



Legislative Notice

Jon Kyl, Chairman

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H.R. 6111

Noteworthy

- On December 8, 2006, the House took up the Senate amended version of H.R. 6111, a bill to amend the Internal Revenue Code to provide that the Tax Court may review claims for equitable innocent spouse relief and will send it back to the Senate with a message that includes the complete text of H.R. 6408 (Tax Relief and Health Care Act of 2006), H.R. 6406 (Extension of Preferences for Africa, Haiti, Andean Countries, and the Generalized System of Preferences; PNTR for Vietnam; and Miscellaneous Trade Bills), S. 3772 (White Pine County Conservation, Recreation, and Development Act of 2006), Cotton Trust Fund, Medical Advantage Enrollment and the text of the House passed H.R. 6111.
- The Majority Leader will call up H.R. 6111 as soon as it is received from the House.
- At the time of publication, no agreement with regard to timing had been reached.
- It is possible that a cloture petition will be filed on the motion to concur on the House Amendment.

Bill Provisions

The following is a brief summary of the major provisions of H.R. 6111 as provided by the Senate Committee on Finance. The italicized language is background information provided by the RPC.

Division A - Extensions and Expansion of Certain Tax Relief Provisions, and Other Tax Provisions

The FY 2006 budget resolution adopted by Congress (H. Con. Res. 95) authorized a revenue reconciliation bill that consists of changes in the laws within its jurisdiction sufficient to reduce revenues by not more than \$11 billion for FY 2006 and not more than \$70 billion for the period of FY 2006 through FY 2010.

The Senate considered the Tax Relief Act of 2005, S. 2020, in November 2005 and approved the bill by a vote of 64 to 33 on November 18, 2005. Subsequently, the House of Representatives approved H.R. 4297, the Tax Relief Extension Reconciliation Act of 2005, by a vote of 234 to 197, on December 8, 2005. The Conference Committee approved the Conference Report on May 9, 2006. The Conference Report was adopted by the House of Representatives on May 10, 2006 by a vote of 244 to 185 and by the Senate by a vote of 54 to 44 on May 11, 2006. Many of the provisions that were not included in the final Conference Report are now included in H.R. 4388.

Title I - Extensions and Modification of Certain Provisions

Deduction for qualified tuition and related expenses. The Economic Growth and Tax Relief Reconciliation Act of 2001 created an above-the-line tax deduction for qualified higher education expenses (defined in the same manner as the HOPE and Lifetime Learning credits). For tax year 2005, the maximum deduction was \$4,000 for taxpayers with Adjusted Gross Income (AGI) of \$65,000 or less (\$130,000 for joint returns) or \$2,000 for taxpayers with AGI of \$80,000 or less (\$160,000 for joint returns). The provision extends the deduction to taxable years beginning in 2006 and 2007. The estimated cost is \$3.3 billion for five and ten years.

Extension and modification of new markets tax credit. Present law provides a new markets tax credit for taxpayers who hold a qualified equity investment on a credit allowance date. The provision extends the new markets tax for one additional year (through the end of 2008), permitting a \$3.5 billion maximum annual amount of qualified equity investments. The provision also requires that the Secretary of the Treasury prescribe regulations to ensure that non-metropolitan counties receive a proportional allocation of qualified entity investments. The effective date is the date of enactment. The estimated cost is \$637 million over five years and \$1.3 billion over ten years.

Election to deduct State and local general sales taxes. The American Jobs Creation Act of 2004 (AJCA) provided that a taxpayer may elect to take an itemized deduction for State and local general sales taxes in lieu of the itemized deduction permitted for State and local income taxes for tax years 2004 and 2005. Taxpayers were given two options for determining deductible sales tax: (1) actual sales tax paid if receipts are maintained for IRS verification; or (2) approximate sales tax paid as estimated in tables provided by the Secretary of the Treasury plus sales taxes paid on major

purchases, such as a boat or car. This provision extends the election to taxable years beginning after December 31, 2005, and expires December 31, 2007. The estimated cost is \$5.5 billion over five years and ten years.

Extension and modification of research credit. In general, the law provides a research tax credit equal to 20 percent of the amount by which a taxpayer's qualified research expenses for a taxable year exceed its base amount for that year. The provision extends the research credit for qualified amounts paid or incurred in 2006 and 2007. The provision also enhances the credit for portions of tax years that are in 2007 by (1) increasing the rates of the alternative incremental credit; and (2) creating a new alternative simplified credit that does not use a gross receipts factor. The estimated cost is \$16.3 billion over five years and \$16.5 billion over ten years.

Work opportunity tax credit and welfare-to-work credit. The provision extends the WOTC and WTW credits for an additional two years (to include wages paid or incurred for individuals beginning work after December 31, 2005 and before January 1, 2008). For wages paid or incurred for individuals who begin work for the employer after December 31, 2006, the provision combines the two credits, expands eligibility for WOTC by raising the age ceiling for food stamp recipients from 25 to 40, eliminates the WOTC family income restrictions for ex-felons, and extends the paperwork filing deadline from 21 days to 28 days. The estimated cost is \$979 million over five years and \$1.002 billion over ten years.

Election to include combat pay as earned income for purposes of earned income credit. Present law allows the use of combat pay in earned income for purposes of calculating the earned income tax credit. The provision extends this provision for one year (for taxable years ending before January 1, 2008). The estimated cost is \$12 million over five and ten years.

Extension and modification of qualified zone academy bonds. Qualified zone academy bonds (QZABs) are an alternative to traditional tax-exempt bonds. State and local governments are authorized to issue QZABs for purposes of financing renovations, equipment purchases, developing course material, and training teachers and personnel at a qualified zone academy. In general, a qualified zone academy is any public school (or academic program within a public school) below college level that is designed in cooperation with businesses to enhance the academic curriculum and increase graduation and employment rates and such public school is located in an empowerment zone or enterprise community. The QZABs offer the holder a federal tax credit instead of interest (there has been an allocation of \$400 million of QZABs each year since 1998). The QZABs program expired on December 31, 2005. This provision allows another \$400 million of issuing authority to state and local governments for 2006 and 2007 for qualified zone academy bonds. The provision also adds special rules relating to expenditures and arbitrage and adds a reporting requirement for issuers of QZABs. The provision is effective for bonds issued after December 31, 2005, and expires on December 31, 2007. The provision is estimated to cost \$132 million over five years and \$330 million over ten.

Above-the-line deduction for certain expenses of elementary and secondary school teachers. The Job Creation and Worker Assistance Act of 2002 provided a \$250 above-the-line deduction for teachers and other school professionals for expenses paid or incurred for books, supplies (other than non-athletic supplies for courses of instruction in health or physical education), computer equipment (including related software and services), other equipment, and supplementary materials used by the educator in the classroom. The provision extends the deduction for two years (to expenses paid or

incurred in taxable years beginning during 2006 and 2007). The estimated cost is \$379 million over five and ten years.

Extension and expansion of expensing of brownfields remediation costs. The provision that permits expensing of costs associated with cleaning up hazardous (brownfield) sites expired on December 31, 2005. The provision would extend current law through the end of 2007. In addition, it provides that petroleum products may be treated as hazardous substances and permits the expensing of payments made or incurred during 2006 and 2007 to abate contamination related thereto.

