ten plan under which, in such cal-
5 endar year, not less than 80 percent
6 of all employees who provide services
7 to such corporation in the United
8 States (or any possession of the
9 United States) are granted stock op-
10 tions, or restricted stock units, with
11 the same rights and privileges to re-
12 ceive qualified stock.
13 "(ii) SAME RIGHTS AND PRIVI-
14 LEGES.—For purposes of clause (i)(II)—
15 "(I) except as provided in sub-
16 clauses (II) and (III), the determina-
17 tion of rights and privileges with re-
18 spect to stock shall be determined in
19 a similar manner as provided under
20 section 423(b)(5),
21 "(II) employees shall not fail to
22 be treated as having the same rights
23 and privileges to receive qualified
24 stock solely because the number of
25 shares available to all employees is not

1 equal in amount, so long as the num-
2 ber of shares available to each em-
3 ployee is more than a de minimis
4 amount, and
5 "(III) rights and privileges with
6 respect to the exercise of an option
7 shall not be treated as the same as
8 rights and privileges with respect to
9 the settlement of a restricted stock
10 unit.
11 "(iii) EMPLOYEE.—For purposes of
12 clause (i)(II), the term 'employee' shall not
13 include any employee described in section
14 4980E(d)(4) or any excluded employee.
15 "(iv) SPECIAL RULE FOR CALENDAR
16 YEARS BEFORE 2018.—In the case of any
17 calendar year beginning before January 1,
18 2018, clause (i)(II) shall be applied with-
19 out regard to whether the rights and privi-
20 leges with respect to the qualified stock are
21 the same.
22 "(3) QUALIFIED EMPLOYEE; EXCLUDED EM-
23 PLOYEE.—For purposes of this subsection—
24 "(A) IN GENERAL.—The term 'qualified
25 employee' means any individual who—

1 "(i) is not an excluded employee, and
2 "(ii) agrees in the election made
3 under this subsection to meet such require-
4 ments as determined by the Secretary to
5 be necessary to ensure that the with-
6 holding requirements of the corporation
7 under chapter 24 with respect to the quali-
8 fied stock are met.
9 "(B) EXCLUDED EMPLOYEE.—The term
10 'excluded employee' means, with respect to any
11 corporation, any individual—
12 "(i) who was a 1-percent owner (with-
13 in the meaning of section 416(i)(1)(B)(ii))
14 at any time during the 10 preceding cal-
15 endar years,
16 "(ii) who is or has been at any prior
17 time—
18 "(I) the chief executive officer of
19 such corporation or an individual act-
20 ing in such a capacity, or
21 "(II) the chief financial officer of
22 such corporation or an individual act-
23 ing in such a capacity,
24 "(iii) who bears a relationship de-
25 scribed in section 318(a)(1) to any indi-

1 vidual described in subclause (I) or (II) of
2 clause (ii), or
3 "(iv) who has been for any of the 10
4 preceding taxable years one of the 4 high-
5 est compensated officers of such corpora-
6 tion determined with respect to each such
7 taxable year on the basis of the share-
8 holder disclosure rules for compensation
9 under the Securities Exchange Act of 1934
10 (as if such rules applied to such corpora-
11 tion).
12 "(4) ELECTION.—
13 "(A) TIME FOR MAKING ELECTION.—An
14 election with respect to qualified stock shall be
15 made under this subsection no later than 30
16 days after the first time the rights of the em-
17 ployee in such stock are transferable or are not
18 subject to a substantial risk of forfeiture,
19 whichever occurs earlier, and shall be made in
20 a manner similar to the manner in which an
21 election is made under subsection (b).
22 "(B) LIMITATIONS.—No election may be
23 made under this section with respect to any
24 qualified stock if—

1 "(i) the qualified employee has made
2 an election under subsection (b) with re-
3 spect to such qualified stock,
4 "(ii) any stock of the corporation
5 which issued the qualified stock is readily
6 tradable on an established securities mar-
7 ket (as determined under paragraph
8 (1)(B)(iii)) at any time before the election
9 is made, or
10 "(iii) such corporation purchased any
11 of its outstanding stock in the calendar
12 year preceding the calendar year which in-
13 cludes the first time the rights of the em-
14 ployee in such stock are transferable or are
15 not subject to a substantial risk of for-
16 feiture, unless—
17 "(I) not less than 25 percent of
18 the total dollar amount of the stock so
19 purchased is deferral stock, and
20 "(II) the determination of which
21 individuals from whom deferral stock
22 is purchased is made on a reasonable
23 basis.

