Subtitle I – Responsibly Funding Our Priorities

Section-by-Section

<u>Part 1 – Corporate and International Tax Reforms</u>

<u>Subpart A – Corporate Tax Rate</u>

Sec. 138101. Increase in Corporate Tax Rate.

This provision replaces the flat corporate income tax with a graduated rate structure. The rate structure provides for a rate of 18 percent on the first $400,000 of income; 21 percent on income up to $5 million, and a rate of 26.5% on income thereafter. The benefit of the graduated rate phases out for corporations making more than $10,000,000. Personal services corporations are not eligible for graduated rates. The domestic dividends received deduction is adjusted to hold constant the tax on domestic corporate-to-corporate dividends.

<u>Subpart B – Interest Expense of International Financial Reporting Groups</u>

Sec. 138111. Limitation on Deduction of Interest by Certain Domestic Corporations Which Are Members of an International Financial Reporting Group.

This provision adds section 163(n) limits the interest deduction of certain domestic corporations which are members in an international financial reporting group to an allowable percentage of 110% of the net interest expense. A domestic corporation's allowable percentage means the ratio of such corporation's allocable share of the group's net interest expense over such corporation's reported net interest expense. A domestic corporation's allocable share of the group's net interest expense is the portion of such expense which bears the same ratio to the total group expense as the corporation's EBITDA bears to the group's total EBITDA.

This interest limitation applies only to domestic corporations whose average excess interest expense over interest includible over a three year period exceeds $12,000,000. The limitation does not apply to any small business exempted under section 163(j)(3). Nor does the limitation apply to any S corporation, real estate investment trust, or regulated investment company. Moreover, changes are made so that both section 163(j) and section 163(n) apply to treat partnerships as aggregates, rather than to continue with the entity treatment currently in section 163(j)(4).

This provision also modifies section 163(j)(4), which applies the limitation on deductibility of business interest under section 163(j) to partnerships and S corporations. Under the provision, section 163(j) generally will apply to a partner or shareholder, rather than to the partnership or S corporation as an entity.

This provision also adds section 163(o), which allows the carryforward of interest expense disallowed by reason of subsection (j)(1) or (n)(1), whichever imposes the lower limitation. The

carryforward will be limited to five years. Interest will be treated as allowed as a deduction on a first-in, first-out basis. The amendments made by this section apply to taxable years beginning after December 31, 2021.

Subpart C – Outbound International Provisions

Sec. 138121. Modifications to Deduction for Foreign-Derived Intangible Income and Global Intangible Low-Taxed Income

This provision reduces the section 250 deduction with respect to both FDII (to 21.875%) and GILTI (to 37.5%). In combination with the proposed 26.5% corporate rate, this yields a 16.5625% GILTI rate and a 20.7% FDII rate. If the section 250 deduction with respect to GILTI or FDII exceeds taxable income, the excess is allowed as a deduction, which will increase the net operating loss for the taxable year. A transition rule is provided for taxable years that include but do not end on December 31, 2021.

Sec. 138122. Repeal of Election for 1-Month Deferral in Determination of Taxable Year of Specified Foreign Corporations.

This provision strikes section 898(c)(2), which previously allowed the choice of a taxable year beginning 1 month earlier than the majority U.S. shareholder year. The amendments made by this section apply to taxable years of specified foreign corporations beginning after November 30, 2021.

Sec. 138123. Modifications of Foreign Tax Credit Rules Applicable to Certain Taxpayers Receiving Specific Economic Benefits.

Dual capacity taxpayers are U.S. companies that are both subject to levy in, and receive certain benefits from, a foreign country or possession of the United States. To ensure dual capacity taxpayers cannot claim foreign tax credits for payments that are not deemed to be income taxes, this section provides that any amount paid by a dual capacity taxpayer to a foreign country will not be considered a tax to the extent it exceeds the generally applicable income tax of that country. A generally applicable income tax means an income tax which is generally imposed under the laws of a foreign country on income derived from the conduct of trade or business within such country, and has substantial applicability to persons who are not dual capacity taxpayers and to citizens or residents of that country. The amendments made by this section apply to taxes paid or accrued in taxable years beginning after the date of enactment of this Act.

Sec. 138124. Modifications to Foreign Tax Credit Limitations.

This provision amends section 904 to require foreign tax credit determinations on a country-by-country basis for purposes of sections 904, 907, and 960. These foreign tax credit computations entail assigning each item of income and loss to a taxable unit of the taxpayer which is a tax resident of a country (or, in the case of a branch, has a taxable presence in such country). Taxable units of the taxpayer are: (1) the person that is the taxpayer, (2) controlled foreign corporations, (3) interests held by the taxpayer or any controlled foreign corporations in a pass-

through entity if such pass-through entity is a tax resident of a country other than the country of the taxpayer or the CFC, and (4) each branch the activities of which are carried on by the taxpayer or any CFC, and which give rise to a taxable presence in the country where it is located. Additionally, this provision repeals the foreign branch income basket.

The provision limits the carryforward of excess foreign tax credit limitation to five succeeding taxable years (compared with 10 years under current law). The carryback of such foreign tax credit limitation is repealed (compared with 1 year carryback under current law).

The provision amends section 904(b) such that, for the purpose of determining the foreign tax credit limitation with respect to the GILTI basket, the taxpayer's foreign source income is determined by allocating only such deductions that are directly allocable to such income (i.e., section 250 deduction).