Tax incentives for investment in the District of Columbia. The Taxpayer Relief Act of 1997 designated certain economically depressed census tracts within the District of Columbia as the District of Columbia Enterprise Zone, within which businesses and individual residents are eligible for special tax incentives. The Taxpayer Relief Act of 1997 also provided a \$5,000 first-time homebuyer credit for the District of Columbia. The zone designation and the first-time homebuyer credit expired December 31, 2005. The provision extends for two years (through 2007) the first-time homebuyer tax credit and four specific tax benefits available to businesses operating in designated DC enterprise zones (i.e., 20 percent wage credit; \$35,000 of additional small business expensing; tax exempt bonds and zero capital gains for property held five years). The estimated cost is \$150 million over five years and \$392 million over ten years.

Indian employment tax credit. The Omnibus Budget Reconciliation Act of 1993 created a business tax credit for the employer of qualified employees who work and live on or near an Indian reservation. The credit is for wages and health insurance costs paid to qualified employees (up to \$20,000) in the current year over the amount paid in 1993. Wages for which the work opportunity tax credit is available are not qualified wages for the Indian employment tax credit. The Indian employment tax credit expired on December 31, 2005. The provision would extend the credit for two additional years (through the end of 2007).

Accelerated depreciation for business property on Indian reservations. A special depreciation recovery period applies to qualified Indian reservation property placed in service before January 1, 2006. In general, qualified Indian reservation property is property used predominantly in the active conduct of a trade or business within an Indian reservation, which is not used outside the reservation on a regular basis and was not acquired from a related person. This provision extends the special depreciation for two additional years (to qualified Indian reservation property placed in service before January 1, 2008). This provision is estimated to cost \$602 million over five years and \$288 million over ten years.

Fifteen-year straight-line cost recovery for qualified leasehold improvements and qualified restaurant property. In AJCA, Congress shortened the cost recovery of certain leasehold improvements and restaurant property from 39 to 15 years for the remainder of 2004 and 2005. The proposal extends this provision to property placed in service after December 31, 2005, and expires December 31, 2007. The estimated cost is \$2.7 billion over five years and \$5.2 billion over ten years.

Cover over of tax on distilled spirits. The present law imposes a \$13.50 per proof gallon excise tax on distilled spirits produced in or imported into the United States. The Code provides a payment to Puerto Rico and the Virgin Islands of the excise tax on rum imported into the United

States. The payment is limited to \$10.50 per proof gallon. This was increased to \$13.25 per proof gallon during the period of July 1, 1999 through December 31, 2005. The proposal extends the \$13.25 per proof gallon provision to articles brought into the United States after December 31, 2005, and expires December 31, 2007. The estimated cost of the provision is \$184 million over five and ten years.

Parity in application of certain limits to mental health benefits. Group health plans that provide medical/surgical and mental health benefits cannot impose limits on mental health that are not imposed on health. There is a \$100 excise per day for violations. This is scheduled to expire after December 31, 2006. The provision extends the present law excise tax effective on the date of enactment for one additional year (through December 31, 2007).

Corporate donations of scientific property used for research and of computer technology and equipment. The proposal would extend a provision that encourages businesses to contribute computer equipment software to elementary, secondary, and post-secondary schools by allowing an enhanced deduction for such contributions. The provision would also allow equipment “assembled by” the donor to qualify for the enhanced deduction. This proposal extends the computer deduction provisions for contributions made during taxable years beginning after December 31, 2005, and expires December 31, 2007.

Availability of Medical Savings Accounts. Medical Savings Accounts (or Archer MSA’s) allow favorable tax treatment of money saved for medical expenses by certain taxpayers covered by high-deductible health plans. This provision allows new contributions through December 31, 2007. The cost is negligible.

Taxable income limit on percentage depletion for oil and natural gas produced from marginal properties. Taxpayers recover investments in oil and gas wells either through cost depletion or percentage depletion (depletion is like depreciation). Percentage depletion is only available to independent producers. Typically under percentage depletion, a taxpayer cannot deduct more than the income derived from the well in a given year. Congress suspended this 100 percent limitation for 1998 through 2005. The provision would extend the suspension of the 100 percent limitation for taxable years beginning in 2006 and 2007.

American Samoa economic development credit. Certain domestic corporations operating in American Samoa were eligible for a possessions tax credit, which offset their U.S. tax liability on income earned in American Samoa from active business operations, sales of assets used in a business, or certain investments in American Samoa. Further, the credit was held to an economic activity-based limit, measuring the credit against wages, depreciation, and American Samoa income taxes. The credit expired December 31, 2005. The provision creates a temporary, two year credit for possessions corporations operating in American Samoa. The credit is generally based on the amount of wages paid in American Samoa and depreciation deductions with respect to property located in American Samoa, and is effective for the first two taxable years beginning after December 31, 2005 and before January 1, 2008.

Extension of bonus depreciation for certain qualified Gulf Opportunity Zone property. The provision extends the placed-in-service deadline for certain GO Zone property in specified portions of the GO Zone to qualify for bonus depreciation. The placed-in-service deadline is extended to December 31, 2010 for nonresidential real property or residential rental property. For such

property, only the adjusted basis of such property attributable to manufacture, construction, or production before January 1, 2010 (progress expenditures) would qualify for bonus depreciation. The placed-in-service deadline is extended for personal property if substantially all the use of such property is in such building and such personal property is placed in service within 90 days of the date the building is placed in service. The specified portions of the GO Zone to which the provision applies are defined as those portions of the GO Zone which are in a county or parish which is identified as being a county or parish with damage to more than 60 percent of the housing units in the county or parish. The estimated cost is \$539 million over five years and \$465 million over ten years.

Authority for undercover operations. Present law authorizes the IRS to use the proceeds from an undercover operation to pay additional expenses incurred in the undercover operation. The IRS must deposit any surpluses into the General Fund. The IRS is required to conduct a detailed financial audit of large undercover operations in which the IRS is churning funds and provide an annual audit report to the Congress on all such large undercover operations. The provision expires at the end of 2006. This proposal extends the provision to apply before January 1, 2008.

Disclosures of certain tax return information. There are several provisions that allow the IRS to share information with other agencies. These provisions were most recently extended as part of the Katrina legislation through 2006. The proposal extends the provisions to requests made after December 31, 2006, and expires December 31, 2007. The provision has no revenue effect.

Special rule for elections under expired provisions. The provision gives fiscal year taxpayers with tax years ending in 2006, but before date of enactment, an opportunity to change elections already made on their originally filed returns to take into account the extension of the provisions that expired at the end of 2005. The revenue effect is included in the revenue effect of the extension and modification of the research credit.

Title II - Energy Tax Provisions

Credit for electricity produced from certain renewable resources (section 45). The provision extends the placed-in-service date by one year (through December 31, 2008) for qualifying facilities: wind facilities; closed-loop biomass facilities; open loop biomass facilities; geothermal facilities; small irrigation power facilities; landfill gas facilities and trash combustion facilities; and qualified hydropower. Placed-in-service dates for solar facilities and refined coal facilities are not altered. The provision is generally effective on the date of enactment. This provision is estimated to cost \$1.069 billion over five years and \$2.893 billion over 10 years.

