1 ***SEC. 13402. REHABILITATION CREDIT LIMITED TO CER-***
2 ***TIFIED HISTORIC STRUCTURES.***
3 *(a) IN GENERAL.—Subsection (a) of section 47 is*
4 *amended to read as follows:*
5 *"(a) GENERAL RULE.—*
6 *"(1) IN GENERAL.—For purposes of section 46,*
7 *for any taxable year during the 5-year period begin-*
8 *ning in the taxable year in which a qualified reha-*
9 *bilitated building is placed in service, the rehabilita-*
10 *tion credit for such year is an amount equal to the*
11 *ratable share for such year.*
12 *"(2) RATABLE SHARE.—For purposes of para-*
13 *graph (1), the ratable share for any taxable year dur-*
14 *ing the period described in such paragraph is the*
15 *amount equal to 20 percent of the qualified rehabili-*
16 *tation expenditures with respect to the qualified reha-*
17 *bilitated building, as allocated ratably to each year*
18 *during such period.".*
19 *(b) CONFORMING AMENDMENTS.—*
20 *(1) Section 47(c) is amended—*
21 *(A) in paragraph (1)—*
22 *(i) in subparagraph (A), by amending*
23 *clause (iii) to read as follows:*
24 *"(iii) such building is a certified his-*
25 *toric structure, and",*
26 *(ii) by striking subparagraph (B), and*

1 *(iii) by redesignating subparagraphs*
2 *(C) and (D) as subparagraphs (B) and (C),*
3 *respectively, and*
4 *(B) in paragraph (2)(B), by amending*
5 *clause (iv) to read as follows:*
6 *"(iv) CERTIFIED HISTORIC STRUC-*
7 *TURE.—Any expenditure attributable to the*
8 *rehabilitation of a qualified rehabilitated*
9 *building unless the rehabilitation is a cer-*
10 *tified rehabilitation (within the meaning of*
11 *subparagraph (C)).".*
12 *(2) Paragraph (4) of section 145(d) is amend-*
13 *ed—*
14 *(A) by striking "of section 47(c)(1)(C)" each*
15 *place it appears and inserting "of section*
16 *47(c)(1)(B)", and*
17 *(B) by striking "section 47(c)(1)(C)(i)" and*
18 *inserting "section 47(c)(1)(B)(i)".*
19 *(c) EFFECTIVE DATE.—*
20 *(1) IN GENERAL.—Except as provided in para-*
21 *graph (2), the amendments made by this section shall*
22 *apply to amounts paid or incurred after December*
23 *31, 2017.*

1 *(2) TRANSITION RULE.—In the case of qualified*
2 *rehabilitation expenditures with respect to any build-*
3 *ing—*
4 *(A) owned or leased by the taxpayer during*
5 *the entirety of the period after December 31,*
6 *2017, and*
7 *(B) with respect to which the 24-month pe-*
8 *riod selected by the taxpayer under clause (i) of*
9 *section 47(c)(1)(B) of the Internal Revenue Code*
10 *(as amended by subsection (b)), or the 60-month*
11 *period applicable under clause (ii) of such sec-*
12 *tion, begins not later than 180 days after the*
13 *date of the enactment of this Act,*
14 *the amendments made by this section shall apply to*
15 *such expenditures paid or incurred after the end of*
16 *the taxable year in which the 24-month period, or the*
17 *60-month period, referred to in subparagraph (B)*
18 *ends.*
19 ***SEC. 13403. EMPLOYER CREDIT FOR PAID FAMILY AND MED-***
20 ***ICAL LEAVE.***
21 *(a) IN GENERAL.—*
22 *(1) ALLOWANCE OF CREDIT.—Subpart D of part*
23 *IV of subchapter A of chapter 1 is amended by adding*
24 *at the end the following new section:*

**3. Rehabilitation credit (sec. 3403 of the House bill, sec. 13402 of the Senate amendment, and sec. 47 of the Code)**

**Present Law**

Section 47 provides a two-tier tax credit for rehabilitation expenditures.

A 20-percent credit is provided for qualified rehabilitation expenditures with respect to a certified historic structure. For this purpose, a certified historic structure means any building that is listed in the National Register, or that is located in a registered historic district and is certified by the Secretary of the Interior to the Secretary of the Treasury as being of historic significance to the district.