The provision amends section 904(b) such that in the case of any covered asset dispositions, the principle of section 338(h)(16) shall apply in determining the source and character of any item for purposes of this part. A covered asset disposition means any transaction which, inter alia, is treated as a disposition of stock of a corporation for purposes of the tax laws of the relevant foreign country.

The amendments made by this section apply to taxable years beginning after December 31, 2021.

Sec. 138125. Foreign Oil Related Income to Include Oil Shale and Tar Sands.

This provision expands the definition of foreign oil related income in section 907(c)(2)(A) to include oil shale or tar sands in addition to oil and gas wells. The amendments made by this section apply to taxable years of foreign corporations beginning after December 31, 2021, and to taxable years of United States shareholders in which or with which such taxable years of foreign corporations end.

Sec. 138126. Modifications to Inclusion of Global Intangible Low-Taxed Income.

Currently a global blending regime, this provision amends section 951A to provide for country-by-country application of the GILTI regime. Under the provision, a United States shareholder's global intangible low-taxed income (GILTI) is the sum of the amounts of GILTI determined separately with respect to each country in which any CFC taxable unit of the United States shareholder is a tax resident. Other items and amounts including net CFC tested income, net deemed tangible income return, qualified business asset investment (QBAI), and interest expense shall be determined on a country-by-country basis as well. The definition of CFC taxable unit is found in new section 904(e)(2)(B).

The provision amends section 951A(c) to provide for carryover of country-specific net CFC tested loss to the succeeding taxable year.

The provision changes the amount of allowable net deemed tangible income return by replacing 10% of QBAI with 5% of QBAI. This reduction does not apply to CFC taxable units in the territories of the United States.

Currently, tested income and tested loss of a CFC are determined without regard to any foreign oil and gas extraction income (FOGEI) and any deductions properly allocable to it. This provision now includes FOGEI and related deductions in the determination of tested income and tested loss. The amendments made by this section apply to taxable years of foreign corporations beginning after December 31, 2021, and to taxable years of United States shareholders in which or with which such taxable years of foreign corporations end.

Sec. 138127. Modifications to Determination of Deemed Paid Credit for Taxes Properly Attributable to Tested Income.

This provision substantially reduces the 20% haircut on foreign tax credits by amending section 960(d)(1) by increasing from 80% to 95% the deemed paid credit for taxes attributable to GILTI (80% to 100% in the case of taxes paid or accrued to U.S. territories). The amendments made by this section apply to taxable years of foreign corporations beginning after December 31, 2021, and to taxable years of United States shareholders in which or with which such taxable years of foreign corporations end. This provision also ensures that a corporation is treated as a controlled foreign corporation only if it has direct United States shareholders, and applies special rules to foreign owned United States shareholders. This provision is effective for taxable years of foreign corporations beginning after December 31, 2017.

Sec. 138128. Deduction for Foreign Source Portion of Dividends Limited to Controlled Foreign Corporations, etc.

Currently, section 245A provides a 100% participation exemption for foreign portions of any dividends received from a specified 10-percent owned foreign corporation, even in cases where the foreign corporation is not a controlled foreign corporation (and therefore not subject to subpart F and GILTI regimes). This provision amends section 245A so that the exemption applies to foreign portions of dividends received only from controlled foreign corporations. This provision also provides an election to be treated as a controlled foreign corporation for certain foreign corporations with United States shareholders. This provision is effective for taxable years of foreign corporations beginning after December 31, 2017.

Sec. 138129. Limitation on Foreign Base Company Sales and Services Income.

The provision limits Foreign Base Company Sales and Services Income to residents of the United States and passthrough entities and branches in the United States. This provision applies to taxable years beginning after December 31, 2021. This provision also closes loopholes that cause shareholders of a controlled foreign corporation to avoid tax on some income from their controlled foreign corporations. The amendments made by this section apply to distributions occurring after, or taxable years of foreign corporations beginning after, December 31, 2021.

<u>Subpart D – Inbound International Provisions</u>

Sec. 138131. Modifications to Base Erosion and Anti-Abuse Tax.

This provision makes several modifications to the Base Erosion and Anti-Abuse Tax (BEAT). First, the BEAT rate in section 59A(b)(1)(A) is amended to 10% in taxable years beginning after December 31, 2021, and before January 1, 2024; to 12.5% in taxable years beginning after December 31, 2023, and before January 1, 2026; and to 15% in any taxable year beginning after December 31, 2025. Second, the base erosion minimum tax amount is to be determined taking into account tax credits.

The provision modifies the rules in 59A(c) for determining modified taxable income. Modified taxable income means taxable income computed without regard to base erosion tax benefits; without adjusting the basis of inventory property due to base erosion payments; by determining net operating losses without regard to any deduction which is a base erosion tax benefit; and according to other adjustments under rules similar to the rules applicable to the alternative minimum tax. Base erosion payments are amended to include amounts paid to a foreign related party that are required to be capitalized in inventory under section 263A, as well as amounts paid to a foreign related party for inventory which exceed the costs of the property to the foreign related party. A safe harbor is available to deem base erosion payments attributable to indirect costs of foreign related parties as 20 percent of the amount paid to the related party.