Credit to holders of clean renewable energy bonds. The provision adds an additional \$400 million to a category of tax credit bond called Clean Renewable Energy Bonds (CREBs). CREBs are defined as bonds issued by qualified issuers if, in addition to other requirements, 95 percent of proceeds are used to finance capital expenditures incurred for facilities qualifying for a tax credit under section 45. Qualified issuers include governmental bodies (including Indian tribal governments) and mutual or cooperative electric companies. The provision is effective for bonds issued after December 31, 2006. This provision is estimated to cost \$73 million over five years and \$174 million over 10 years.

Performance standards for sulfur dioxide removal in advanced coal-based generation technology units designed to use subbituminous coal. The provision establishes an alternative measurement to achieve low sulfur dioxide emissions for advanced coal-based generation technology units designed to use sub-bituminous coal, for the investment tax credits for clean coal facilities established in the Energy Policy Act of 2005. Integrated gasification combined cycle (IGCC) projects get a 20 percent investment tax credit and other advanced coal-based projects that produce electricity get a 15 percent credit. The Secretary may allocate up to \$800 million for IGCC projects and up to \$500 million for other advanced coal-based technologies. This provision has no revenue effect.

Deduction for energy efficient commercial buildings. The provision extends for one year a deduction for energy efficient commercial buildings that reduce annual energy and power consumption by 50 percent compared to the American Society of Heating, Refrigerating, and Air Conditioning Engineers (ASHRAE) standard. The deduction would equal the cost of energy efficient property installed during construction, with a maximum deduction of \$1.80 per square foot of the building. In addition, a partial deduction of 60 cents per square foot would be provided for building subsystems.

Credit for new energy efficient homes. The provision extends for one year a credit to eligible contractors for construction of qualified new energy-efficient homes. The credit applies to manufactured homes meeting Energy Star Standards and other homes meeting a 50 percent standard. Credit applies to homes which are purchased prior to January 1, 2009. This provision is estimated to cost \$45 million over five years and \$56 million over 10 years.

Credit for residential energy efficient property. The provision extends for one year a credit, equal to 30 percent of qualifying expenditures, for the purchase for qualified photovoltaic property and solar water heating property used exclusively for purposes other than heating swimming pools and hot tubs. The provision also provides a 30 percent credit for the purchase of qualified fuel cell power plants and applies to property placed prior to January 1, 2009. The provision also clarifies that all property, not just photovoltaic property, that uses solar energy to generate electricity for use in a dwelling unit is qualifying property.

Energy credit. The provision extends for one year a 30 percent business energy credit for the purchase of qualified fuel cell power plants for businesses and a 10 percent credit for the purchase of qualifying stationary microturbine power plants. Additionally, a 30 percent credit for the purchase of qualifying solar energy property is also extended. Credits apply to periods before January 1, 2009.

Special rule for qualified methanol or ethanol fuel derived from coal. This provision extends a reduced excise tax rate on methanol or ethanol fuel derived from coal (including peat). This provision is estimated to cost less than \$500,000 over five and 10 years.

Special depreciation allowance for cellulosic biomass ethanol plant property. The provision allows for 50 percent accelerated depreciation in the year a new cellulosic biomass ethanol facility is placed in service. Cellulosic biomass ethanol is defined as ethanol produced by enzymatic hydrolysis of any lignocellulosic or hemicellulosic matter that is available on a renewable or recurring basis. The provision applies to facilities placed in service prior to January 1, 2013.

Expenditures permitted from the Leaking Underground Storage Tank Trust Fund. Monies appropriated from the Leaking Underground Storage Tank (LUST) trust fund are used for detection, prevention, and cleanup of leaking underground storage tanks to reduce water pollution. The provision expands the purposes the LUST trust fund can be spent on protective and corrective measures for the national water supply. New purposes include: expanding corrective action in response to underground storage tank petroleum releases; making funds available to carry out corrective actions for the release of MTBEs and other oxygenated fuel additives; requiring new tanks near community water systems to be secondarily contained; expanding inspections of underground storage tanks; implementing tank operator training requirements; expanding Federal and state enforcement efforts; improving prevention measures and compliance; and developing and implementing a strategy for addressing petroleum releases from tanks on tribal lands. This provision has no revenue effect.

Treatment of coke and coke gas. Certain fuels produced from nonconventional sources and sold to unrelated parties are eligible for an income tax credit. Qualified fuels must be within the United States. The provision clarifies that petroleum coke, or pet coke, is not a qualifying product for purposes of the nonconventional production tax credit and eliminates the phase-out of the credit for facilities producing coke or coke gas. The provision is effective the date of enactment and is estimated to have no revenue effect.

Title III - Health Savings Accounts

FSA and HRA terminations to fund HSAs. The provision permits an employer to make a one-time transfer of the balance in an employee's health reimbursement account (HRA) or flexible spending account (FSA) to a health savings account (HSA). The maximum transfer is the lesser of the HRA or FSA balance on the date of transfer or September 21, 2006. Transfers must be made before January 1, 2012. If a high deductible plan is not maintained for at least 12 months following the transfer, the transferred amount is taxable as ordinary income and subject to a 10 percent excise tax. Any FSA balance remaining at the end of a year can be used up in the first 2 ½ months of the following year (if the plan allows). Treasury has concluded that participation in an FSA that permits use of a balance for one year in the following year precludes contributions to an HSA for the first 2 ½ months of the following year. This provision would permit contributions from January 1 if the FSA balance is zero or is transferred to an HSA. This provision costs \$19 million over five years and \$21 million over 10 years.

Repeal of annual deductible limitation on HSA contributions. Current law allows HSA contributions of the lesser of the deductible or \$2,700 (\$5,450 family). The deductible amount must be at least \$1,050 for single coverage and \$2,100 for family coverage. The provision would allow a contribution of \$2,700 for single coverage (\$5,450 for family), even if the deductible is less than \$2,700 (\$5,450 family). This provision costs \$121 million over five years and \$712 million over 10 years.

Modification of cost-of-living adjustment. Enrollment in employer-provided health plans usually takes place in November or early December. Currently, adjustments to HSA limits are not released until late in the year, making preparation of enrollment materials and advance planning difficult. The provision would require indexing of limits by June 1. The cost of this provision is negligible.

Contribution limitation not reduced for part-year coverage. Currently the HSA contribution limit is prorated if coverage is less than 12 months, but the minimum deductible is not prorated. The provision allows a full year's contribution to an HSA for partial year's coverage, provided the taxpayer maintains the high deductible plan for at least 12 months. Failure to maintain the high deductible coverage for at least 12 months results in a loss of the deduction and a 10 percent penalty. The provision costs \$147 million over five years and \$302 million over 10 years.

Exception to requirement for employers to make comparable health savings account contributions. Under current law, employers can contribute to HSAs on behalf of employees, but the contributions must be "comparable" for all employees. The provision would allow employers to provide additional contributions to lower-paid workers. The cost of this provision is negligible.

One-time distribution from individual retirement plans to fund HSAs. Distributions from an IRA for medical expenses are taxable income (to the extent not a distribution of basis). Distributions from an HSA to pay medical expenses are not. This provision would allow those who cannot afford to fully fund an HSA with direct contributions to move IRA money to a more tax-advantaged position. The cost of this provision is negligible.

