

**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 serv-  
ices.

“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 (e) 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(e)(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 con-  
current resolution on the budget for fiscal year 2018.”.

