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MARK WALKER, CHAIRMAN

House Amendment to the Senate Amendment to H.R. 88 – Retirement, Savings, and Other Tax Relief Act of 2018 and the Taxpayer First Act of 2018 (Rep. Blackburn, R-TN)

FLOOR SCHEDULE:

Scheduled for consideration on November 30, 2018, under a closed rule.

The rule providing for consideration of H.R. 88 considers as adopted ("self-executes") a Managers Amendment offered by Chairman Brady, and therefore this Legislative Bulletin integrates the changes made by the amendment to the underlying bill. Changes made by the amendment will be noted in the analysis below.

TOPLINE SUMMARY:

The House Amendment to the Senate Amendment to H.R. 88, the Retirement, Savings, and Other Tax Relief Act of 2018 and the Taxpayer First Act of 2018 would extend or make permanent a number of expiring special interest tax benefits, many of which subsidize the green energy sector, make a number of corrections to the Tax Cuts and Jobs Act; provide various forms of tax relief for individuals and businesses impacted by recent natural disasters; make changes to retirement savings and business start-up provisions of tax law; and would make changes to the Internal Revenue Service with the goal of improving customer service and enforcement.

COST:

According to a revenue and direct spending estimate from the Congressional Budget Office (CBO) and the Joint Committee on Taxation (JCT) the bill would increase deficits by $54.68 billion over a ten-year period. The bill would reduce revenues by $53.3 billion and increase direct spending outlays by $1.4 billion. Because of these effects, Pay-As-You-Go procedures apply which would require that the deficit impact be offset by across the board spending cuts to non-exempt programs through the sequestration process.

CONSERVATIVE VIEWS:

Many conservatives may be concerned that the bill contains over two dozen tax extender provisions that perpetuate special interest tax breaks that distort economic decision making, complicate the federal tax code, and subsidize certain business sectors in contradiction to free market principles.

Some conservatives may be concerned that the bill would add over $54 billion to federal deficits over a ten-year period.

Some conservatives may be displeased that the bill does not make permanent the individual tax breaks and business expensing provisions of the Tax Cuts and Jobs Act.

Some conservatives may be pleased that the bill corrects a number of technical errors from the Tax Cuts and Jobs Act, notably the "retail glitch."

Some conservatives may be pleased that the bill (as a part of the Manager's Amendment) would eliminate the increase in unrelated business taxable income related to certain transportation fringe benefits for non-profits. Many know this issue as the "church parking lot" issue.

Conservatives may be pleased that the bill reduces barriers that prevent businesses from sponsoring pooled retirement plans and allows people to have greater flexibility in the use of their retirement savings.

Conservatives may be pleased that the bill provides tax incentives and reforms designed to boost small business creation.

- **Expand the Size and Scope of the Federal Government?** No.
- **Encroach into State or Local Authority?** No.
- **Delegate Any Legislative Authority to the Executive Branch?** Yes.
- **Contain Earmarks/Limited Tax Benefits/Limited Tariff Benefits?** No.

DETAILED SUMMARY AND ANALYSIS:

The House Amendment to the Senate Amendment to H.R. 88, the Retirement, Savings, and Other Tax Relief Act of 2018 and the Taxpayer First Act of 2018 would extend or make permanent a number of expiring special interest tax benefits, many of which subsidize the green energy sector, and provides various forms of tax relief for individuals and businesses impacted by recent natural disasters.

The bill contains a number of technical tax corrections to provisions of the Tax Cuts & Jobs Act (TCJA) including the TCJA's pass-through deduction attributable to certain real estate investment trust (REIT) dividends and publicly traded partnership income, bonus depreciation of qualified investment property (a.k.a. the "retail glitch"), and limitations pertaining to carryovers and carrybacks of net operating losses. It also addresses the "church parking lot" issue, clarifies deferred foreign income refund and credit language, and addresses an issue pertaining to business holdings of private foundations.

The bill includes provisions based on H.R. 6757 - the Family Savings Act of 2018 (which was passed by the House on September 27, 2018 as part of the "Tax Reform 2.0" package) that would reduce requirements related to tax-preferred savings accounts and retirement plans, allow employers greater flexibility to create pooled retirement plans, allow for penalty-free retirement distributions for new baby and adoption expenses, and eliminate age limitations pertaining to retirement contributions and required distributions.

The bill does not include a provision from H.R. 6757 that would expand the scope of 529 plan qualified expenses to include expenses related to apprenticeship programs, homeschooling,

elementary and secondary school expenses, including fees, tutoring, special needs services, books, and supplies, and certain student loan debt payments. It also does not include a provision from H.R. 6757 that would create Universal Savings Accounts.

The bill includes provisions based on H.R. 6756 - the American Innovation Act of 2018 (which was passed by the House on September 27, 2018 as part of the "Tax Reform 2.0" package) that would consolidate and increase the deductions available to businesses for start-up and organizational expenditures and allow certain tax attributes attributable to a corporation's start-up period to be used after an ownership change without regard to certain existing tax law limitations.

The bill would make a number of changes to the Internal Revenue Service, with the goal of improving customer service and enforcement procedures. These provisions are based on the H.R. 5444 – the Taxpayer First Act of 2018, which passed the House on April 18, 2018.

The bill would require the Treasury Department to implement a number of administrative and operational reforms including developing strategies to protect against fraud and identity theft, automating the IRS's Income Verification Express Service (IVES), requiring certain tax preparers to submit returns electronically, and facilitating the IRS to directly accept of debt and credit card payments. These provisions are based on the H.R. 5445 – 21st Century IRS Act, which passed the House on April 18, 2018.

H.R. 88 does ***not*** contain the third bill of Tax Reform 2.0, H.R. 6760 - the Protecting Family and Small Business Tax Cuts Act of 2018, which would generally make provisions from the Tax Cuts & Jobs Act of 2017 reducing taxes on individuals and pass-through businesses permanent.