Title IV - Other Provisions

Deduction allowable with respect to income attributable to domestic production activities in Puerto Rico. The manufacturing deduction under Section 199 (as enacted in AJCA) allows a deduction from taxable income for up to 3 percent of domestic manufacturing income (gradually rising to 9 percent by 2009, which effectively lowers the corporate rate on manufacturing income to approximately 32 percent). Activities in Puerto Rico do not qualify. The provision expands this deduction to activities in Puerto Rico. The provision is effective for the first two taxable years beginning after December 31, 2005 and before January 1, 2008. The estimated cost is \$162 million over five and ten years.

Credit for prior year minimum tax liability made refundable after period of years. Incentive Stock Options (ISO's) are granted by companies to workers at all levels, not just executives, and typically have a long term holding period of at least one year. The grant of these options, even before exercised, is subject to tax under the Alternative Minimum Tax (AMT) at the value of the stock on the date the option was granted. A large number of taxpayers have been hit with AMT bills that far exceed income or the sale value of the stock. The provision allows certain taxpayers who have unused AMT credits to claim a refundable credit at 20 percent of the long-term unused AMT credits per year (up to \$5,000) for the next five years. The refundable credit phases out for higher income taxpayers. The provision is effective for taxable years beginning after the date of enactment and sunsets on December 31, 2012. The estimated cost is \$1.7 billion over five years and \$51 million over ten years (which includes the revenue increase expected from the following provision).

Returns required in connection with certain options. Present law requires that every corporation report transfers of stock pursuant to a person's exercise of an incentive stock option or a transfer of legal title of a share of stock acquired by the transferor pursuant to the exercise of an option. The provision requires the corporation reporting the transfer to provide a statement to the person named in the information return. The provision is effective for calendar years beginning after the date of enactment.

Partial expensing for advanced mine safety equipment. Present law generally provides that a taxpayer must capitalize the cost of property used in a trade or business and recover such cost over time through annual deductions for depreciation or amortization. The provision provides 50 percent immediate expensing for qualified underground mine safety equipment (that goes above and beyond current safety equipment requirements), including: (1) communications technology enabling miners to remain in constant contact with an individual above ground; (2) electronic tracking devices that enable an individual above ground to locate miners in the mine at all times; (3) self-contained self-rescue emergency breathing apparatuses carried by the miners and additional oxygen supplies stored in the mine; and (4) mine atmospheric monitoring equipment to measure levels of carbon monoxide, methane, and oxygen in the mine. This provision will encourage mining companies to invest in safety equipment that goes above and beyond current safety equipment requirements. The provision is effective for costs paid or incurred after the date of enactment and does not apply to property placed in service after December 31, 2008. The estimated cost is \$17 million over five years and less than \$1 million over ten years.

Mine rescue team training tax credit. The provision provides a credit of up to \$10,000 for training of mine rescue team members. This tax incentive is effective for taxable years beginning after December 31, 2005, and expires on December 31, 2008. The estimated cost is \$4 million over five years and \$9 million over ten years.

Whistleblower reforms. Present law authorizes the IRS to pay such sums as deemed necessary for: (1) detecting underpayments of tax; and (2) detecting and bringing to trial and punishing persons guilty of violating the internal revenue laws or conniving at the same. Amounts are paid based on a percentage of the tax, fines, and penalties (but not interest) actually collected based on the information provided. The provision reforms the reward program for individuals who provide information regarding violations of the tax laws to the Secretary that involve an individual whose gross income exceeds \$200,000 for any taxable year subject to such action and that involves tax, penalties, and interest of over \$2 million. Generally, the provision establishes a reward floor of 15 percent and a cap of 30 percent of the collected proceeds (including penalties, interest, additions to tax and additional amounts) if the IRS moves forward with an administrative or judicial action based on information brought to the IRS's attention by an individual. Under certain specified circumstances, the provision permits awards of lesser amounts. The provision allows an above-the-line deduction for attorneys' fees and costs paid by, or on behalf of, the individual in connection with any award for providing information regarding violations of the tax laws. The provision allows the whistleblower to appeal the award determination with the Tax Court. The provision also creates a Whistleblower Office within the IRS to administer the reward program. The provision requires a yearly study and report by the Secretary of the Treasury. The provision is effective for information provided on or after the date of enactment. The provision is estimated to raise \$32 million over five years and \$182 million over ten years.

Frivolous tax submissions. The provision modifies the IRS-imposed penalty by increasing the amount of the penalty from \$500 to \$5,000 and by applying it to all taxpayers and to all types of Federal taxes. The provision also modifies present law with respect to certain submissions that raise frivolous arguments or that are intended to delay or impede tax administration. The submissions to which the provision applies are requests for a collection due process hearing, installment agreements, offers-in-compromise, and taxpayer assistance orders. First, the provision permits the IRS to disregard such requests. Second, the provision permits the IRS to impose a

penalty of up to \$5,000 for such requests, unless the taxpayer withdraws the request after being given an opportunity to do so. The provision requires the IRS to publish a list of positions, arguments, requests, and submissions determined to be frivolous for purposes of these provisions. This provision is estimated to raise \$15 million over five years and \$30 million over 10 years.

Addition of meningococcal and human papillomavirus vaccines to list of taxable vaccines.

Certain vaccines are taxed at \$0.75 per dose and the tax is put into the Vaccine Injury Compensation Trust Fund. The trust fund provides for payment of compensation for vaccine-related injury or death with respect to a taxable vaccine. This provision adds meningococcal and human papillomavirus vaccines to the list of taxable vaccines for purposes of the Vaccine Injury Compensation Trust Fund. This is effective one month after the date of enactment. This provision is estimated to raise \$7 million over five and ten years.

Clarification of taxation of certain settlement funds made permanent. The Tax Increase Prevention and Reconciliation Act of 2005 (TIPRA) provided that certain escrow accounts or settlement funds established before January 1, 2011 for resolving liability claims under the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA) are to be treated as beneficially owned by the U.S. government and therefore, not subject to Federal income tax. The provision makes this change permanent. The estimated cost is \$2 million over five years and \$45 million over ten years.

Modification of active business definition under section 355 made permanent. Normally, corporations are taxed on distributions of property to shareholders as if sold at fair market value. However, section 355 of the tax code provides corporations with the flexibility to distribute one or more of their businesses to their shareholders, such as in a spin-off, without triggering tax consequences if the transaction meets important requirements. An exception is allowed only if both the distributing and distributed corporations continue to conduct an “active trade or business.” TIPRA simplified the active trade or business test by looking at all corporations in the distributing corporation’s and the distributed subsidiary’s respective affiliated group to determine if the active trade or business test is satisfied. The changes were set to expire after 2010. The provision makes the changes permanent. The estimated cost is \$2 million over five years and \$71 million over ten years.

Revision of State veterans limit made permanent. Qualified veterans’ mortgage bonds are private activity bonds, the proceeds of which are used to make mortgage loans to certain veterans. The five States eligible to issue these bonds are Alaska, California, Oregon, Texas, and Wisconsin. TIPRA revised eligibility requirements for veterans’ mortgage bonds issued by the States of Alaska, Oregon, and Wisconsin to provide that veterans must apply for financing within 25 years of leaving active duty. In addition, the annual issuance volume limits on veterans’ mortgage bonds for the States of Alaska, Oregon, and Wisconsin were changed and are to be phased in between the years 2006 and 2010. The veterans’ mortgage bonds issued by Texas and California were not amended. These changes were set to expire after 2010. The provision makes the TIPRA qualified veterans’ mortgage bond provision permanent. The estimated cost is less than \$500,000 over five years and \$19 million over ten years.