A 10-percent credit is provided for qualified rehabilitation expenditures with respect to a qualified rehabilitated building, which generally means a building that was first placed in service before 1936. A pre-1936 building must meet requirements with respect to retention of existing external walls and internal structural framework of the building in order for expenditures with respect to it to qualify for the 10-percent credit. A building is treated as having met the substantial rehabilitation requirement under the 10-percent credit only if the rehabilitation expenditures during the 24-month period selected by the taxpayer and ending within the taxable year exceed the greater of (1) the adjusted basis of the building (and its structural components), or (2) $5,000.

The provision requires the use of straight-line depreciation or the alternative depreciation system in order for rehabilitation expenditures to be treated as qualified under the provision.

**House Bill**

The House bill repeals the rehabilitation credit.

Effective date.–The provision applies to amounts paid or incurred after December 31, 2017. A transition rule provides that in the case of qualified rehabilitation expenditures (within the meaning of present law), with respect to any building owned or leased by the taxpayer at all times on and after January 1, 2018, the 24-month period selected by the taxpayer (under section 47(c)(1)(C)) is to begin not later than the end of the 180-day period beginning on the date of the enactment of the Act, and the amendments made by the provision apply to such expenditures paid or incurred after the end of the taxable year in which such 24-month period ends.

**Senate Amendment**

The Senate amendment repeals the 10-percent credit for pre-1936 buildings. The provision retains the 20-percent credit for qualified rehabilitation expenditures with respect to a certified historic structure, with a modification. Under the provision, the credit allowable for a taxable year during the five-year period beginning in the taxable year in which the qualified rehabilitated building is placed in service is an amount equal to the ratable share. The ratable share for a taxable year during the five-year period is amount equal to 20 percent of the qualified rehabilitation expenditures for the building, as allocated ratably to each taxable year during the

five-year period. It is intended that the sum of the ratable shares for the taxable years during the five-year period does not exceed 100 percent of the credit for qualified rehabilitation expenditures for the qualified rehabilitated building.

Effective date.–The provision applies to amounts paid or incurred after December 31, 2017. A transition rule provides that in the case of qualified rehabilitation expenditures (for a pre-1936 building) with respect to any building owned or leased (as provided under present law) by the taxpayer at all times on and after January 1, 2018, the 24-month period selected by the taxpayer (under section 47(c)(1)(C)) is to begin not later than the end of the 180-day period beginning on the date of the enactment of the Act, and the amendments made by the provision apply to such expenditures paid or incurred after the end of the taxable year in which such 24-month period ends.

## Conference Agreement

The conference agreement follows the Senate amendment with a modification to the transition rule under the effective date relating to qualified rehabilitation expenditures under certain phased rehabilitations for which the taxpayer may select a 60-month period.

Effective date.–The provision applies to amounts paid or incurred after December 31, 2017. A transition rule provides that in the case of qualified rehabilitation expenditures (for either a certified historic structure or a pre-1936 building), with respect to any building owned or leased (as provided under present law) by the taxpayer at all times on and after January 1, 2018, the 24-month period selected by the taxpayer (section 47(c)(1)(C)(i)), or the 60-month period selected by the taxpayer under the rule for phased rehabilitation (section 47(c)(1)(C)(ii)), is to begin not later than the end of the 180-day period beginning on the date of the enactment of the Act, and the amendments made by the provision apply to such expenditures paid or incurred after the end of the taxable year in which such 24-month or 60-month period ends.

### 4. Repeal of work opportunity tax credit (sec. 3404 of the House bill and sec. 51 of the Code)

## Present Law

### In general

The work opportunity tax credit is available on an elective basis for employers hiring individuals from one or more of ten targeted groups. The amount of the credit available to an employer is determined by the amount of qualified wages paid by the employer. Generally, qualified wages consist of wages attributable to services rendered by a member of a targeted group during the one-year period beginning with the day the individual begins work for the employer (two years in the case of an individual in the long-term family assistance recipient category).