The provision provides an exception for payments subject to U.S. tax, and for payments to foreign parties if the taxpayer establishes that such amount was subject to an effective rate of foreign tax not less than the applicable BEAT rate. The provision also limits the exception to the provision for taxpayers with a low base erosion percentage to taxable years beginning before January 1, 2024. The provision is effective for taxable years beginning after December 31, 2021.

Subpart E – Other Business Tax Provisions

Sec. 138141. Credit for Clinical Testing of Orphan Drugs Limited to First Use or Indication

This provision limits the credit for qualified clinical testing expenses to expenses related to the first use or indication for an orphan drug as designated under section 526 of the Federal Food, Drug, and Cosmetic Act. Additionally, the provision provides that clinical testing expenses for any drug that has received a marketing approval for any use or indication (either for use in rare disease or condition or non-rare disease or condition) do not qualify for the credit. The amendments made by this section apply to taxable years beginning after December 31, 2021.

Sec. 138142. Modifications to Treatment of Certain Losses.

The provision amends section 165(g) to provide that losses with respect to securities are treated as realized on the day that the event establishing worthlessness occurs. In addition, the provision provides that partnership indebtedness is treated in the same manner as corporate indebtedness under the section. In addition, the rule amends section 165 to provide that a loss on a worthless partnership interest is subject to the same rules as a loss in a sale of a partnership interest. This provision is applicable for taxable years beginning after December 31, 2021. The rule also changes the treatment of taxable liquidations of corporate subsidiaries. Under the provision, a

loss in a taxable liquidation is deferred until the property received in the liquidation is sold to a third party. This provision is applicable to liquidations after the date of enactment.

Sec. 138143. Adjusted Basis Limitation for Divisive Reorganization.

This provision amends section 361 to provide that a distributing corporation in a divisive reorganization recognizes gain to the extent of controlled corporation debt securities transferred to the creditors of the distributing corporation in excess of the basis in assets (reduced by amounts paid by the controlled corporation to the distributing corporation) transferred from the distributing corporation to the controlled corporation in the transaction. The provision applies to reorganizations after the date of enactment.

Sec. 138144. Rents from Prison Facilities not Treated as Qualified Income for Purposes of REIT Income Tests.

This provision amends section 856 to provide that income received with respect to property primarily used as a prison or other detention facility does not qualify for the purpose of REIT income tests. The amendments made by this section apply to taxable years beginning after December 31, 2021.

Sec. 138145. Modifications to Exemption for Portfolio Interest.

This provision modifies definition of "10-percent shareholder", whose interest is exempt from portfolio interest. The provision provides that, in the case of an obligation issued by a corporation, any person who owns 10% or more of the total vote or value of the stock of such corporation is not eligible for the portfolio interest exemption. This amendment applies to obligations issued after the date of enactment of this Act.

Sec. 138146. Payments Equivalent to Publicly-Traded Partnership Income Payments.

The provision amends section 871(m) to provide that payments pursuant to sale-repurchase agreements, specified notional principal contracts, or any other similar payment as the Secretary provides with respect to publicly traded partnerships and other partnerships (as provided in regulations) are treated as dividend equivalents. The provision applies rules similar to the other paragraphs of section 871(m) to the provision. The provision also applies withholding rules similar to those under section 1446(f). The amendments made by this section apply to payments made on or after the date that is 180 days after the date of the enactment of this Act.

Sec. 138147. Adjustments to Earnings and Profits of Controlled Foreign Corporations.

Currently, a special rule in section 952(c)(3) for determining earnings and profits of a controlled foreign corporation has limited application with respect to subpart F income. This provision relocates this rule to section 312(n) so that it is more generally applied in determining the earnings and profits of controlled foreign corporations, in this case without regard to LIFO inventory adjustments, installment sales, and completed contract method of accounting. The amendments made by this section apply to taxable years of foreign corporations beginning after December 31, 2021, and to taxable years of United States shareholders in which or with which such taxable years of foreign corporations end.

Sec. 138148. Certain Dividends from Controlled Foreign Corporations to United States Shareholders Treated as Extraordinary Dividends.

A general rule in section 1059 provides that if any corporation receives an extraordinary dividend with respect to any stock that such corporation has not held for more than 2 years prior to the dividend announcement date, the basis of the stock is reduced by the nontaxed portion of such dividends, and any excess is treated as gain from the sale or exchange of such stock. Under this new provision in section 1059(g), any disqualified CFC dividend is treated as an extraordinary dividend without regard to the period the taxpayer held the stock to which such dividend relates. For purposes of this new rule, a disqualified CFC dividend means any dividend paid by a controlled foreign corporation to a United States shareholder of such foreign corporation if such dividend is attributable to earnings and profits which were earned, or are attributable to gain on property which accrued, while such foreign corporation was not a controlled foreign corporation or such stock was not owned by a United States shareholder. The amendments made by this section apply to distributions made after the date of enactment.

Sec. 138149. Modification of Rules for Partnership Interests Held in Connection with the Performance of Services.

The provision makes several changes to section 1061. First, the provision generally extends the from three to five years the holding period required for gain attributable an applicable partnership interest to qualify for long term capital gain treatment. The provision retains the three year holding period for real property trades or businesses and taxpayers with an AGI less than 400,000. The provision also extends section 1061 to all assets eligible for long term capital gain rates. In addition, the provision adds rules for a measuring the three or five year holding period, including in the context of tiered partnerships, and modifies the rules applicable to sale or exchange transactions, and extends regulatory authority under the provision to address carry waivers and arrangements that avoid the purposes of this section. The provision applies to taxable years beginning after December 31, 2021.