Capital gains treatment for certain self-created musical works made permanent. TIPRA allowed for a taxpayer to elect to have the sale or exchange before January 1, 2011 of musical compositions or copyrights in musical works created by the taxpayer’s personal efforts (or having a

basis determined by reference to the basis in the hands of the taxpayer whose personal efforts created the compositions or copyrights) to be treated as the sale or exchange of a capital asset. The changes were set to expire after 2010. The provision makes these changes permanent. The estimated cost is \$3 million over five years and \$29 million over ten years.

Reduction in minimum vessel tonnage which qualifies for tonnage tax made permanent.

Corporations that are qualifying vessel operators may elect a “tonnage tax” in lieu of the corporate tax on taxable income from certain foreign shipping activities. The tonnage tax was enacted to help U.S. vessel operators involved in international shipping be more competitive with foreign-flag ship operators. TIPRA lowered from 10,000 to 6,000 deadweight tons the limitation on vessels qualifying to elect into the tonnage tax regime for taxable years beginning after December 31, 2005, and ending before January 1, 2011. The provision makes this change permanent. The estimated cost is \$3 million over five years and \$108 million over ten years.

Modification of special arbitrage rule for certain funds made permanent. Under current law, issuers of tax exempt bonds are restricted as to the amount of arbitrage activity that they can engage in with their bond proceeds. The TIPRA extended and updated the grandfather exception from the arbitrage bond rules for certain permanent university funds. It is scheduled to sunset on August 31, 2009. The provision makes the arbitrage rule permanent. The estimated cost is \$3 million over five years and \$20 million over ten years.

Great Lakes domestic shipping to not disqualify vessel from tonnage tax. Currently, if a vessel operates in the U.S. domestic trade for more than 30 days a year, it cannot qualify for the alternative tonnage tax regime for income from its operations in U.S. foreign trade. This means vessel operators in the Great Lakes generally do not qualify for the tonnage tax regime. The provision modifies the treatment of shipping within the Great Lakes to permit vessel operators in the region to qualify for the tonnage tax regime. The provision is effective for taxable years beginning after the date of enactment. The estimated cost is \$20 million over five years and \$52 million over ten years.

Use of qualified mortgage bonds to finance residences for veterans without regard to first-time homebuyer requirement. States operate tax-exempt mortgage revenue bond programs to provide lower-income individuals access to mortgages with lower interest costs. Normally, only first-time homebuyers qualify. The provision allows veterans to have a second chance at being a first-time homebuyer. The provision is effective for bonds issued after the date of enactment and before January 1, 2008. The estimated cost is \$156 million over five years and \$339 million over ten years.

Exclusion of gain from sale of a principal residence by certain employees of the intelligence community. Current law provides an exclusion from capital gains tax for \$250,000 from the sale of a primary residence (\$500,000 for married couples). Taxpayers must have lived in the residence for at least two of the five years prior to the sale. Much like military service personnel and foreign service officers, intelligence officers who have been stationed overseas cannot always meet the residency requirement to avoid the capital gains tax. In 2003, Congress changed the law to permit military service personnel and foreign service officers to toll the five year period for up to 10 years while they are stationed 50 miles from home. This provision provides the same residency requirement exclusion offered to military service personnel to intelligence officers, except that it requires that the intelligence officers be stationed overseas. The provision is effective for sales and

exchanges after the date of enactment through December 31, 2010. The estimated cost is \$1 million over five and ten years.

Sale of property by judicial officers. The provision extends to Federal judges the ability, currently available to executive branch employees, to elect to defer capital gains on property sold to avoid conflicts of interest to the extent the proceeds are reinvested in other permitted property. The provision is effective for divestitures after the date of enactment. The estimated cost is \$1 million over five years and \$3 million over ten years.

Premiums for mortgage insurance. The provision establishes an itemized deduction for the cost of mortgage insurance on a qualified personal residence. The deduction is phased-out ratably by 10 percent for each \$1,000 by which the taxpayer's AGI exceeds \$100,000. Thus, the deduction is unavailable for a taxpayer with an AGI in excess of \$110,000. The provision is effective for amounts paid or accrued (and applicable to the period) after December 31, 2006 and before January 1, 2008 for mortgage contracts issued after December 31, 2006. The estimated cost is \$91 million over five and ten years.

Modification of refunds for kerosene used in aviation. The provision allows tax exempt users of fuel, such as crop dusters and air ambulances, to file for a refund or waive their right to claim the refund to the registered vendor. The provision is effective for kerosene sold before the date of enactment to ultimate purchasers at a price that included the tax imposed on such fuel and for which the amount of the tax has not been repaid or credited, and for fuel sold on or after the date of enactment. The provision is estimated to cost less than \$500,000 for five and ten years.

Regional income tax agencies treated as States for purposes of confidentiality and disclosure requirements. The provision allows a governmental organization composed of multiple municipalities with an aggregate population in excess of 250,000 to enter into agreements with the IRS to receive federal tax information to assist with tax administration. This provision has no revenue effect.

Designation of wines by semi-generic names. The Code contains certain provisions with respect to wine relating to consumer protection and trade. Section 5388(c) allows a semi-generic wine name to be used to designate wine of an origin other than that indicated by its name only if the label discloses the place of origin and the wine conforms to the standard of identity contained in regulations. On March 10, 2006, the United States signed the Agreement between the United States of America and the European Community on Trade in Wine (the "Agreement") under which, among other things, the United States entered into certain obligations with respect to certain semi-generic wine names of European origin. The provision implements the obligations of the United States under the Agreement with respect to certain semi-generic wine names of European origin. The provision does not apply to wine that (1) contains less than seven percent or more than 24 percent alcohol by volume; (2) does not bear a brand name; or (3) is intended for sale outside the United States. Such wine continues to be governed by present law. The provision applies to wine imported or bottled in the United States on or after the date of enactment. This provision has no revenue effect.

Modification of railroad track maintenance credit. Present law provides, subject to limitations, a tax credit equal to 50 percent of the "qualified railroad track maintenance expenditures" paid or incurred by eligible taxpayers including Class II and Class III railroads. The proposed provision

modifies the definition of qualified railroad track maintenance expenditures to include gross expenditures. Under the provision, qualified railroad track maintenance expenditures should be determined without regard to any consideration for such expenditures given by the Class II or Class III railroad which assign the track for purposes of the credit. The provision would be effective as if included in the AJCA. The provision is expected to cost \$49 million over five years and \$49 million over 10 years.

Modification of excise tax on unrelated business taxable income of charitable remainder trusts. The provision imposes a 100 percent excise tax on the unrelated business taxable income of a charitable remainder trust. This replaces the present-law rule that takes away the income tax exemption of a charitable remainder trust for any year in which the trust has any unrelated business taxable income. Consistent with present law, the tax is treated as paid from corpus. The unrelated business taxable income is considered income of the trust for purposes of determining the character of the distribution made to the beneficiary. This legislation was passed as part of the CARE Act by the Senate in 2003. The provision costs \$23 million over five years and \$62 million over 10 years.