### Targeted groups eligible for the credit

Generally, an employer is eligible for the credit only for qualified wages paid to members of a targeted group. These targeted groups are: (1) Families receiving TANF; (2) Qualified

research credit determined under section 41(a) (for a taxable year beginning before January 1, 1990), section 196 limits the deduction to 50 percent of such unused credits.[898]

**House Bill**

This provision repeals the deduction for certain unused business credits.

Effective date.–The provision applies to taxable years beginning after December 31, 2017.

**Senate Amendment**

The Senate amendment follows the House bill.

**Conference Agreement**

The conference agreement does not follow the House bill provision.

### 6. Termination of new markets tax credit (sec. 3406 of the House bill and sec. 45D of the Code)

**Present Law**

Section 45D provides a new markets tax credit for qualified equity investments made to acquire stock in a corporation, or a capital interest in a partnership, that is a qualified community development entity ("CDE").[899] The amount of the credit allowable to the investor (either the original purchaser or a subsequent holder) is (1) a five-percent credit for the year in which the equity interest is purchased from the CDE and for each of the following two years, and (2) a six-percent credit for each of the following four years.[900] The credit is determined by applying the applicable percentage (five or six percent) to the amount paid to the CDE for the investment at its original issue, and is available to the taxpayer who holds the qualified equity investment on the date of the initial investment or on the respective anniversary date that occurs during the taxable year.[901] The credit is recaptured if at any time during the seven-year period that begins on the date of the original issue of the investment the entity (1) ceases to be a qualified CDE, (2) the proceeds of the investment cease to be used as required, or (3) the equity investment is redeemed.[902]

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[898] Sec. 196(d).

[899] Section 45D was added by section 121(a) of the Community Renewal Tax Relief Act of 2000, Pub. L. No. 106-554.

[900] Sec. 45D(a)(2).

[901] Sec. 45D(a)(3).

[902] Sec. 45D(g).

A qualified CDE is any domestic corporation or partnership: (1) whose primary mission is serving or providing investment capital for low-income communities or low-income persons; (2) that maintains accountability to residents of low-income communities by their representation on any governing board of or any advisory board to the CDE; and (3) that is certified by the Secretary as being a qualified CDE.[903] A qualified equity investment means stock (other than nonqualified preferred stock) in a corporation or a capital interest in a partnership that is acquired at its original issue directly (or through an underwriter) from a CDE for cash, and includes an investment of a subsequent purchaser if such investment was a qualified equity investment in the hands of the prior holder.[904] Substantially all of the investment proceeds must be used by the CDE to make qualified low-income community investments and the investment must be designated as a qualified equity investment by the CDE. For this purpose, qualified low-income community investments include: (1) capital or equity investments in, or loans to, qualified active low-income community businesses; (2) certain financial counseling and other services to businesses and residents in low-income communities; (3) the purchase from another CDE of any loan made by such entity that is a qualified low-income community investment; or (4) an equity investment in, or loan to, another CDE.[905]

A "low-income community" is a population census tract with either (1) a poverty rate of at least 20 percent or (2) median family income which does not exceed 80 percent of the greater of metropolitan area median family income or statewide median family income (for a non-metropolitan census tract, does not exceed 80 percent of statewide median family income). In the case of a population census tract located within a high migration rural county, low-income is defined by reference to 85 percent (as opposed to 80 percent) of statewide median family income.[906] For this purpose, a high migration rural county is any county that, during the 20-year period ending with the year in which the most recent census was conducted, has a net out-migration of inhabitants from the county of at least 10 percent of the population of the county at the beginning of such period.

The Secretary is authorized to designate "targeted populations" as low-income communities for purposes of the new markets tax credit.[907] For this purpose, a "targeted population" is defined by reference to section 103(20) of the Riegle Community Development and Regulatory Improvement Act of 1994[908] (the "Act") to mean individuals, or an identifiable group of individuals, including an Indian tribe, who are low-income persons or otherwise lack adequate access to loans or equity investments. Section 103(17) of the Act provides that "low-income" means (1) for a targeted population within a metropolitan area, less than 80 percent of the area median family income; and (2) for a targeted population within a non-metropolitan area,

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[903] Sec. 45D(c).

[904] Sec. 45D(b).

[905] Sec. 45D(d).

[906] Sec. 45D(e).

[907] Sec. 45D(e)(2).