Sec. 138150. Limitation on Certain Special Rules for Section 1202 Gains.

This provision amends section 1202(a) to provide that the special 75% and 100% exclusion rates for gains realized from certain qualified small business stock will not apply to taxpayers with adjusted gross income equal or exceeding $400,000. The baseline 50% exclusion in 1202(a)(1) remains available for all taxpayers. The amendments made by this section apply to sales and exchanges after September 13, 2021, subject to a binding contract exception.

Sec. 138151. Constructive Sales.

This provision includes digital assets in the constructive sale rules, anti-abuse rules previously applicable to other financial assets. The constructive sale rules in section 1259 treat the adoption of certain offsetting positions to previously owned positions as sales of the previously owned position. These rules prevent taxpayers from locking in investment gains without realizing taxable gain. The amendments made by this section apply to taxable years beginning after December 31, 2021.

Sec. 138152. Rules Relating to Common Control.

The tax code aggregates certain business entities in order to apply various limitations (e.g., the gross receipts limitation in the use of the cash method of accounting under section 448(c), the exemption from interest deductibility limitations under section 163(j)). Section 52(a) addresses corporate entities and section 52(b) provides similar rules for corporate and non-corporate entities. Section 52(b) refers to "trades or business (whether or not incorporated)" and the treatment of certain for-profit activity is unclear.

The provision would provide that a taxpayer engaged in any activity in connection with a trade or business or any for-profit activity is subject to the aggregation rules under section 52(b). The provision would be effective on the date of enactment.

Sec. 138153 Wash Sales

This section includes commodities, currencies, and digital assets in the wash sale rule, an anti-abuse rule previously applicable to stock and other securities. The wash sale rule in section 1091 prevents taxpayers from claiming tax losses while retaining an interest in the loss asset. The amendments made by this section apply to taxable years beginning after December 31, 2021.

Part 2 – Tax Increases for High-Income Individuals

Sec. 138201. Increase in Top Marginal Individual Income Tax Rate.

The provision increases the top marginal individual income tax rate in section 1(j)(2) to 39.6%. This marginal rate applies to married individuals filing jointly with taxable income over $450,000, to heads of households with taxable income over $425,000, to unmarried individuals with taxable income over $400,000, to married individuals filing separate returns with taxable income over $225,000, and to estates and trusts with taxable income over $12,500. The amendments made by this section apply to taxable years beginning after December 31, 2021.

Sec. 138202. Increase in Capital Gains Rate for Certain High Income Individuals

The provision increases the capital gains rate in section 1(h)(1)(D) to 25%. The amendments made by this section apply to taxable years ending after the date of introduction of this Act. A transition rule provides that the preexisting statutory rate of 20% continues to apply to gains and losses for the portion of the taxable year prior to the date of introduction. Gains recognized later in the same taxable year that arise from transactions entered into before the date of introduction pursuant to a written binding contract are treated as occurring prior to the date of introduction.

Sec. 138203. Application of Net Investment Income Tax to Trade or Business Income of Certain High Income Individuals

This provision amends section 1411 to expand the net investment income tax to cover net investment income derived in the ordinary course of a trade or business for taxpayers with greater than $400,000 in taxable income (single filer) or $500,000 (joint filer), as well as for trusts and estates. The provision clarifies that this tax is not assessed on wages on which FICA is

already imposed. The amendments made by this section apply to taxable years beginning after December 31, 2021.

Sec. 138204. Limitation on Deduction of Qualified Business Income for Certain High Income Individuals

The provision amends section 199A by setting the maximum allowable deduction at $500,000 in the case of a joint return, $400,000 for an individual return, $250,000 for a married individual filing a separate return, and $10,000 for a trust or estate. The amendments made by this section apply to taxable years beginning after December 31, 2021.

Sec. 138205. Limitations on Excess Business Losses of Noncorporate Taxpayers

This provision amends section 461(l) to permanently disallow excess business losses (i.e., net business deductions in excess of business income) for non-corporate taxpayers. The provision allows taxpayers whose losses are disallowed to carry those losses forward to the next succeeding taxable year. The amendments made by this section apply to taxable years beginning after December 31, 2021.

Sec. 138206. Surcharge on High Income Individuals, Trusts, and Estates

This provision adds section 1A, which imposes a tax equal to 3% of a taxpayer's modified adjusted gross income in excess of $5,000,000 (or in excess of $2,500,000 for a married individual filing separately). For this purpose, modified adjusted gross income means adjusted gross income reduced by any deduction allowed for investment interest (as defined in section 163(d)). The amendments made by this section apply to taxable years beginning after December 31, 2021.

Sec. 138207. Termination of Temporary Increase in Unified Credit

This provision terminates the temporary increase in the unified credit against estate and gift taxes, reverting the credit to its 2010 level of $5,000,000 per individual, indexed for inflation.

Sec. 138208. Increase in Limitation of Estate Tax Valuation Reduction for Certain Real Property Used in Farming or Other Trades or Businesses

This provision amends section 2032A to increase the special valuation reduction available for qualified real property used in a family farm or family business. This reduction allows decedents who own real property used in a farm or business to value the property for estate tax purposes based on its actual use rather than fair market value. This provision increases the allowable reduction from $750,000 to $11,700,000.