Loans to qualified continuing care facilities made permanent. The Tax Increase Prevention and Reconciliation Act of 2005 (TIPRA) included legislation that reformed the treatment of loans by seniors to qualified continuing care facilities where they are residents. The provision in TIPRA expired after five years. This change makes the reform permanent. This provision costs \$1 million over five years and \$14 million over 10 years.

Technical corrections.

a. Look-through treatment of payments between related controlled foreign corporations under the foreign personal holding company rules. Subpart F of the Code taxes on a current basis certain mobile income earned by foreign subsidiaries of U.S. persons. TIPRA created a new exception from Subpart F for certain payments between related foreign subsidiaries of U.S. persons. The provision conforms this new rule to its purpose of allowing U.S. companies to redeploy their active foreign earnings without an additional U.S. tax burden in appropriate circumstances. In order to qualify for this exception from Subpart F, a related party payment must not be attributable to income of the payor that is effectively connected with the conduct of a U.S. trade or business. The provision also clarifies Treasury's regulatory authority. This provision has no revenue effect.

b. Technical Correction regarding authority to exercise reasonable cause and good faith exception. This provision clarifies H.R. 4440 (Gulf Opportunity Zone Act of 2005) Section 303 (a)(2)(B)(iii). As originally enacted in the GoZone bill, this section made retroactive a provision in AJCA that repealed interest suspension rules on tax shelter listed transactions and nondisclosed reportable transactions (i.e., the 18-month interest suspension rules do not apply to interest on tax deficiencies resulting from certain tax shelter transactions). The GoZone provision contained an exception to encourage taxpayers to elect into the Notice 2005-80 IRS global tax shelter settlement initiative (i.e., interest on those deficiencies would continue to be suspended for periods later than 18 months from the due date of the return, or the date of filing, whichever was later). It included a similar exception for taxpayers who acted reasonably and in good faith. Under the terms of the GoZone provision, only the Secretary of the Treasury could determine whether taxpayers were acting reasonably and in good faith. The provision clarifies that the Secretary of the Treasury may delegate his authority to permit interest suspension where taxpayers have acted reasonably and in good faith. The provision has no revenue effect.

DIVISION B – Medicare and Other Health Provisions

***Medicare** payment rates for physician services were scheduled under their payment formula to be cut by about 5 percent in 2007. Instead, payment rates will remain at 2006 levels. In addition, for the second half of 2007 (July-December), physicians who voluntarily submit claims data on certain measures of quality of care will be paid a single additional bonus payment amount equal to 1.5 percent of the allowed charges during that time.*

This bill also extends six payment provisions of the Medicare Modernization Act of 2003 (MMA) and also calls for tying payments for hospital outpatient services to quality reporting in, or after, 2009.

A cost-offsetting provision limits the use of the \$10 billion “stabilization fund” for private Medicare insurers. MMA established the fund to provide incentives for plans to participate and remain in the Medicare Advantage regional program. It was to be made available between 2007 and 2013. Instead, the amount has been reduced to \$3.5 billion and it will only be made available beginning in 2012.

***Medicaid** savings are derived from lowering the maximum rate at which a state can tax its Medicaid health providers to draw down matching federal Medicaid funds. More Medicaid funding will be provided to Tennessee and Hawaii hospitals which care disproportionately for uninsured patients. Six month extensions (through June 2007) were granted to expiring programs for abstinence education and for providing transitional Medicaid benefits for certain families who leave welfare to work.*

Title I – Medicare Improved Quality and Provider Payments

Payments for physician services. Prevents physician payment cuts in 2007 by freezing payment rates for physician services.

Quality reporting system for physician services. Provides a 1.5 percent bonus-incentive payment to physicians who report on quality measures in 2007. Establishes a fund to promote physician payment stability and physician quality initiatives in 2008.

Geographic payment adjustment for physicians. Extends through 2007 the 1.0 floor on the Medicare work geographic adjustment for any locality for which the index is less than 1.0.

Payments for dialysis services. Provides a 1.6 percent update to one component of end stage renal disease (ESRD) facility payments in 2007.

Physician pathology services. Extends through 2007 direct billing for the technical component for pathology services by independent laboratories, rather than hospitals.

Laboratory tests. Extends through June 2007 the higher level cost-based payments for lab tests furnished in small rural hospitals.

Hospital Medicare reports and clarifications. Corrects mid-year expiration of the Medicare hospital wage index reclassifications, and requires the Medicare Payment Advisory Commission and Centers for Medicare and Medicaid Services to issue reports on the wage index system and possible alternatives. Eliminates other unneeded reports.

Brachytherapy. Allows brachytherapy to be paid based on hospital costs for another year through 2007. Establishes codes for certain brachytherapy devices by July 1, 2007.

Competitive Acquisition Program for Part B Drugs. Allows for a post-payment review process to ensure that payment is made for a drug or biological only if the drug or biological is delivered for administration to a beneficiary.

Quality reporting for hospital outpatient services. Provides a full update to hospital outpatient and ambulatory surgical facilities that choose to provide designated quality data starting no sooner than 2009. Requires CMS to develop quality measures for hospital outpatient and ambulatory surgery services.

Cancer anti-anemia drugs. Requires physicians to report anemia quality indicators when administering cancer anti-anemia drugs.

Title II – Medicare Beneficiary Protections

Therapy services. Provides a one-year extension of the exceptions process established in the Deficit Reduction Act to allow patients to apply for additional physical, occupational and speech language therapy services if their treatment is expected to exceed the annual cap on therapy services.

Physician administration of Part D vaccines. CMS has chosen not to reimburse providers for administering vaccines that are covered under the new Medicare prescription drug benefit (Part D). If doctors and their staff are not being paid to provide these vaccines, it will create access problems to these important preventive medicines. This provision ensures that providers will be paid for their services through Part B funds in 2007 and through Part D thereafter.

Never events. Provides that the Office of Inspector General will conduct and report on a study involving the prevalence of, and payment for, “never events” in the Medicare population. Never events are medical events that the clinical community feels should never occur and result in the death or serious disability of the patient.

Medical home demonstration program. Establishes a three-year demonstration on the concept of a medical home model. The medical home model redesigns health care delivery systems to provide targeted and coordinated care to patients suffering from one or more chronic conditions. A personal physician and a physician practice work together to better manage these patients, so continuity of care is not disrupted.

Rural Program of All-Inclusive Care for the Elderly (PACE). Retains previously appropriated outlier payment funds through 2010.

Title III – Medicare Program Integrity Efforts

Medicare Advantage (MA) Stabilization Fund. The health provisions are partially off-set by reducing the stabilization fund. The \$10 billion fund was to provide incentives for private health plans to participate and remain in the Medicare Advantage regional program. It was to be made available between 2007 and 2013. Instead, the amount has been reduced to \$3.5 billion and it will only be made available beginning in 2012.

Medicare payment inaccuracies. Extends and expands the recovery audit contractor (RAC) program from three states to all states to identify and collect overpayments and underpayments through specialized contractors.