[908] Pub. L. No. 103-325.

less than the greater of 80 percent of the area median family income or 80 percent of the statewide non-metropolitan area median family income. A targeted population is not required to be within any census tract. In addition, a population census tract with a population of less than 2,000 is treated as a low-income community for purposes of the credit if such tract is within an empowerment zone, the designation of which is in effect under section 1391, and is contiguous to one or more low-income communities.

A qualified active low-income community business is defined as a business that satisfies, with respect to a taxable year, the following requirements: (1) at least 50 percent of the total gross income of the business is derived from the active conduct of trade or business activities in any low-income community; (2) a substantial portion of the tangible property of the business is used in a low-income community; (3) a substantial portion of the services performed for the business by its employees is performed in a low-income community; and (4) less than five percent of the average of the aggregate unadjusted bases of the property of the business is attributable to certain financial property or to certain collectibles.[909]

The maximum annual amount of qualified equity investments is $3.5 billion for calendar years 2010 through 2019. No amount of unused allocation limitation may be carried to any calendar year after 2024.

**House Bill**

This provision provides that the new markets tax credit limitation is zero for calendar year 2018 and thereafter and no amount of unused allocation limitation may be carried to any calendar year after 2022.

Effective date.–The provision applies to calendar years beginning after December 31, 2017.

**Senate Amendment**

No provision.

**Conference Agreement**

The conference agreement does not follow the House bill provision.

**7. Repeal of credit for expenditures to provide access to disabled individuals (sec. 3407 of the House bill and sec. 44 of the Code)**

**Present Law**

Section 44 provides a 50-percent credit for eligible access expenditures paid or incurred by an eligible small business for the taxable year. The credit is limited to eligible access

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[909] Sec. 45D(d)(2).

Effective date.–The provision terminating the inflation adjustment is effective for taxable years ending after the date of enactment. The provision codifying existing guidance for determining when construction has begun is effective for taxable years beginning before, on, or after the date of enactment.

**Senate Amendment**

No provision.

**Conference Agreement**

The conference agreement does not follow the House bill provision.

### 2. Modification of the energy investment tax credit (sec. 3502 of the House bill and sec. 48 of the Code)

**Present Law**

In general

A permanent, nonrefundable, 10-percent business energy credit[930] is allowed for the cost of new property that is equipment that either (1) uses solar energy to generate electricity, to heat or cool a structure, or to provide solar process heat or (2) is used to produce, distribute, or use energy derived from a geothermal deposit, but only, in the case of electricity generated by geothermal power, up to the electric transmission stage. Property used to generate energy for the purposes of heating a swimming pool is not eligible solar energy property.

In addition to the permanent credit, temporary investment credits are available for a variety of renewable and alternative energy property. The rules governing these temporary credits are described below.

The energy credit is a component of the general business credit.[931] An unused general business credit generally may be carried back one year and carried forward 20 years.[932] The taxpayer's basis in the property is reduced by one-half of the amount of the credit claimed. For projects whose construction time is expected to equal or exceed two years, the credit may be claimed as progress expenditures are made on the project, rather than during the year the property is placed in service. The credit is allowed against the alternative minimum tax.

Solar energy property

The credit rate for solar energy property is increased to 30 percent in the case of property the construction of which begins before January 1, 2020. The rate is increased to 26 percent in

[930] Sec. 48.

[931] Sec. 38(b)(1).

[932] Sec. 39.

the case of property the construction of which begins in calendar year 2020. The rate is increased to 22 percent in the case of property the construction of which begins in calendar year 2021. To qualify for the enhanced credit rates, the property must be placed in service before January 1, 2024.

Additionally, equipment that uses fiber-optic distributed sunlight ("fiber optic solar") to illuminate the inside of a structure is solar energy property eligible for the 30-percent credit, but only for property placed in service before January 1, 2017.

Fuel cell property and microturbine property

The energy credit applies to qualified fuel cell power plant property, but only for periods prior to January 1, 2017. The credit rate is 30 percent.

A qualified fuel cell power plant is an integrated system composed of a fuel cell stack assembly and associated balance of plant components that (1) converts a fuel into electricity using electrochemical means, and (2) has an electricity-only generation efficiency of greater than 30 percent and a capacity of at least one-half kilowatt. The credit may not exceed $1,500 for each 0.5 kilowatt of capacity.