1 "(C) DEFINITIONS AND SPECIAL RULES
2 RELATED TO LIMITATION ON STOCK REDEMP-
3 TIONS.—
4 "(i) DEFERRAL STOCK.—For pur-
5 poses of this paragraph, the term 'deferral
6 stock' means stock with respect to which
7 an election is in effect under this sub-
8 section.
9 "(ii) DEFERRAL STOCK WITH RE-
10 SPECT TO ANY INDIVIDUAL NOT TAKEN
11 INTO ACCOUNT IF INDIVIDUAL HOLDS DE-
12 FERRAL STOCK WITH LONGER DEFERRAL
13 PERIOD.—Stock purchased by a corpora-
14 tion from any individual shall not be treat-
15 ed as deferral stock for purposes of clause
16 (iii) if such individual (immediately after
17 such purchase) holds any deferral stock
18 with respect to which an election has been
19 in effect under this subsection for a longer
20 period than the election with respect to the
21 stock so purchased.
22 "(iii) PURCHASE OF ALL OUT-
23 STANDING DEFERRAL STOCK.—The re-
24 quirements of subclauses (I) and (II) of
25 subparagraph (B)(iii) shall be treated as

1 met if the stock so purchased includes all
2 of the corporation's outstanding deferral
3 stock.
4 "(iv) REPORTING.—Any corporation
5 which has outstanding deferral stock as of
6 the beginning of any calendar year and
7 which purchases any of its outstanding
8 stock during such calendar year shall in-
9 clude on its return of tax for the taxable
10 year in which, or with which, such calendar
11 year ends the total dollar amount of its
12 outstanding stock so purchased during
13 such calendar year and such other infor-
14 mation as the Secretary may require for
15 purposes of administering this paragraph.
16 "(5) CONTROLLED GROUPS.—For purposes of
17 this subsection, all corporations which are members
18 of the same controlled group of corporations (as de-
19 fined in section 1563(a)) shall be treated as one cor-
20 poration.
21 "(6) NOTICE REQUIREMENT.—Any corporation
22 that transfers qualified stock to a qualified employee
23 shall, at the time that (or a reasonable period be-
24 fore) an amount attributable to such stock would

1 (but for this subsection) first be includible in the
2 gross income of such employee—
3 "(A) certify to such employee that such
4 stock is qualified stock, and
5 "(B) notify such employee—
6 "(i) that the employee may elect to
7 defer income on such stock under this sub-
8 section, and
9 "(ii) that, if the employee makes such
10 an election—
11 "(I) the amount of income recog-
12 nized at the end of the deferral period
13 will be based on the value of the stock
14 at the time at which the rights of the
15 employee in such stock first become
16 transferable or not subject to substan-
17 tial risk of forfeiture, notwithstanding
18 whether the value of the stock has de-
19 clined during the deferral period,
20 "(II) the amount of such income
21 recognized at the end of the deferral
22 period will be subject to withholding
23 under section 3401(i) at the rate de-
24 termined under section 3402(t), and

1 "(III) the responsibilities of the
2 employee (as determined by the Sec-
3 retary under paragraph (3)(A)(ii))
4 with respect to such withholding.".
5 (2) DEDUCTION BY EMPLOYER.—Subsection (h)
6 of section 83 is amended by striking "or (d)(2)" and
7 inserting "(d)(2), or (i)".
8 (b) WITHHOLDING.—
9 (1) TIME OF WITHHOLDING.—Section 3401 is
10 amended by adding at the end the following new
11 subsection:
12 "(i) QUALIFIED STOCK FOR WHICH AN ELECTION IS
13 IN EFFECT UNDER SECTION 83(i).—For purposes of sub-
14 section (a), qualified stock (as defined in section 83(i))
15 with respect to which an election is made under section
16 83(i) shall be treated as wages—
17 "(1) received on the earliest date described in
18 section 83(i)(1)(B), and
19 "(2) in an amount equal to the amount in-
20 cluded in income under section 83 for the taxable
21 year which includes such date.".
22 (2) AMOUNT OF WITHHOLDING.—Section 3402
23 is amended by adding at the end the following new
24 subsection:

1 "(t) RATE OF WITHHOLDING FOR CERTAIN
2 STOCK.—In the case of any qualified stock (as defined in
3 section 83(i)) with respect to which an election is made
4 under section 83(i)—
5 "(1) the rate of tax under subsection (a) shall
6 not be less than the maximum rate of tax in effect
7 under section 1, and
8 "(2) such stock shall be treated for purposes of
9 section 3501(b) in the same manner as a non-cash
10 fringe benefit.".
11 (c) COORDINATION WITH OTHER DEFERRED COM-
12 PENSATION RULES.—
13 (1) ELECTION TO APPLY DEFERRAL TO STATU-
14 TORY OPTIONS.—
15 (A) INCENTIVE STOCK OPTIONS.—Section
16 422(b) is amended by adding at the end the fol-
17 lowing: "Such term shall not include any option
18 if an election is made under section 83(i) with
19 respect to the stock received in connection with
20 the exercise of such option.".
21 (B) EMPLOYEE STOCK PURCHASE
22 PLANS.—Section 423(a) is amended by adding
23 at the end the following flush sentence:

1 "The preceding sentence shall not apply to any share of
2 stock with respect to which an election is made under sec-
3 tion 83(i).".

4 (2) EXCLUSION FROM DEFINITION OF NON-
5 QUALIFIED DEFERRED COMPENSATION PLAN.—Sec-
6 tion 409B(b), as added by this Act, is amended by
7 adding at the end the following new paragraph:

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

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

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

20 "(16) the amount includible in gross income
21 under subparagraph (B) of section 83(i)(1) with re-
22 spect to an event described in such subparagraph
23 which occurs in such calendar year, and

24 "(17) the aggregate amount of income which is
25 being deferred pursuant to elections under section

1 83(i), determined as of the close of the calendar
2 year.".
3 (e) PENALTY FOR FAILURE OF EMPLOYER TO PRO-
4 VIDE NOTICE OF TAX CONSEQUENCES.—Section 6652 is
5 amended by adding at the end the following new sub-
6 section:
7 "(o) FAILURE TO PROVIDE NOTICE UNDER SECTION
8 83(i).—In the case of each failure to provide a notice as
9 required by section 83(i)(6), at the time prescribed there-
10 for, unless it is shown that such failure is due to reason-
11 able cause and not to willful neglect, there shall be paid,
12 on notice and demand of the Secretary and in the same
13 manner as tax, by the person failing to provide such no-
14 tice, an amount equal to $100 for each such failure, but
15 the total amount imposed on such person for all such fail-
16 ures during any calendar year shall not exceed $50,000.".
17 (f) EFFECTIVE DATES.—
18 (1) IN GENERAL.—Except as provided in para-
19 graph (2), the amendments made by this section
20 shall apply to stock attributable to options exercised,
21 or restricted stock units settled, after December 31,
22 2017.
23 (2) REQUIREMENT TO PROVIDE NOTICE.—The
24 amendments made by subsection (e) shall apply to
25 failures after December 31, 2017.

1 (g) TRANSITION RULE.—Until such time as the Sec-
2 retary (or the Secretary's delegate) issue regulations or
3 other guidance for purposes of implementing the require-
4 ments of paragraph (2)(C)(i)(II) of section 83(i) of the
5 Internal Revenue Code of 1986 (as added by this section),
6 or the requirements of paragraph (6) of such section, a
7 corporation shall be treated as being in compliance with
8 such requirements (respectively) if such corporation com-
9 plies with a reasonable good faith interpretation of such
10 requirements.

Page 344, strike lines 9 through 12, and insert the following:

11 "(4) COORDINATION WITH SECTION 78.—With
12 respect to the taxes treated as paid or accrued by a
13 domestic corporation with respect to amounts which
14 are includible in gross income of such domestic cor-
15 poration by reason of this section, section 78 shall
16 apply only to so much of such taxes as bears the
17 same proportion to the amount of such taxes as—
18 "(A) the excess of—
19 "(i) the amounts which are includible
20 in gross income of such domestic corpora-
21 tion by reason of this section, over

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

Page 372, line 12, strike "subsection (h) or (i)" and insert "subsection (c)(2)(C), (h), or (i)".

Page 376, strike lines 3 through 7, and insert the following:

5 "(1) COMMODITIES GROSS INCOME.—The term
6 'commodities gross income' means, with respect to
7 any corporation—
8 "(A) gross income of such corporation
9 from the disposition of commodities which are
10 produced or extracted by such corporation (or a
11 partnership in which such corporation is a part-
12 ner), and
13 "(B) gross income of such corporation
14 from the disposition of property which gives rise
15 to income described in subparagraph (A).".