DIVISION A – RETIREMENT, SAVINGS, AND OTHER TAX RELIEF

TITLE I—EXTENSION OF EXPIRING PROVISIONS

The bill would extend or make permanent a number of expiring special interest tax benefits as follows:

Subtitle A—Made Permanent

Sec. 101. Railroad track maintenance credit: This provision would make the railroad track maintenance credit permanent but reduce it from 50 percent to 30 percent of the cost of qualifying maintenance expenses.

Subtitle B—Extension and Phase Out

Sec. 111. Biodiesel and renewable diesel: The bill would extend the biodiesel fuels credit, including the biodiesel mixture credit ($1.00 per gallon of biodiesel used or sold by the taxpayer in the production of a qualified biodiesel mixture) and the biodiesel credit ($1.00 per gallon of biodiesel used or sold by the taxpayer that is not in a mixture with diesel fuel), through 2021. After 2021 the credit would be phased out over three years. No such credit would exist in 2024.

Subtitle C—Extensions for 2018

The bill would extend the following tax benefits through the remainder of 2018:

- **Nonbusiness energy property credit** worth 10 percent of the expenditures on energy-efficient improvements to the building envelope (windows, doors, skylights, and roofs) of

principal residences, and credits of fixed dollar amounts ranging from $50 to $300 for energy-efficient property (eg. furnaces, boilers, biomass stoves, heat pumps). The credit is subject to a lifetime cap of $500.

- **Qualified fuel cell motor vehicles credit** worth between $4,000 and $40,000 (depending on the weight of the vehicle) when a taxpayer buys a new qualified fuel cell vehicle (vehicles propelled by chemically combining oxygen with hydrogen and creating electricity)

- **Alternative fuel refueling property credit** worth 30 percent (up to $30,000 for depreciable property and $1,000 otherwise) of the cost of property used to refuel alternative fuel vehicles (eg. charging stations).

- **2-wheeled plug-in electric vehicle credit** worth 10 percent (up to $2,500) for the cost of a new qualified plug-in electric vehicle.

- **Second generation biofuel producer credit** worth $1.01 per gallon purchased of second generation biofuel. This is formerly known as the "cellulosic biofuel producer credit."

- **Production tax credit** for electricity produced from certain (non-wind) renewable resources based on kilowatt hours generated and the type of renewable facility. The credit rate for 2017 was 2.4 cents per kilowatt hour for power produced at closed-loop biomass and geothermal facilities and 1.2 cents per kilowatt hour for power produced at open-loop biomass, small irrigation power, municipal solid waste, marine/hydrokinetic, and certain hydropower facilities.

- **Production credit for Indian coal facilities** worth $2 per ton (pre-inflation adjustment).

- **Energy efficient homes credit** worth between $1,000 and $2,000 provided to the contractor or manufacturer for each certified energy efficient new home acquired from the contractor or manufacturer.

- **Classification of certain race horses as 3-year property for expensing**.

  In additional to general concerns over the special interest nature of tax extender, conservatives may be concerned that this extender is unnecessary in light of the full and immediate expensing reforms of the Tax Cuts & Jobs Act.

- **Special allowance for second generation biofuel plant property** providing for a 50 percent first-year depreciation.

  In additional to general concerns over the special interest nature of tax extender, conservatives may be concerned that this extender is unnecessary in light of the full and immediate expensing reforms of the Tax Cuts & Jobs Act.

- **Energy efficient commercial buildings deduction** worth up to $1.80 per square foot of the building for the cost of energy efficient commercial building property (eg. heating, cooling, ventilation, and hot water systems)

- **Election to expense advanced mine safety equipment** up to 50 percent of the cost of the equipment in its first year of service.

In additional to general concerns over the special interest nature of tax extender, conservatives may be concerned that this extender is unnecessary in light of the full and immediate expensing reforms of the Tax Cuts & Jobs Act.

- **Extension of special rule for sales or dispositions to implement FERC or State electric restructuring policy for qualified electric utilities**. This special rule allows an electric utility to elect to recognize gains on sales of electric transmission services property to independent transmission companies ratably over an eight-year period.

- **Extension of excise tax credits relating to alternative fuels** worth $.50 per gallon of alternative fuel sold by the taxpayer.

- **7-year recovery period for motorsports entertainment complexes for depreciation purposes.**

  In additional to general concerns over the special interest nature of tax extender, conservatives may be concerned that this extender is unnecessary in light of the full and immediate expensing reforms of the Tax Cuts & Jobs Act.

- **Accelerated depreciation for certain business property on Indian reservation**.

  In additional to general concerns over the special interest nature of tax extender, conservatives may be concerned that this extender is unnecessary in light of the full and immediate expensing reforms of the Tax Cuts & Jobs Act.

- **Expensing rules for certain qualified film and television and live theatrical productions** allows taxpayers to elect to generally deduct up to $15 million of the cost of qualifying film and television production (including qualified live theatrical productions) in lieu of capitalizing the cost and recovering it through depreciation allowances.

- **Indian employment credi**t worth 20 percent of wages and healthcare expenses paid by an employer to members of an Indian tribe.

- **Mine rescue team training credit** applicable to the employer for each team employee worth the lesser of $10,000 or 20 percent of the training costs of the employee.

- **Exclusion from gross income of discharge of qualified principal residence indebtedness**.

- **Treatment of mortgage insurance premiums as qualified residence interest** so as to make the insurance premiums deductible.

- **Deduction of qualified tuition and related expenses** capped at $4,000 for individuals with adjusted gross income (AGI) up to $65,000 and $2,000 for individuals with AGI up to $80,000.

- **Extension of empowerment zone tax incentives**.

  According to the Joint Committee on Taxation (JCT), "The empowerment zone tax incentives are intended to encourage economic growth and investment in distressed communities by providing Federal tax incentives to businesses located within the designated geographic

areas. There are 40 areas designated as empowerment zones. The tax incentives available within the designated empowerment zones …include tax exempt bond financing, a Federal income tax credit for employers who hire qualifying employees, accelerated depreciation deductions on qualifying equipment, deferral of capital gains tax on sale of qualified assets sold and replaced."