Health Care Fraud and Abuse Control Account (HCFAC). Provides a four-year funding stream to the HCFAC through the application of the Consumer Price Index (CPI) to help reduce or eliminate fraud and abuse.

Implementation funding. Calls for \$45 million to be used by the Centers for Medicare and Medicare Services for implementation.

Title IV – Medicaid and Other Health Provisions

Transitional Medical Assistance (TMA) and abstinence education programs. The TMA program, which continues Medicaid health benefits for up to one year, for families leaving welfare for work, and the federally-funded abstinence education programs are extended through June 30, 2007.

Valley Fever vaccines. Provides \$40 million in grants through 2012 to develop vaccines against Valley Fever.

Provider taxes. States which levy taxes on their medical provider facilities and then use the revenues to draw down increased federal Medicaid matching funds, will have to limit such tax rates to 5.5 percent. The current limit is 6 percent.

FY 2007 DSH allotments for Tennessee and Hawaii. Creates a \$280 million allotment for Tennessee hospitals that care disproportionately for uninsured patients. Creates a \$10 million allotment for Hawaii.

Medicaid Deficit Reduction Act (DRA) technical corrections.

DIVISION C – Other Provisions

Title I – Gulf of Mexico Energy Security

Outer Continental Shelf (OCS). The provision provides for opening more than 8.3 million acres on the outer Continental Shelf for oil and gas leasing. The provision calls for opening approximately 2.5 million acres as soon as practicable, but no later than one year of the date of

enactment. It calls for opening an additional 5.8 million acres as soon as practicable. The provision also directs leasing in the 181 Area, excluding areas East of the Military Mission Line, areas in the New Eastern Gulf of Mexico Planning Area within 125 miles of the State of Florida, and areas in the New Central Gulf of Mexico Planning Area within 100 miles of the State of Florida. The provision also directs leasing in the 181 South Area, excluding areas East of the Military Mission Line, and areas east of the New Eastern Gulf of Mexico Planning Area. The provision directs the Secretary of the Interior to establish within one year of enactment a regulation that provides for an option to exchange leases in areas unavailable for leases within 125 miles of Florida coastline in the New Eastern Gulf Planning Area for leases in areas available for leasing in the Gulf of Mexico. The provision provides for revenue sharing on new areas of production made available by this agreement and new leases beginning in FY 2007 and each fiscal year thereafter (181 Area above the CBO baseline and 181 South Area) and on new leases after date of enactment in existing planning areas beginning in FY 2016 and each fiscal year thereafter (Gulf of Mexico planning areas) as follows: 37.5 percent to Gulf producing states, 12.5 percent to Stateside LWCF, and 50 percent to the Federal Treasury. There is a \$500 million annual net spending cap on revenue. "Net" means spending in excess of receipts coming in from new areas opened up under this bill.

Title II – Surface Mining Control and Reclamation Act Amendments of 2006

Surface Mining Control and Reclamation Act Amendments of 2006. The provision extends the AML program for fifteen years and ensures that reclamation funds collected from fees on coal production will be distributed to the states that have the most dangerous abandoned mine sites. Annual appropriations since the program's inception have been severely limited due to ongoing budget constraints, but significant problems remain in many states that threaten the health and safety of people who live near them. In addition, this legislation repays states the money they paid into the AML Fund. Each year, fees imposed on coal production are held in this fund and have not been fully redistributed. The provision also requires annual transfers of AML Fund interest to pay for the health benefits of orphan beneficiaries in the Combined Benefit Fund, and the 1992 and 1993 plans. In addition, coal receipts received through the Mineral Leasing Act will be used as needed to pay for any benefits not covered by the AML Fund interest. This provision addresses the problem of the current structure for financing orphan benefits, which is no longer sustainable because of the declining number of contributing employers.

Title III – Other Provisions

Tobacco personal use quantity exception to not apply to delivery sales. The provision amends the Imported Cigarette Compliance Act (ICCA) by: (1) extending the ICCA's provisions to cover smokeless tobacco products, (2) clarifying that, under current law, the personal use exemption does not apply to any cigarettes or smokeless tobacco products sold in connection with a delivery sale, and (3) authorizing State attorney generals to obtain copies of any certifications required under the ICCA. The provision raises \$4 million over five years and \$9 million over ten years.

Ethanol Tariff Schedule. The provision extends a 54-cent-per-gallon tariff on imported ethanol. The provision applies to imported ethanol through January 1, 2009.

Withdrawal of certain Federal land and interests in certain Federal land from location, entry, and patent under the mining laws and disposition under the mineral and geothermal leasing laws. The provision excludes from income 25 percent of any long-term capital gain recognized upon the sale of the taxpayer's entire interest in a mineral or geothermal deposit that is located on certain Federal land. To qualify, the sale must be to a government or to a section 501(c)(3) conservation organization. The provision would make permanent current government policy not to issue any new oil and gas leases on the Forest Service and BLM land south of the Glacier National Park. Over the last 50 years, the Forest Service and BLM have issued 60 leases for oil and gas development in this area. However, none of these leases is currently producing. The issuance of future leases has been administratively suspended and the provision would make permanent the current Federal moratorium. This provision is estimated to cost \$1 million over five and ten years.

Continuing eligibility for certain students under District of Columbia School Choice Program. The DC School Choice Incentive Act of 2003 provides federal assistance to low-income families in Washington, D.C. to attend private schools of their choice. This provision increases the income eligibility cap for current students to remain in the program from 200 percent to 300 percent of the federal poverty level.

Study on establishing uniform national database on elder abuse. The Secretary of HHS, in consultation with the Attorney General, shall conduct a study on establishing a uniform national database on elder abuse. The Secretary may consider current methodologies for collecting data on elder abuse, the process by which uniform national standards for reporting elder abuse could be implemented, potential conflicts in federal, state and/or local law, as well as the scope and variability of existing federal, state and/or local definitions of elder abuse. The study must be completed within two years of enactment and the Secretary must report to Congress with recommendations within six months of completion of the study.

Cotton Trust Fund. The bill suspends duties on certain cotton fabrics and establishes a trust fund not to exceed \$16,000,000 each fiscal year. Funds will be distributed among eligible yarn spinners and shirt manufacturers, and to a nationally recognized association established to promote the growth of pima cotton in the United States. The trust fund terminates October 1, 2008.

Equitable Innocent Spouse Relief. The bill would amend the Internal Revenue Code by adding several provisions favorable to innocent spouses seeking equitable relief from tax liability for understatements of tax liability on joint tax returns by a divorced or separated spouse.

Medicare Advantage Enrollment. The bill adds a provision that allows Medicare beneficiaries who are enrolled in a traditional fee-for-service, but not enrolled in a prescription drug plan, to enroll in a Medicare Advantage plan that does not offer drug coverage after their enrollment period ends. Such beneficiaries would be allowed to make this change once during the year, after their enrollment period had ended.

White Pine County Conservation, Recreation, and Development Act of 2006, S. 3772. The bill conveys land for two existing state parks and one state wildlife management area to expand and improve the management of these areas.