Page 398, strike lines 7 through 10, and insert the following:

16 "(C) the foreign corporation shall be al-
17 lowed a deduction for the taxable year referred

1 to in subparagraph (A) equal to the product
2 of—
3 "(i) the sum of 104 percent plus the
4 annual Federal short-term rate (deter-
5 mined under section 1274(d)) for the last
6 month ending before the beginning of the
7 taxable year, multiplied by
8 "(ii) the deemed expenses with respect
9 to such amount.".

Page 398, strike lines 21 through 25, and insert the following:

10 "(ii) any amount paid or incurred for
11 the acquisition of any security described in
12 section 475(c)(2) or any commodity de-
13 scribed in section 475(e)(2),".

Page 399, strike lines 10 through 14 and insert the following:

14 "(C) AMOUNTS NOT TREATED AS EFFEC-
15 TIVELY CONNECTED TO EXTENT OF GROSS-
16 BASIS TAX.—Subparagraph (B)(iii) shall only
17 apply to so much of any specified amount as
18 bears the proportion to such amount as—".

Page 400, line 1, insert "such specified amount and" before "deemed expenses".

Page 400, strike lines 13 through 19, and insert the following:

1 "(C) METHOD OF DETERMINATION.—
2 Amounts described in subparagraph (B) shall
3 be determined with respect to the international
4 financial reporting group on the basis of the
5 consolidated financial statements referred to in
6 paragraph (4)(A)(i) and the books and records
7 of the members of the international financial
8 reporting group which are used in preparing
9 such statements, taking into account only reve-
10 nues and expenses of the members of such
11 group (other than the members of such group
12 which are treated as domestic for purposes of
13 this subsection) derived from, or incurred with
14 respect to—
15 "(i) persons who are not members of
16 such group, and
17 "(ii) members of such group which
18 are treated as a domestic corporation for
19 purposes of this subsection.".

Page 403, strike line 20 and all that follows through page 404, line 9, and insert the following:

20 "(8) TREATMENT OF FOREIGN TAXES.—

1 "(A) ALLOWANCE OF CREDIT.—In the
2 case of any foreign corporation which receives
3 specified amounts to which paragraph (1) ap-
4 plies during any taxable year, there shall be al-
5 lowed as a credit against the tax imposed by
6 this chapter for such taxable year an amount
7 equal to the product of—
8 "(i) the excess (if any) of—
9 "(I) the aggregate specified
10 amounts received by such foreign cor-
11 poration to which paragraph (1) ap-
12 plies for such taxable year, over
13 "(II) the aggregate amount of
14 deductions allowed under paragraph
15 (1)(C) with respect to such foreign
16 corporation for such taxable year,
17 multiplied by
18 "(ii) the lesser of—
19 "(I) 50 percent of the inter-
20 national financial reporting group's
21 effective foreign tax rate for the re-
22 porting year during which or with
23 which such taxable year ends, or
24 "(II) 20 percent.

1 "(B) DISALLOWANCE OF FOREIGN TAX
2 CREDIT.—No credit shall be allowed under sec-
3 tion 901 for any taxes paid or accrued (or
4 treated as paid or accrued) with respect to any
5 specified amount to which paragraph (1) ap-
6 plies.
7 "(C) DENIAL OF DEDUCTION.—No deduc-
8 tion shall be allowed under this chapter for any
9 tax for which credit is not allowable under sec-
10 tion 901 by reason of subparagraph (B) (deter-
11 mined by treating the taxpayer as having elect-
12 ed the benefits of subpart A of part III of sub-
13 chapter N).
14 "(D) EFFECTIVE FOREIGN TAX RATE.—
15 For purposes of this paragraph, the term 'effec-
16 tive foreign tax rate' means, with respect to any
17 reporting year of any international financial re-
18 porting group, the ratio (expressed as a per-
19 centage and not less than zero) of—
20 "(i) the foreign income taxes paid by
21 the international financial reporting group
22 during such reporting year, divided by
23 "(ii) the net income of the inter-
24 national financial reporting group deter-

1 mined without regard to interest income,
2 interest expense, and income taxes.
3 Amounts described in this subparagraph shall
4 be determined as provided in paragraph (3)(C).
5 "(E) FOREIGN INCOME TAXES.—For pur-
6 poses of this paragraph, the term 'foreign in-
7 come taxes' means any income, war profits, or
8 excess profits taxes paid to any foreign country
9 or possession of the United States.".

Page 418, line 12, strike "$100,000" and insert "$250,000".

Amend the long title so as to read: "A bill to provide for reconciliation pursuant to titles II and V of the concurrent resolution on the budget for fiscal year 2018.".