Sec. 138209. Certain Tax Rules Applicable to Grantor Trusts

This provision adds section 2901, which pulls grantor trusts into a decedent's taxable estate when the decedent is the deemed owner of the trusts. Prior to this provision, taxpayers were able to use grantor trusts to push assets out of their estate while controlling the trust closely. The provision also adds a new section 1062, which treats sales between grantor trusts and their

deemed owner as equivalent to sales between the owner and a third party. The amendments made by this section apply only to future trusts and future transfers.

Sec. 138210. Valuation Rules for Certain Transfers of Nonbusiness Assets

This provision amends section 2031 by clarifying that when a taxpayer transfers nonbusiness assets, those assets should not be afforded a valuation discount for transfer tax purposes. Nonbusiness assets are passive assets that are held for the production of income and not used in the active conduct of a trade or business. Exceptions are provided for assets used in hedging transactions or as working capital of a business. A look-through rule provides that when a passive asset consists of a 10-percent interest in some other entity, the rule is applied by treating the holder as holding its ratable share of the assets of that other entity directly. The amendments made by this section apply to transfers after the date of the enactment of this Act.

Part 3 – Modification of Rules Relating to Retirement Plans

Subpart A – Limitations on High-Income Taxpayers with Large Retirement Account Balances

Sec. 138301. Contribution Limit for Individual Retirement Plans of High-Income Taxpayers with Large Account Balances.

Under current law, taxpayers may make contributions to IRAs irrespective of how much they already have saved in such accounts. To avoid subsidizing retirement savings once account balances reach very high levels, the legislation creates new rules for taxpayers with very large IRA and defined contribution retirement account balances.

Specifically, the legislation prohibits further contributions to a Roth or traditional IRA for a taxable year if the total value of an individual's IRA and defined contribution retirement accounts generally exceed $10 million as of the end of the prior taxable year. The limit on contributions would only apply to single taxpayers (or taxpayers married filing separately) with taxable income over $400,000, married taxpayers filing jointly with taxable income over $450,000, and heads of households with taxable income over $425,000 (all indexed for inflation).

The legislation also adds a new annual reporting requirement for employer defined contribution plans on aggregate account balances in excess of $2.5 million. The reporting would be to both the Internal Revenue Service and the plan participant whose balance is being reported.

The provisions of this section are effective tax years beginning after December 31, 2021.

Sec. 138302. Increase in Minimum Required Distributions for High-Income Taxpayers with Large Retirement Account Balances.

If an individual's combined traditional IRA, Roth IRA and defined contribution retirement account balances generally exceed $10 million at the end of a taxable year, a minimum distribution would be required for the following year. This minimum distribution is only

required if the taxpayer's taxable income is above the thresholds described in the section above (e.g., $450,000 for a joint return). The minimum distribution generally is 50 percent of the amount by which the individual's prior year aggregate traditional IRA, Roth IRA and defined contribution account balance exceeds the $10 million limit.

In addition, to the extent that the combined balance amount in traditional IRAs, Roth IRAs and defined contribution plans exceeds $20 million, that excess is required to be distributed from Roth IRAs and Roth designated accounts in defined contribution plans up to the lesser of (1) the amount needed to bring the total balance in all accounts down to $20 million or (2) the aggregate balance in the Roth IRAs and designated Roth accounts in defined contribution plans. Once the individual distributes the amount of any excess required under this 100 percent distribution rule, then the individual is allowed to determine the accounts from which to distribute to satisfy the 50 percent distribution rule above.

This provision is effective tax years beginning after December 31, 2021.

Subpart B – Other Provisions Relating to Individual Retirement Accounts

Sec. 138311. Tax Treatment of Rollovers to Roth IRAs and Accounts.

Under current law, contributions to Roth IRAs have income limitations. For example, the income range for single taxpayers for making contributions to Roth IRAs for 2021 is $125,000 to $140,000. Those single taxpayers with income above $140,000 generally are not permitted to make Roth IRA contributions.

However, in 2010, the similar income limitations for Roth IRA conversions were repealed, which allowed anyone to contribute to a Roth IRA through a conversion. irrespective of the still-in-force income limitations for Roth IRA contributions. As an example, if a person exceeds the income limitation for contributions to a Roth IRA, he or she can make a nondeductible contribution to a traditional IRA – and then shortly thereafter convert the nondeductible contribution from the traditional IRA to a Roth IRA.

In order to close these so-called "back-door" Roth IRA strategies, the bill eliminates Roth conversions for both IRAs and employer-sponsored plans for single taxpayers (or taxpayers married filing separately) with taxable income over $400,000, married taxpayers filing jointly with taxable income over $450,000, and heads of households with taxable income over $425,000 (all indexed for inflation). This provision applies to distributions, transfers, and contributions made in taxable years beginning after December 31, 2031.

Furthermore, this section prohibits all employee after-tax contributions in qualified plans and prohibits after-tax IRA contributions from being converted to Roth regardless of income level, effective for distributions, transfers, and contributions made after December 31, 2021.

Sec. 138312. Prohibition of IRA Investments Conditioned on Account Holder's Status.