- **American Samoa economic development credit** available to domestic corporations engaged in qualified business activity in American Samoa. The credit is equal to the sum of certain percentages of the corporation's expenses such as wages and fringe benefits.

Subtitle D—Extensions for 2019

Extension of oil spill liability trust fund (OSLTF) financing rate
The OSLTF is primarily financed by a 9-cents-per-barrel tax on domestic crude oil and imported crude oil and petroleum products (up from 8 cents per barrel in 2016). The bill would extend this rate through the end of 2019.

Black lung liability trust fund excise tax
The bill would extend the current level of tax on coal mining operations through the end of 2019.

TITLE II—DISASTER TAX RELIEF

The bill would provide various forms of tax relief for individuals and businesses impacted by recent natural disasters including Hurricanes Florence and Michael, Typhoons Mangkhut and Yutu, the Mendocino, Camp, and Woolsey wildfires, the Kilauea volcanic eruption, and the Hawaiian storms, flooding, and mudslides.

NOTE: The Manager's Amendment mandates an automatic extension of IRS filing dates for taxpayers in the disaster areas.

NOTE: The Manager's Amendment would clarify that the Carr and Hill fires are included within the Mendocino fire area and the Camp and Woolsey fire area, respectively. For purposes of defining a qualified Yutu distribution, the Amendment clarifies the designation of the disaster area and typhoon to reference "Typhoon Yutu disaster area" and "Typhoon Yutu", respectively.

The bill would allow for penalty-free withdrawals from retirement savings accounts for those impacted. The withdrawals must be repaid within three years.

The bill would provide a tax credit to impacted employers. The credit would be equal to 40 percent of up to $6,000 of the wages paid to an employee, without regard to whether the employee performs services.

NOTE: The Manager's Amendment would align the start date (by changing it from September 19, 2018, to July 23, 2018) for determining whether an employer is eligible for the Mendocino wildfire employee retention credit with the start date of the designated incident period in the Federal disaster declaration.

The bill would suspend the limit on charitable contributions made for relief in disaster areas.

TITLE III—RETIREMENT AND SAVINGS

The vast majority of this Title was part of H.R. 6757 - the Family Savings Act of 2018 (which was passed by the House on September 27, 2018 as part of the "Tax Reform 2.0" package)

Sec. 301. Multiple employer plans; pooled employer plans.

A "multiple employer plan" is a type of tax-preferred retirement savings vehicle. Generally, a multiple employer plan is a single qualified retirement plan maintained by two or more unrelated employers.

For certain multiple employer plans, the bill would provide relief from the so-called "one bad apple" rule. So long as the plan meets certain requirements pertaining to the terms of the plan, a plan would not lose their tax-preferred status simply because one employer participating in the plan failed to take some legally required action. The required terms generally would have to provide that the assets of the noncompliant employer would be transferred to another plan unless it is determined by the IRS that it is in the best interests of the employees of the noncompliant employer to retain the assets in the plan. The terms would also have to state that the noncompliant employer is responsible for any plan liabilities attributable to its employees.

The bill would allow a two or more employers to form "pooled employer plans" for purposes of jointly offering tax-preferred retirement benefits. Generally, under the bill, a "pooled employer plan" is a plan: 1) that is an individual account plan that provides benefits to the employees of two or more employers; and 2) that is a qualified retirement plan or an IRA plan. Pools also have to designate a "pooled plan provider" designate trustees, and bestow fiduciary responsibilities on the plan provider and participating employers. A pooled employer plan is treated for purposes of ERISA requirements as a single plan that is a multiple employer plan (eg. Fiduciary and bonding requirements).

Under the bill, pooled employer plans and multiple employer plans would have to provide annual information on their 5500 Form about the participating employers, the balance of the plan, and certain information regarding plan providers in the case of pooled employer plans.

Sec. 302. Rules relating to election of safe harbor 401(k) status.

Under current law, employees can elect to have a portion of their salary (generally, up to $18,500 in 2018) deferred and placed into a 401(k) plan. These plans must provide at least annually an opportunity to make or change an election. Some plans provide for automatic enrollment in an elective deferral design, but employees can opt out.

For 401(k) plans, the actual deferral percentage test (ADP test) requires that deferrals of highly compensated employees not outpace to a certain extent those of other employees. Excess deferrals can be sent back to highly compensated employees. Otherwise, there are safe harbor plans that effectively allow deferrals of highly compensated to outpace others. Each safe harbor must satisfy a notice requirement that is satisfied when, according to the committee report, "each employee eligible to participate is given, within a reasonable period before any year, written notice of the employee's rights and obligations under the 401(k) arrangement and the notice meets certain content [regarding plan attributes] and timing requirements."

The bill eliminates the safe harbor notice requirement with respect to "nonelective 401(k) safe harbor plans" (See, Option 1 here). The bill does not change the current-law requirement that 401(k) plans provide each eligible employee with an effective opportunity to make or change an election to

make elective deferrals at least once each plan year. The bill would also allow these plans to be amended up until 30 days before the end of a plan year to become nonelective 401(k) safe harbor plan. Such an amendment may also take place within 30 days of the end of the plan year so long as: 1) the plan is amended to provide for a nonelective contribution of at least four percent of compensation (rather than at least three percent) for all eligible employees for that plan year; and 2) the plan is amended no later than the last day of the plan year for distributing excess contributions for the plan year.

Sec. 303. Certain taxable non-tuition fellowship and stipend payments treated as compensation for IRA purposes.

The bill would ensure that gross income derived from payments to an individual to aid the individual in the pursuit of graduate or postdoctoral study or research is treated as compensation taken into account for IRA contribution purposes. This raises the ceiling on the amount that a person can contribute to an IRA.

Sec. 304. Repeal of maximum age for traditional IRA contributions.