DIVISION D

Trade Provisions

Generalized System of Preferences (GSP). *The Generalized System of Preferences (GSP) provides duty-free tariff treatment to certain products from designated countries. The authorization contained in section 4101 of the Trade Act of 2002 (P.L. 107-210) expires on December 31, 2006. Under the program, the President is authorized to grant duty-free treatment for any eligible product to developing countries generally, or to countries otherwise deemed as having satisfied the mandatory criteria set out in the law as well as the discretionary considerations the President may utilize.* This bill extends the program for two years, but allows the President to limit the availability of GSP benefits for super-competitive products – i.e. those products for which the aggregate annual import value is greater than \$180 million or that constitute more than 75 percent of total U.S. imports of such product.

Andean Trade Preference Act (ATPA). The ATPA program offers the four Andean countries – Colombia, Peru, Ecuador, and Bolivia – duty-free access to the U.S. market for a variety of products. The program expires at the end of 2006. This bill includes a straight extension of the program for all four countries for six months, followed by an additional six-month extension for a beneficiary country if the United States and that country both complete their legislative processes to approve a free trade agreement.

African Growth Opportunity Act (AGOA). The AGOA program offers sub-Saharan countries duty-free access to the U.S. market. One important piece of AGOA – the “third country fabric provision” – expires in October 2007. That provision allows the least developed countries duty free access for certain apparel made with fabric from countries other than the United States or African countries. This bill will extend the “third country fabric” provision until 2012. Also, in order to remove disincentives to investment in fabric production in Africa, the bill creates an "abundant supply" exception to eligibility under the third country fabric provision with respect to fabrics and yarns that are available in commercial quantities from African suppliers. In addition, it extends AGOA benefits to certain textile articles wholly made in sub-Saharan African countries. *AGOA extends preferential treatment to imports from eligible countries that (1) have established, or are making continual progress toward establishing a market-based economy and is taking other designated actions; (2) do not engage in activities that undermine U.S. national security and foreign policy interests; and (3) do not engage in gross violations of internationally recognized human rights or provide support for international terrorism.*

Haitian Hemispheric Opportunity through Partnership Encouragement (HOPE) Act. The bill would allow duty-free entry to specified apparel articles made and/or assembled in Haiti, the United States, a beneficiary country of a U.S. trade preference program, or a country party to a U.S. free trade agreement. The sum of material and production costs must be an increasing percentage of the customs value over a five-year period (starting at 50 percent in year one), and import quantities are capped at an increasing percentage not to exceed 2 percent of annual U.S. apparel imports. The bill would also extend duty-free entry to certain wire harness automotive components if the cost of materials and processing operations performed in Haiti, the United States, or both, exceeds 50 percent of the declared customs value of such articles. Haiti may only receive benefits under this

legislation if the President certifies that Haiti meets certain political, economic, and labor criteria, as well as textile and apparel transshipment enforcement requirements.

Permanent Normal Trade Relations (PNTR) for Vietnam. *The bill authorizes the President to extend nondiscriminatory treatment (normal trade relations treatment) to the products of Vietnam on a permanent basis. Since 2001, the President has granted conditional normal trade relations to Vietnam by utilizing waiver authority in Section 401 of Title IV of the Trade Act of 1974. As written, the provision authorizes the President both to determine that title IV no longer applies to Vietnam and to proclaim the extension of unconditional or permanent normal trade relations treatment (PNTR) to the products of Vietnam.*

Vietnam applied to join the World Trade Organization (WTO) on January 1, 1995. On May 31, 2006, United States and Vietnamese negotiators signed a bilateral agreement that contained conditions for Vietnam's accession into the WTO. This agreement marked the last of Vietnam's bilateral accession negotiations. On November 7, 2006, Vietnam completed the multilateral component of its WTO membership process. The WTO General Council approved Vietnam's accession documents containing the bilateral agreements that Vietnam negotiated with WTO members, including the United States.

If the United States does not extend unconditional or permanent normal trade relations (PNTR) to Vietnam, U.S. exporters will not be able to avail themselves of the market access commitments Vietnam has made pursuant to WTO membership.

On June 13, 2006, Senator Baucus introduced S. 3495, and Congressman Ramstad introduced companion legislation (H.R. 5602) in the House of Representatives. Both bills authorize the President to determine that Title IV of the Trade Act of 1974 (19 U.S.C. 2431 et seq.) no longer applies to Vietnam and to proclaim the extension of unconditional or permanent normal trade relations treatment (PNTR) to the products of Vietnam.

Chairman Grassley convened a hearing of the Finance Committee on July 12, 2006. On July 31, 2006, the Committee ordered S. 3495 favorably reported without amendment.

In September 2004, the Secretary of State designated Vietnam as a "Country of Particular Concern" under the International Religious Freedom Act. According to the Department of State's International Religious Freedom Report for 2005, U.S. government officials have "raised concerns about...the detention and arrest of religious figures, the repression of Protestants in the Central and Northwest Highlands, and other restrictions on religious freedom with the Prime Minister, Deputy Prime Minister, government cabinet ministers, Communist Party of Vietnam (CPV) leaders, provincial officials, and others." In May 2005, the United States and Vietnam concluded an agreement in which the Government of Vietnam made a number of commitments to protect religious freedoms.

On November 13, 2006, the State Department removed Vietnam from the list of "countries of particular concern."

As part of Vietnam's accession to the WTO, it has committed to open its markets to more U.S. products and services. But the United States cannot take advantage of Vietnam's commitments until PNTR is extended. Currently, the United States reviews its trade relations with

Vietnam on a yearly basis. This bill would end that practice and grant unconditional normal trade relations to Vietnam. The bill also establishes a process for the Administration to examine whether Vietnam has maintained any prohibited subsidies to its textile and apparel industry in violation of the terms of its WTO accession.

Miscellaneous Tariff Bill (MTB). *On July 28, 2006, the House passed H.R. 4, the Pension Protection Act of 2006. The legislation included duty suspension legislation for several hundred products. The Senate subsequently passed the bill on August 3 by a vote of 93 to 5. On August 17, the President signed the bill into law (P.L. 109-280). The provisions contained in the current package include items to which the Senate and House have agreed but not enacted in previous legislation (P.L. 109-280) that enacted duty suspensions.*

The MTB offers temporary duty reductions on a variety of items not manufactured in the United States. The MTB also provides for a very limited number of reliquidations of entries in cases of government error. The House passed its MTB earlier this year. Some MTB items were included in the pensions bill (i.e. those that were in the House-passed MTB that had Senate companions). Other non-controversial items not included in the pensions bill are included in this bill.

Modifications to the tariff schedule. Periodically, USTR must make changes to tariff lines in the Harmonized Tariff Schedule of the United States (HTSUS) to conform to changes agreed upon in the World Customs Organization. This year, due to the thousands of changes to be made and to administrative delays, the business community has expressed interest in extending the period before such changes take effect. The bill would extend the current 15-day window for implementation to 30 days in order to afford the private sector sufficient time to incorporate all of the changes in their computer systems and avoid costly, time-consuming errors to entries. The Administration is expected to notice the changes in the Federal Register sometime in early January.

Administration Position

A Statement of Administration Policy was not available at the time of publication.

Cost

The Joint Committee on Taxation estimated that H.R. 6408 would result in a revenue loss of \$38 billion over five years and \$45 billion over 10 years. For a copy of JCT's revenue estimate of H.R. 6408, please see <http://www.house.gov/jct/x-51-06.pdf>. The overall cost of H.R. 6111 was not available at press time.