The bill prohibits an IRA from holding any security if the issuer of the security requires the IRA owner to have certain minimum level of assets or income, or have completed a minimum level of education or obtained a specific license or credential. For example, the legislation prohibits

IRAs from holding investments which are offered to accredited investors because those investments are securities that have not been registered under federal securities laws. IRAs holding such investments would lose their IRA status. This section generally takes effect for tax years beginning after December 31, 2021, but there is a 2-year transition period for IRAs already holding these investments.

Sec. 138313. Statute of Limitations with Respect to IRA Noncompliance.

The bill expands the statute of limitations for IRA noncompliance related to valuation-related misreporting and prohibited transactions from 3 years to 6 years to help IRS pursue these violations that may have originated outside the current statute's 3-year window. This provision applies to taxes to which the current 3-year period ends after December 31, 2021.

Sec. 138314. Prohibition of Investment of IRA Assets in Entities in Which the Owner Has a Substantial Interest.

To prevent self-dealing, under current law prohibited transaction rules, an IRA owner cannot invest his or her IRA assets in a corporation, partnership, trust, or estate in which he or she has a 50 percent or greater interest. However, an IRA owner can invest IRA assets in a business in which he or she owns, for example, one-third of the business while also acting as the CEO. The bill adjusts the 50 percent threshold to 10 percent for investments that are not tradable on an established securities market, regardless of whether the IRA owner has a direct or indirect interest. The bill also prevents investing in an entity in which the IRA owner is an officer. Further, the bill modifies the rule to be an IRA requirement, rather than a prohibited transaction rule (i.e., in order to be an IRA, it must meet this requirement). This section generally takes effect for tax years beginning after December 31, 2021, but there is a 2-year transition period for IRAs already holding these investments.

Sec. 138315. IRA Owners Treated as Disqualified Persons for Purposes of Prohibited Transactions Rules.

The bill clarifies that, for purposes of applying the prohibited transaction rules with respect to an IRA, the IRA owner (including an individual who inherits an IRA as beneficiary after the IRA owner's death) is always a disqualified person. This section applies to transactions occurring after December 31, 2021.

<u>Part 4 – Funding the Internal Revenue Service and Improving Taxpayer Compliance</u>

Sec. 138401. Funding of the Internal Revenue Service.

This provision appropriates $78,935,000,000 for necessary expenses for the IRS for strengthening tax enforcement activities and increasing voluntary compliance, and modernizing information technology to effectively support enforcement activities. No use of these funds is intended to increase taxes on any taxpayer with taxable income below $400,000. Further, $410,000,000 is appropriated for necessary expenses for the Treasury Inspector General for Tax Administration to provide oversight of the IRS. Finally, $157,000,000 is appropriated for the Tax

Court for adjudicating tax disputes. These appropriated funds are to remain available until September 30, 2031.

Sec. 138402. Backup Withholding and Third Party Network Transactions.

This provision amends section 3406(b) to add to the list of reportable payments any payments in settlement of third party network transactions, but only if the aggregate annual payment made by the third party settlement organization to the payee equals or exceeds $600, the third party settlement organization was required under section 6050W to file a return for the preceding year with respect to the payee, or if during the preceding calendar year the payment organization made reportable payments to the payee with respect to which amounts were required to be deducted and withheld under 3406(a). A transition rule for 2022 adds the requirement that the aggregate number of annual transactions between the third party settlement organization and the payee exceeds 200.

Sec. 138403. Limitation on Deduction for Qualified Conservation Contributions Made by Pass-Through Entities.

To curb syndicated conservation easement tax shelters, this provision denies charitable deduction for contributions of conservation easements by partnerships and other pass-through entities if the amount of the contribution (and therefore the deduction) exceeds 2.5 times the sum of each partner's adjusted basis in the partnership that relates to the donated property. This general disallowance rule does not apply to donations of property that meet the requirements of the 3-year holding period rule, and contributions by family partnerships. In addition, certain taxpayers whose deeds are found to have certain defects and are notified by the Commissioner have the opportunity to correct such defects within 90 days of the notice. This ability to cure does not apply in the case of reportable transactions and transactions for which deduction is disallowed under this section.

Various accuracy-related penalties apply, including gross valuation misstatement penalty, and adjustments are made to the statute of limitations on assessment and collection by the IRS, in case of any disallowance of a deduction by reason of this provision.

This section applies to contributions made after December 23, 2016 (the date of the relevant IRS Notice). In the case of contributions of easements related to the preservation of certified historic structures, this section applies to contributions made in taxable years beginning after December 31, 2018. The ability to cure defective deeds are permitted for returns filed after the date of the enactment and for returns filed on or before such date if the section 6501 period has not expired as of such date.

Sec. 138404. Modification of Procedural Requirements Relating to Assessment of Penalties.

This provision repeals a requirement that any assessment of penalties must be approved by a supervisor of the employee making such determination. This amendment is effective as if included in section 3306 of the Internal Revenue Service Restructuring and Reform Act of 1998, which is notices issued, and penalties assessed, after December 31, 2000.

This provision also requires that each supervisor certify quarterly by letter to the Commissioner of Internal Revenue whether employees have followed the procedural requirements with respect to issuance of notices of penalty. This amendment applies to notices of penalty issued after the date of the enactment of this Act.

Part 5 – Other Provisions

Sec. 138501. Modifications to Limitation on Deduction of Excessive Employee Remuneration.