Under current law, a person cannot make contributions to a traditional IRA after reaching age 70½. The bill would repeal this age-related restriction.

Sec. 305. Qualified employer plans prohibited from making loans through credit cards and other similar arrangements.

Under current law, employer-sponsored retirement plans can give out loans to participating employees, and so long as the terms of the loan meets certain requirements, it is not deemed a distribution. According to the Committee Report, "Some arrangements have developed under which an employee can access plan loans through the use of a credit card or similar mechanism."

The bill would specify that a plan loan made through the use of a credit card would be deemed a distribution.

Sec. 306. Portability of lifetime income investments.

The bill would allow a lifetime income investment (i.e. annuity) to be rolled over to another retirement plan when the investment is no longer authorized by the original plan to prevent the employee from being penalized on account of the annuity being required to be cashed out prematurely.

Sec. 307. Treatment of custodial accounts on termination of section 403(b) plans.

The bill would direct the IRS to issue guidance to provide that if an employer terminates a custodial 403(b) retirement plan (a type of annuity) used by nonprofit companies, religious groups, school districts, and governmental organizations, accounts under the plan may be distributed to a plan holder – but maintained by a custodian - without losing their 403(b) tax preferred status.

Some conservatives may be concerned that this provision delegate quasi-legislative authority to the IRS instead of simply writing a law to achieve the desired policy outcome.

Sec. 308. Clarification of retirement income account rules relating to church-controlled organizations.

A retirement income account is a defined contribution program established or maintained by a church, or a convention or association of churches, to provide benefits under the plan to employees of a religious, charitable or similar tax-exempt organization.

Under the bill, retirement income accounts may cover ministers regardless of the source of his compensation, church employees, and employees still included in a church plan under certain circumstances after separation from the service of a church.

Sec. 309. Increase in 10 percent cap for automatic enrollment safe harbor after 1st plan year.

This section was not included in the House-passed H.R. 6757 – Family Savings Act of 2018.

The bill would increase from 10 to 15 percent the cap on the amount of an employee's compensation that can be contributed to under a defined contribution deferral plan that the employee is automatically enrolled. These plans provide a safe harbor to employers for purposes of compliance with applicable nondiscrimination rule requirements.

Sec. 310. Increase in credit limitation for small employer pension plan startup costs.

This section was not included in the House-passed H.R. 6757 – Family Savings Act of 2018.

Current law provides small employers with a three-year tax credit worth $500 each year designed to assist the employer with the expense of setting up a retirement plan for employees.

The bill would retain $500 as the floor for the credit. But an employer could get a credit about $500 in an amount equal to the lesser of the following: 1) $250 for each non-highly compensated employee eligible for the plan, or 2) $1,500. Effectively, $1,500 would become the ceiling on the credit.

Sec. 311. Small employer automatic enrollment credit.

This section was not included in the House-passed H.R. 6757 – Family Savings Act of 2018.

The bill would boost the three-year credit for small employers that create certain retirement plans (described in Sec. 310) by an additional $500 when the plan features automatic enrollment. This boost also applies when a small employer adds this feature to a plan that it previously set up.

Sec. 312. Exemption from required minimum distribution rules for individuals with certain account balances.

Under current law, employer-provided qualified retirement plans, traditional IRAs, and individual retirement annuities are subject to required minimum distribution rules that generally kick in at age 70 ½.

The bill would eliminate required distributions if a person's cumulative interest in retirement plans does not exceed $50,000 (subject to indexing).

Sec. 313. Elective deferrals by members of the Ready Reserve of a reserve component of the Armed Forces.

Under current law, total elective deferrals that may be made by an individual for a year are subject to a dollar limit, generally $18,500 for 2018. Presently a Ready Reserve member is subject to this limit for elective deferrals made to their military TSP or another civilian retirement account on a combined basis. The bill would create a $18,500 limit for elective deferrals made to the TSP, and a separate, equal limit for elective deferrals made to a civilian retirement account.

Sec. 321. Plan adopted by filing due date for year may be treated as in effect as of close of year.

Under the bill, a retirement plan adopted by an employer after the close of a taxable year but before the employer's tax filing deadline, the plan could be considered adopted by the close of the taxable year.

Sec. 322. Modification of nondiscrimination rules to protect older, longer service participants.

Generally, under current nondiscrimination rules, retirement plans cannot discriminate in favor highly compensated employees as coverage, benefits, rights, or features. According to the Committee Report, this can be problematic "for employers that sponsor defined benefit plans and have closed their plans to new employees and offer new employees alternative retirement savings plans." Additionally, "without greater flexibility in the nondiscrimination rules, employers may be forced to freeze these defined benefit plans, thus preventing employees who remain in the plan from earning their expected benefits."

Under the bill, a closed or frozen defined benefit plan would not violate nondiscrimination rule the by reason of the composition of the closed class, or the benefits, rights, or features provided to the closed class so long as the plan was in compliance with nondiscrimination rules the year the plan closed or froze and in the two following years, and no subsequent plan modifications were discriminatory, and was closed or frozen before April 5, 2017 (or had been in effect for five years or more when it closed or was frozen and did not significantly increase benefits or coverage since then).

Sec. 323. Fiduciary Safe Harbor for Selection of Lifetime Income Provider

This provision would create a safe harbor with respect to the selection of the provider of an annuity by a fiduciary. The safe harbor requirements, and the fiduciary is deemed in compliance with its present-law statutory duties, are met if the fiduciary is thorough and objective in their search for a provider, considers the financial capability of competing providers, and considers the cost versus the benefits provided by the providers. Based on this consideration, the fiduciary would have to determine that the provider selected is financial capable and its costs are reasonable in light of its benefits.

Sec. 324. Disclosure regarding lifetime income

This section was not included in the House-passed H.R. 6757 – Family Savings Act of 2018.

This provision would mandate that employers that provide defined contribution plans to provide their participating employees with lifetime income disclosures. The disclosures would need to show the lifetime income stream equivalent of the total benefits accrued with respect to the employee.

Sec. 325. Modification of PBGC premiums for CSEC plans

This section was not included in the House-passed H.R. 6757 – Family Savings Act of 2018.

This provision would lower the fixed per-participant PBGC premiums for cooperative and small employer charity (CSEC) plans from $80 per employee participating in the plan to $19. The provision also effectively reduces variable rate premiums for CSECs by adjusting the method for measuring unfunded liabilities of the plan.

It is important to note that the present bill does not include either the Universal Savings Accounts or 529 Plans Expansion language that was included in the House-passed H.R. 6757 – Family Savings Act of 2018.

Sec. 331. Penalty-free withdrawals from retirement plans for individuals in case of birth of child or adoption.

Under the bill, people would be able to make distributions from certain retirement plans penalty-free within the first year of a child's birth or adoption a child that is under 18 (unless incapable of self-support) and not the child of the spouse. The maximum penalty-free distribution is $7,500 per spouse. Normally, early withdrawal incurs a ten percent penalty.

TITLE IV—AMERICAN INNOVATION

This Title is the same as H.R. 6756 - the American Innovation Act of 2018 (which was passed by the House on September 27, 2018 as part of the "Tax Reform 2.0" package)

Start-Up and Organizational Expenditures

Under current tax law, the Internal Revenue Code (IRC) allows a business to deduct up $5,000 of start-up expenditures and $5,000 organizational expenditures accumulated during the taxable year in which the business begins. These are separate deductions under current law. A start-up expenditure is an amount paid or incurred in connection with investigating the creation or acquisition of an existing business, creating a business, or any activity engaged in for profit and for the production of income before the day on which the business begins. An organizational expenditure is an amount paid which is incident to the creation of the corporation, is chargeable to capital account, is of a character which, if expended incident to the creation of a corporation having a limited life, would be amortizable over such life (i.e., the cost of actually creating the business entity). The size of each of these deductions is reduced by the amount that the total of applicable expenditure exceeds $50,000. Any deduction left over may be applied ratably over a 15-year period or capitalized (to increase the taxpayer's basis in the business) and recovered upon disposition of the company within the 15-year window.

Effective for tax years after 2018, the bill would combine the two deductions into a single deduction worth up to $20,000 of start-up and organizational expenses accumulated in the in the business's first taxable year. This maximum deduction would be adjusted for inflation using Chained Consumer Price Index for All Urban Consumers (Chained-CPI). Additionally, the bill would increase the threshold above which the deduction would be reduced to $120,000. This threshold would be adjusted for inflation using Chained-CPI.

If a pass-through business is liquidated prior to the conclusion of the 15-year period, any remaining unamortized amounts can be deducted, but only to the extent allowed pursuant to general loss-deduction rules under Section 165 of the IRC. If a business is disposed of or discontinued prior to the conclusion of the 15-year period, any remaining unamortized amounts attributable to start-up expenditures can be deducted, but only to the extent allowed pursuant to general loss-deduction rules under Section 165 of the IRC. The bill would not allow a partnership or to any partner of the

partnership to deduct amounts paid or incurred to promote the sale of (or to sell) an interest in the partnership.

Carryover Net Operating Losses and Tax Credits after Ownership Change

Section 382 of the IRC allows – to a limited extent – corporations that have had a change in ownership to utilize losses attributable to prior to the ownership change to offset income attributable to after the change. A corporation changes ownership when one or more owners of the company that own at least five percent of a company's stock increase their collective ownership stake by more than 50 percent of the company's stock within a three-year period.

The maximum amount of losses that can be carried forward in a single year pursuant to Section 382 is equal to the value of the business, multiplied by the long-term tax-exempt rate (presently, about three percent). If the limitation established under Section 382 is higher than the income of a newly owned corporation in a year that a corporation utilizes some pre-ownership change losses to offset the income, the next post-change year's 382 limitation is raised by the excess. These rules apply only to newly-owned corporations that carry on the existing business enterprise.

Under Section 383 of the IRC, a similar limitation framework applies to newly owned corporations that attempt to utilize unused general business credits, alternative minimum tax credits, foreign tax credits, and net capital losses attributable to a prior to the ownership change.

Generally, the bill would exclude from the limitations established in Sections 382 and 383 pre-ownership change net operating loss carryforwards, net operating losses, general business credit carryforwards, and general business credits of a start-up business. Therefore, startup businesses would be able to take better advantage of tax attributes attributable to a pre-ownership change period. Generally, these tax attributes are considered start-up so long as they occur in the first three years of the corporation.

TITLE V – CERTAIN TAX TECHNICAL CORRETIONS AND CLARIFICATIONS

Sec. 501 Technical Amendments Relating to Public Law 115-97 ("Tax Cuts and Jobs Act" or "TCJA")

Amendment Relating to Qualified Business Income

The TCJA provided a 20% deduction on qualified business income (QBI) of a pass-through business. Taxpayers could also deduct 20% of aggregate qualified real estate investment trust (REIT) dividends, qualified cooperative dividends, and qualified publicly traded partnership income.

The amendment would ensure that individual shareholders of a regulated investment company that owns stock in a REIT or qualified publicly traded partnership and receive dividends directly attributable to such stock can deduct 20% of such dividends.

Amendment Relating to the Deduction for Qualified Improvement Property

The TCJA expanded existing bonus depreciation to full and immediate expensing for certain depreciable business assets. The TCJA also combined several categories of improvement property that previously qualified for bonus depreciation into a single group coined Qualified Improvement Property (QIP). The TCJA intended to extend full and immediate expensing the to the new combined

QIP category, however failed to do so because of a drafting error. This is often referred to as the "retail glitch."

This provision corrects the QIP drafting error so that full and immediate expensing is available for QIP.

Amendment Relating to Net Operating Losses (NOL)

The TCJA limited the use of NOL carryovers and carrybacks. Specifically, it prohibited NOL deductions from being carried back, but allows NOL deductions them to be carried over without year limitation but only up to 80 percent of the business's taxable income (pre-NOL deduction) in a given year.