This provision moves up the effective date of the amendment to section 162(m) in the American Rescue Plan Act of 2021 (ARPA) to tax years following December 31, 2021. The ARPA expanded the set of applicable employees under section 162(m) to include the eight most highly compensated officers other than the principal executive and principal financial officers for a taxable year, beginning in tax years after December 31, 2026. The additional five employees scoped in under the ARPA amendment are not considered permanent covered employees for the purposes of the section. The provision also applies the section 414 aggregation rules for covered health insurance providers to the general rule under section 162(m), expands the IRS's regulatory authority under the general rule, and expands the definition of applicable employee renumeration.

Sec. 138502. Extension of Tax to Fund Black Lung Disability Trust Fund.

This provision extends the tax to fund the Black Lung Disability Trust Fund through December 31, 2025. The amendment made by this section applies to sales after December 31, 2021.

Sec. 138503. Prohibited Transactions Relating to Holding DISC or FSC in Individual Retirement Account.

This provision provides that holding an interest in a DISC or FSC that receives any commission or other payment from an entity owned by the individual for whose benefit the IRA is established is a prohibited transaction for purposes of section 4975. The provision also applies if the DISC or FSC is held indirectly through one or more corporations. For purposes of determining ownership of the entity that makes the payments, the constructive ownership rules in section 318 apply, substituting 10 percent for 25 percent. The tax imposed by section 4975 applies even if the account ceases to be treated as an IRA. The section applies to stock acquire or held on or after December 31, 2021.

Sec. 138504. Increase in Tax on Certain Tobacco Products and Imposition of Tax on Nicotine.

This provision doubles the current rate of excise taxes on cigarettes, small cigars, and roll-your-own tobacco. The provision changes the tax on large cigars from an ad valorem basis to a weight basis at the rate of $49.56 per pound, but not less than 10.06 cents per cigar. The provision provides larger increases in tax on smokeless tobacco (i.e., snuff, chewing tobacco, and pipe tobacco) and a new tax on discrete single-use units at the rate of $100 per thousand. The

definition of roll-your-own tobacco is expanded to include certain processed tobacco. Finally, the provision imposes excise taxes on "taxable nicotine", which is any nicotine (other than nicotine used in listed tobacco products) that has been extracted, concentrated, or synthesized. The level of tax on "taxable nicotine" is equivalent to the rate for cigarettes per 1,810 milligrams of nicotine. Taxable nicotine is treated as a tobacco product and the tax rates for tobacco products are adjusted for inflation after 2022. The provision imposes a floor stocks tax on cigarettes and small cigars, with a de minimis exemption amount of $1,000. The effective date for cigarettes, small cigars, and smokeless tobacco is calendar quarters beginning after the date of enactment of this Act. The effective date for large cigars, discrete single-use units, and taxable nicotine is calendar quarters beginning 180 days after the date of enactment of this Act.

Sec. 138505. Clarification of Rules Regarding Tobacco Drawback.

In certain cases, U.S. companies may be eligible for a "drawback" (i.e., a refund of certain duties, taxes, and fees that are made when a good is imported) of excise tax on tobacco products. "Substitution drawback" is one common type of drawback that involves the refunds of duties, taxes, and fees that are paid upon importation and refunded when similar goods are exported. A "double drawback" occurs when a producer claims a substitution drawback, even though the exported product is generally not subject to excise tax. This provision stops the practice of double drawbacks for tobacco products by making exports that are not subject to excise tax ineligible for a drawback claim.

Sec. 138506. Termination of Employer Credit for Paid Family Leave and Medical Leave.

This provision accelerates termination of employer credit for wages paid to employees during family and medical leave to taxable years beginning after 2023. Currently, the credit will terminate for wages paid in taxable years beginning after 2025.

Sec. 138507. Clarification of Treatment of DISC Gains and Distributions of Certain Foreign Shareholders.

This provision clarifies that gains from the sale or exchange of, and distributions by a DISC or FSC to a foreign shareholder are treated as effectively connected with the conduct of a trade or business conducted through a permanent establishment deemed to be had by the shareholder in the United States. This provision is effective for distributions on or after December 31, 2021.

Sec. 138508. Access to Self-Employment Income Information for Paid Leave Administration.

This provision amends section 6103 of the Code so as to authorize disclosures of certain self-employment income to employees within the Treasury department for purposes of administering the paid family and medical leave program established under Subtitle A of the Budget Recommendations.

Sec. 138509. Temporary Rule to Allow Certain S Corporations to Reorganize as Partnerships Without Tax.

This provision allows eligible S corporations to reorganize as partnerships without such reorganizations triggering tax. Eligible S corporation means any corporation that was an S corporation on May 13, 1996 (prior to the publication of current law "check the box" regulations with respect to entity classification). The eligible S corporation must completely liquidate and transfer substantially all of its assets and liabilities to a domestic partnership during the two-year period beginning on December 31, 2021.

Sec. 138510. Treatment of Certain Qualified Sound Recording Productions.

This provision amends section 181 to permit taxpayers to treat as currently deductible expenses the cost of qualified sound recording productions not exceeding $150,000 in a taxable year. The bill defines qualified sound recording production as certain sound recordings produced and recorded in the United States. The provision expires on December 31, 2025 (the current section 181 termination date).

Sec. 138511. Payment to Certain Individuals Who Dye Fuel.