The TCJA provided that these new limitations apply to NOLs arising in tax years ending after 2017. The present provision would change this effective date to tax years beginning after 2017.

Amendment Relating to the Non-Deductibility of Attorney's Fees in Sexual Offense Suits

The bill would ensure that attorneys' fees paid by the defendant in relation to a nondisclosure agreement arising from a sexual harassment or assault suit are non-deductible, but the attorney's fees paid by the plaintiff (the accuser) are deductible.

Amendment Relating to Certain Deferred Foreign Income [as amended by the Manager's Amendment]

Under the TCJA, the Conference Report would create a new one-time tax on post-1986 overseas profits that have been held overseas set at 15.5% for cash holdings and 8% for illiquid holdings which U.S. companies can elect to make payable in installments over up to eight years.

The present provision would clarify that the election of a company to pay this liability in installments should not prevent credit or refund of overpayments or increase tax liability.

Amendment to Eliminate the Increase in Unrelated Business Taxable Income by Disallowed Fringe [as added by the Manager's Amendment]

The bill would eliminate the increase in unrelated business taxable income related to certain transportation fringe benefits for non-profits. Many know this issue as the "church parking lot" issue.

Amendment to the Rules Related to Business Holdings of Private Foundations [as added by the Manager's Amendment]

The bill would disregard certain purchases of employee-owned stock disregarded for purposes of foundation tax on excess business holdings.

Sec. 502 Clarification of Treatment of Veterans as Specified Group for Purposes of the Low-Income Housing Tax Credit

The low-income housing credit is available to developers that build affordable housing projects. Among other requirements, housing projects must be available for general public use. Under current law, a project does not fail to meet the general public use requirement solely because of occupancy restrictions or preferences that favor tenants with special needs, who are members of a specified

group under a Federal program or State program or policy that supports housing for such a specified group, or who are involved in artistic or literary activities.

The provision would ensure that veterans' housing is considered to comply with the general public use requirements as a specified group under a federal or state program.

Sec. 503 Clarification of General Public Use Requirement for Qualified Residential Rental Projects.

In the same way that Sec. 502 would ensure that veterans' housing is deemed to comply with the general public use requirements for purposes of the low-income tax credit, this provision would ensure that veterans housing complies with the general public use requirements for purposes of the exempt facility bonds. Exempt facility bonds are used to finance the construction of public works facilities like airports, docks and wharves, mass commuting facilities, and facilities for furnishing of water.

DIVISION B—TAXPAYER FIRST ACT OF 2018

TITLE I—PUTTING TAXPAYERS FIRST

The vast majority of this title comes from H.R. 5444 – the Taxpayer First Act of 2018, which passed the House on April 18, 2018.

Independent Appeals Process: The bill would establish a new Independent Office of Appeals. The Office would be charged with resolving tax controversies without litigation in a way that is fair and impartial, promotes a consistent application of voluntary compliance with tax laws, and enhances public confidence in the IRS. The Chief of Appeals would be appointed by the IRS Administrator.

The bill would require that taxpayers with adjusted gross income below $400,000 or entities with gross receipts below $5 million and have a case referred to Independent Appeals have access to the nonprivileged portions of casefiles on record at least ten days prior to a scheduled conference.

Comprehensive Customer Service Strategy: The bill would require the IRS to develop a comprehensive customer strategy within one year.

Free File: The bill would require the IRS to continue to operate the Free File program for the lowest 70 percent of taxpayers as well as a basic online electronic fillable forms utility for all taxpayers.

Offer in Compromise: An offer in compromise is a settlement between the IRS and a taxpayer that allows the tax liability to be satisfied by paying less than the amount owed. The IRS charges a fee for processing an offer in compromise, which is waived for those below 250 percent of the poverty level. The bill would codify the regulations that established the fee exemption for those below 250 percent of the poverty level.

Structuring: The Bank Secrecy Act requires reporting on all cash transactions of $10,000 or more. Attempting to evade the reporting requirement by engaging in multiple transactions is called structuring. The law allows the IRS to seize assets involved in structuring transactions.

The bill would limit the IRS's ability to seize assets related to structuring only if the assets were derived from an illegal source or the transactions were structured for the purpose of concealing other

criminal laws. The bill would establish a post seizure hearing process to allow persons who have a property interest in seized assets to have the seizure reviewed by a court of competent jurisdiction.

Exclusion of Interest Received Due to Wrongful Seizure: Under current law, if the IRS wrongly seizes property and then pays interest to the victim, the interest counts as taxable income. The bill would exclude interest received in connection with property seized by the IRS related to allegations of structuring.

Equitable Relief from Joint Liability: The bill would provide uniform treatment of Tax Court review of claims for equitable relief from joint liability.

Third Party Summons: The bill would prohibit the Secretary of the Treasury from issuing a "John Doe summons" to attempt to discover the identity of a possibly non-compliant taxpayer unless the information sought is narrowly tailored to pertain to the potential failure of the person(s) to comply with a specific, identified provision of the tax code.

Exemption from Private Tax Debt Collection: As an offset to pay for the increased spending in the Fixing America's Surface Transportation (FAST) Act of 2015, the IRS was required to use private debt collection agencies to help collect certain back taxes.

The bill would exempt back taxes that are identified as being from an individual with adjusted gross income below 200 percent (formerly 250 percent in H.R. 5444 – the Taxpayer First Act of 2018) of the federal poverty line from being subject to private debt collection. It would also exempt taxpayers who derive substantially all of their income from Social Security Disability Insurance benefits or supplemental security income benefits. H.R. 5444 – the Taxpayer First Act of 2018 did not address SSDI or SSI benefits.

The bill also provides that back taxes are subject to such private collection efforts when more than two years has passed since assessment of the tax debt. It also limits installments agreements for the payment of back taxes to seven years.

The exemption would be applicable beginning 180 days after enactment and ending on December 31, 2019.

Contact of Third Parties: The bill would require that, prior to the IRS contacting third parties regarding the determination or collection of tax liability of a taxpayer, the IRS provide notice to the taxpayer that third parties may be contacted during a specified period for up to one year. The bill would require such notice to be provided at least 45 days prior to the specified period. The bill permits multiple notices to a taxpayer.

Designated Summons: According to the Committee Report, "A designated summons is an administrative summons that is issued to a large corporation (or person to whom the corporation has transferred the requested books and records) with respect to one or more taxable periods currently under examination in the coordinated industry case program and meets three conditions. First, it must be reviewed and approved by the Division Commissioner and Division Counsel of the relevant operating division or organization with jurisdiction over the return. Second, it must be issued at least 60 days before the expiration of the assessment limitations period (as extended). Finally, it must clearly state that it is a ''designated summons.'' No more than one designated summons may be issued with respect to a return under examination." Since 1995, only three designated summons have been issued.

The bill would require a designated summons to be preceded by a review and approved by the head of an IRS operating division and the division counsel which includes facts establishing that the IRS had made reasonable requests for information.

Limitation of Access to Return Information to IRS Contractors: The bill would prohibit access of confidential taxpayer information obtained by a summons to IRS contractors (such as outside attorneys retained by the IRS), except when the contractor requires such information for the sole purpose of providing expert evaluation and assistance to the IRS. The bill would further prohibit a non-IRS employee or officer from questioning a witness whose testimony was obtained by summons under oath.

National Taxpayer Advocate: The bill would require the Administrator of the IRS to ensure compliance of a taxpayer Assistance Directive issued by the National Taxpayer Advocate within 90 days. The bill would also strike a provision in current law that allows the Secretary of the Treasury to determine the salary of the National Taxpayer Advocate, and would fix the salary at the same level as the highest rate of pay for the Senior Executive Service.

The bill does not eliminate the IRS Oversight Board as would have happened in H.R. 5444 – the Taxpayer First Act of 2018.

IRS Organization: The bill would require the Administrator of the IRS to submit a redesign plan to Congress by September 30, 2020. The bill establishes priorities for the redesign plan, including that the plan shall: (1) ensure the successful implementation of the priorities specified by Congress in this bill; (2) prioritize taxpayer services to ensure that all taxpayers easily and readily receive the assistance they need; (3) streamline the structure of the agency including minimizing the duplication of services and responsibilities; (4) best position the IRS to combat cybersecurity and other threats to the IRS; and (5) address whether the Criminal Division of the IRS should report directly to the Administrator.

Volunteer Income Tax Assistance (VITA) program: The bill would authorize the IRS to allocate up to $30 million per year of preciously appropriated funding to the VITA program.

This provision was not in H.R. 5444 – the Taxpayer First Act of 2018.

Low Income Taxpayer Clinics (LITC): The bill would allow the IRS to promote the availability of and eligibility requirements for LITCs.

This provision was not in H.R. 5444 – the Taxpayer First Act of 2018.

Closure of Taxpayer Assistance Centers: The bill would require the IRS to make information about relevant alternative sources of taxpayer assistance publicly available 90 days prior to the proposed closure of a Taxpayer Assistance Center. The bill would also require notification to Congress prior to the closure of a Center.

This provision was not in H.R. 5444 – the Taxpayer First Act of 2018.

Seizure of Perishable Goods: The bill would limit expedited sale of seized goods procedures to only those that are perishable instead of also those goods that become greatly reduced in price or value by keeping, or property that cannot be kept without great expense.

This provision was not in H.R. 5444 – the Taxpayer First Act of 2018.

Whistleblower Reform: The bill would allow the IRS to provide a limited amount of information regarding the progress of the investigation. It would also create anti-retaliation protections. This provision was not in H.R. 5444 – the Taxpayer First Act of 2018.

Misdirected Tax Refunds: The bill would direct the IRS to establish a means for taxpayers whose refund was sent to an incorrect account to report these events. It also directs the IRS to work with banks to identify and redirect misdirected refunds to the appropriate account.

This provision was not in H.R. 5444 – the Taxpayer First Act of 2018.

TITLE II—21ST CENTURY IRS

The vast majority of this Title is based on the H.R. 5445 – 21st Century IRS Act, which passed the House on April 18, 2018.

CYBERSECURITY AND IDENTITY PROTECTION

The bill would direct the Department of the Treasury to work with the public and the entities in the private sector in order to enhance methods to protect taxpayers from identity theft tax refund fraud.

The bill would require the Electronic Tax Administration Advisory Committee to recommend to the Secretary of the Treasury methods by which the Treasury can prevent identity theft and refund fraud.

The bill would authorize the Treasury to participate in the Identity Theft Tax Return Fraud Information Sharing and Analysis Center (ISAC). According to the Committee Report, "The ISAC is a secure, web-based venue for States, industry and the IRS to share and exchange information. The ISAC enables the IRS and the States to work together with external third parties to serve as an early warning system for tax refund fraud, identity theft schemes, and cybersecurity issues."

The bill would direct that federal or state agencies conduct period on-site inspections of government contractors that are authorized to receive federal returns and related information. A review would have to happen at least once every three years under the bill.

The bill would require the Treasury to report on its use, and potential improvements to its use, of electronic platforms to accept payment of taxes.

The following provisions of the bill were not in H.R. 5445 – 21st Century IRS Act.

- The bill directs the IRS to create a program for taxpayers to file their taxes with an Identity Protection Personal Identification Number.
- The bill would require IRS to establish a single point of contact for people that are dealing with tax-related identify theft.
- The bill would require the IRS to notify taxpayers of unauthorized use of their identity.
- The bill would increase the penalty for unauthorized disclosure by a tax preparer of taxpayer identity when the disclosure is connected to an instance of identity theft. Under current law the penalty for all improper disclosures is $250 per incident up to $10,000 per year. This would be raised under the bill when connected to identity theft to $1,000 per disclosure up to $50,000 per year.