In general, under section 4081, tax is imposed upon the removal of taxable fuel (including diesel fuel and kerosene) from a terminal. Under section 4081(e), if tax is paid and reported to the government on more than one taxable event for a taxable fuel under section 4081, the person paying the "second tax" on such fuel may claim a refund (without interest) of that second tax if certain conditions and reporting requirements are met. However, if the fuel is dyed at removal from the second terminal, there is no second tax paid on the fuel and refund relief is not available under section 4081(e) for the dyed fuel. This provision creates a new refund mechanism for taxpayers who remove eligible indelibly dyed diesel fuel or kerosene from a terminal for nontaxable use, and establishes to the satisfaction of the Secretary that tax for such fuel under section 4081 has already been paid.

Sec. 138512. Extension of Credit for Portion of Employer Social Security Taxes Paid with Respect to Employee Tips to Beauty Service Establishments.

In general, section 45B defines the employer social security credit as an amount equal to the employer social security tax paid with respect to employee tips. Previously, the credit was only applied with respect to tips received in connection with providing or delivering food or beverages. This provision extends the credit to tips received for providing beauty services to a client or customer. The amendments made by this section apply to taxable years beginning after December 31, 2021.

Sec. 138513. Enhancement of Work Opportunity Credit During COVID-19 Recovery Period.

This provision increases the Work Opportunity Tax Credit (WOTC) to 50% for the first $10,000 in wages, through December 31, 2023, for all WOTC targeted groups except for summer youth employees. The increase is also available for qualified wages earned by a WOTC target group employee in his or her second year of employment (current law limits allows WOTC to be claimed only on first-year wages).

Sec. 138514. Allowance of Deduction for Certain Expenses of the Trade or Business of Being an Employee.

The provision allows for up to $250 in dues to a labor organization be claimed as an above-the-line deduction. The provision is effective for taxable years beginning after December 31, 2021.

Sec. 138515. Cover Over of Certain Distilled Spirits Taxes.

The provision permanently eliminates the limitation on distilled spirit taxes covered over to Puerto Rico and the U.S. Virgin Islands. This change is effective with respect to distilled spirits brought into the United States after December 31, 2021. Additionally, the provision contains a rule that requires a certain amount of the funds covered over to be transferred into the Puerto Rico Conservation Trust Fund.

Sec. 138516. Research and Experimental Expenditures

This provision delays the effective date of section 13206 of Public Law 115-97. That section provides for amortization of the research and experimental expenditures starting taxable years beginning after December 31, 2021. Under this provision, the amortization of research and experimental expenditures will begin for amount paid or incurred in taxable years beginning after December 31, 2025.

Sec. 138517. Payroll Credit for Compensation of Local News Journalists.

This provision allows an employment tax credit for each calendar quarter wages, not to exceed $12,500, paid to local news journalists by an eligible local newspaper publisher. The credit for each calendar quarter may not exceed total amount of employment taxes paid by such publisher with respect to all employees. Any excess is treated as overpayment, and allowed as refund. The credit amount is equal to 50% of wages for each of the first 4 calendar quarters, and 30% of wages for each calendar quarter thereafter. Eligible local newspaper publisher is any employer that is in the trade or business of publishing a local newspaper that serves the needs of a regional or local community and who employs no more than 750 employees. This section applies to calendar quarters during the first 5 calendar years beginning after the date of enactment.

Sec. 138518. Treatment of Financial Guaranty Insurance Companies as Qualifying Insurance Corporations under Passive Foreign Investment Company Rules.

This provision provides that a financial guarantee insurance company that satisfies certain conditions may include unearned premium reserves in its applicable insurance liability for purposes of determining whether it is a passive foreign investment company. The provision clarifies that certain items on financial statement shall be reported separately, and provides regulatory authority to impose additional tax reporting requirements on financial guarantee insurance companies. This provision is effective as if included in Public Law 115-97, taxable years beginning after December 31, 2017, except for reporting provisions, which are effective for reports made after the date of enactment.

Sec. 138519. Credit for Qualified Access Technology for the Blind.

Beginning in 2022, this provision establishes a nonrefundable credit of up to $2,000 in any 3-consecutive year taxable period for amounts paid or incurred for qualified access technology for use by a qualified blind individual—either the taxpayer or the taxpayer's spouse or dependent. "Qualified access technology" consists of hardware, software, or other information technology designed to convert or adapt information visually represented into forms or formats usable by blind individuals. No double benefits are permitted, and expenses compensated by insurance are ineligible for the credit. The credit is indexed and expires after 2026.

Sec. 138520. Modification of REIT Constructive Ownership Rules.

A certain percentage of REIT income must be rents from real property. Payments from any person are excluded, however, if the REIT owns, in the case of a corporation, stock possessing 10 percent of the vote or value of the corporation and, in the case of any other person, an interest of 10 percent or more in the assets or net profits of the person. For purposes of determining the ownership of stock, assets, or net profits, the constructive ownership rules of section 318(a) apply, with two modifications. This provision modifies the REIT constructive ownership rules by providing that stock, assets, and net profits constructively owned by a partnership, estate, trust, or corporation by reason of the application of 318(a)(3) (the "downward" attribution rule) are not considered as owned by such entity for purposes of again applying section 318(a)(3) in order to make another person the constructive owner of such stock, assets, or net profits.