- The penalty for knowingly or recklessly disclosing taxpayer identify when connected to identity theft would be raised to $100,000.

DEVELOPMENT OF INFORMATION TECHNOLOGY

The measure would formally codify the existing position of Chief Information Officer within the IRS. The Chief Information Officer would be responsible for creating a multiyear strategic plan for the information technology needs of the IRS.

Under the bill, the Treasury would have to develop online accounts to provide services to taxpayers for making payment of taxes, sharing documentation, and addressing and correcting issues. The Treasury would also have to develop an online method for people to file 1099 forms.

MODERNIZATION OF CONSENT-BASED INCOME VERIFICATION SYSTEM

The bill would automate the IRS's Income Verification Express Service (IVES), which is typically used by lenders to verify applicant income. Presently, requests for verification have to be approved via fax. The bill would allow the IRS to collect fees for the service.

EXPANDED USE OF ELECTRONIC SYSTEMS

The bill phases in a reduction in the threshold requirement determining when a tax preparer must file returns electronically. That threshold is reduced from 250 to 100 returns filed in a year by the preparer for 2020, from 100 to 10 for 2021, and then stays at that level. However, in the case of a partnership the applicable number is 200 for 2018 and 150 for 2019.

The bill directs the Treasury to create standards for how it can accept electronic signatures.

The bill would the IRS to directly accept payments via credit or debit card, but would also require that taxpayers pay the fees charged by the card company. Currently, the IRS accepts credit and debit card payments but is prohibited from paying a fee or providing any other consideration in connection with the use of a credit card, and so taxpayers must pay through a third party.

Electronically prepared paper returns would be required to have a scannable code. The IRS would be required to verify the identity of people creating an e-Services account online before the person can use the account. These two elements were not in H.R. 5445 – 21st Century IRS Act.

TITLE III—MISCELLANEOUS PROVISIONS

Electronic Record Retention: The bill would establish more stringent requirements for the retention of electronic records of the IRS.

This was not in H.R. 5445 – 21st Century IRS Act.

Rehire Prohibition: The bill would bar the IRS from rehiring people that were fired for misconduct or for cause.

This was not in H.R. 5445 – 21st Century IRS Act.

Notification of Unauthorized Disclosure: The bill extends the requirement that the IRS notify people of a taxpayer of an unauthorized disclosure or inspection of their information after a person is charged criminally for the act to also instances where a government employee is proposed to be punished administratively for such acts.

This was not in H.R. 5445 – 21st Century IRS Act.
E-Filing by Tax-Exempt Organizations: The bill would require all tax-exempt organizations are to e-file an annual information return or notice in the Form 990 series.

This was not in H.R. 5445 – 21st Century IRS Act.

Notice of Tax-Exempt Revocation: The IRS would be required to provide notice to tax-exempt organization that have failed to file an annual information return or notice in the Form 990 series for two consecutive years. Under current law, after three years, they lose their tax-exempt status.

This was not in H.R. 5445 – 21st Century IRS Act.

Disqualification of Tax Court Judges: The bill would align the grounds for disqualifying a Tax Court judge with the requirements of other federal judges.

Tax Court Terminology: The bill would align the terminology used to describe the opinions and judgements of Tax Courts with those used by other courts. The bill would also update the title of a special trial judge of the Tax Court to be a magistrate judge of the Tax Court.

OUTSIDE GROUPS:

Support for H.R. 6757

- Investment Company Institute
- Associated Builders and Contractors, Inc. National Association of Home Builders

Support for HR 6756

- Advanced Medical Technology Association (AdvaMed)
- Biotechnology Innovation Organization
- National Venture Capital Association
- Angel Capital Association

Articles on Tax Extenders

- Heritage Foundation
- Tax Foundation

Non-Profit Transportation Fringe Benefits

- National Council of Nonprofits
- Congressman Mark Walker Press Release

Retail Glitch & Net Operating Losses

- Tax Foundation

COMMITTEE ACTION:

H.R. 88 was originally introduced as the Shiloh National Military Park Boundary Adjustment and Parker's Crossroads Battlefield Designation Act on January 3, 2017. The bill passed the House on February 27, 2017, by voice vote. The Senate passed the Shiloh National Military Park Boundary Adjustment and Parker's Crossroads Battlefield Designation Act with an amendment on June 6, 2018, by unanimous consent.

H.R. 6757 – the Family Savings Act was introduced on September 10, 2018, and was referred to the House Ways and Means Committee. The Committee held a mark-up session on September 13, 2018, and the bill was ordered to be reported with an amendment in the nature of a substitute by recorded vote (21 – 14).

H.R. 6756 – the American Innovation Act was introduced on September 10, 2018, and was referred to the House Ways and Means Committee. The Committee held a mark-up session on September 13, 2018, and the bill was ordered to be reported with an amendment in the nature of a substitute by voice vote.

H.R. 5444 – the Taxpayer First Act was introduced on April 10, 2018, and referred to the Committee on Ways and Means and the Committee on Financial Services. The Committee on Ways and Means marked up and reported the bill on April 11, 2018, by voice vote. The Committee on Ways and Means and the Committee on Financial Services had an exchange of letters waiving the Committee on Financial Services right to sequential referral of the bill.

H.R. 5445 – the 21st Century IRS Act was introduced on March 10, 2018, and referred to the House Ways and Means Committee. An amended version was reported by the Committee on April 13, 2018, by voice vote.

ADMINISTRATION POSITION:

No Statement of Administration Policy is available.

CONSTITUTIONAL AUTHORITY:

The Constitutional Authority Statement for the original bill as introduced read: "Congress has the power to enact this legislation pursuant to the following: Article I, Section 8, Clause 18: To make all Laws which shall be necessary and proper for carrying into Execution the foregoing Powers, and all other Powers vested by this Constitution in the Government of the United States, or in any Department or Officer thereof."

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