The energy credit applies to qualifying stationary microturbine power plant property for periods prior to January 1, 2017. The credit is limited to the lesser of 10 percent of the basis of the property or $200 for each kilowatt of capacity.

A qualified stationary microturbine power plant is an integrated system comprised of a gas turbine engine, a combustor, a recuperator or regenerator, a generator or alternator, and associated balance of plant components that converts a fuel into electricity and thermal energy. Such system also includes all secondary components located between the existing infrastructure for fuel delivery and the existing infrastructure for power distribution, including equipment and controls for meeting relevant power standards, such as voltage, frequency, and power factors. Such system must have an electricity-only generation efficiency of not less than 26 percent at International Standard Organization conditions and a capacity of less than 2,000 kilowatts.

Geothermal heat pump property

The energy credit applies to qualified geothermal heat pump property placed in service prior to January 1, 2017. The credit rate is 10 percent. Qualified geothermal heat pump property is equipment that uses the ground or ground water as a thermal energy source to heat a structure or as a thermal energy sink to cool a structure.

Small wind property

The energy credit applies to qualified small wind energy property placed in service prior to January 1, 2017. The credit rate is 30 percent. Qualified small wind energy property is property that uses a qualified wind turbine to generate electricity. A qualifying wind turbine means a wind turbine of 100 kilowatts of rated capacity or less.

Combined heat and power property

The energy credit applies to combined heat and power ("CHP") property placed in service prior to January 1, 2017. The credit rate is 10 percent.

CHP property is property: (1) that uses the same energy source for the simultaneous or sequential generation of electrical power, mechanical shaft power, or both, in combination with the generation of steam or other forms of useful thermal energy (including heating and cooling applications); (2) that has an electrical capacity of not more than 50 megawatts or a mechanical energy capacity of not more than 67,000 horsepower or an equivalent combination of electrical and mechanical energy capacities; (3) that produces at least 20 percent of its total useful energy in the form of thermal energy that is not used to produce electrical or mechanical power, and produces at least 20 percent of its total useful energy in the form of electrical or mechanical power (or a combination thereof); and (4) the energy efficiency percentage of which exceeds 60 percent. CHP property does not include property used to transport the energy source to the generating facility or to distribute energy produced by the facility.

The otherwise allowable credit with respect to CHP property is reduced to the extent the property has an electrical capacity or mechanical capacity in excess of any applicable limits. Property in excess of the applicable limit (15 megawatts or a mechanical energy capacity of more than 20,000 horsepower or an equivalent combination of electrical and mechanical energy capacities) is permitted to claim a fraction of the otherwise allowable credit. The fraction is equal to the applicable limit divided by the capacity of the property. For example, a 45 megawatt property would be eligible to claim 15/45ths, or one third, of the otherwise allowable credit. Again, no credit is allowed if the property exceeds the 50 megawatt or 67,000 horsepower limitations described above.

Additionally, systems whose fuel source is at least 90 percent open-loop biomass and that would qualify for the credit but for the failure to meet the efficiency standard are eligible for a credit that is reduced in proportion to the degree to which the system fails to meet the efficiency standard. For example, a system that would otherwise be required to meet the 60-percent efficiency standard, but which only achieves 30-percent efficiency, would be permitted a credit equal to one-half of the otherwise allowable credit (i.e., a 5-percent credit).

Election of energy credit in lieu of section 45 production tax credit

A taxpayer may make an irrevocable election to have the property used in certain qualified renewable power facilities be treated as energy property eligible for a 30-percent investment credit under section 48. For this purpose, qualified facilities are facilities otherwise eligible for the renewable electricity production tax credit with respect to which no credit under section 45 has been allowed. A taxpayer electing to treat a facility as energy property may not claim the production credit under section 45. In the case of non-wind facilities, to make this election, construction must begin before January 1, 2017. For wind facilities, the 30-percent credit rate is reduced by 20 percent in the case of any wind facility the construction of which begins in calendar year 2017, by 40 percent in the case of any wind facility the construction of which begins in calendar year 2018, and by 60 percent in the case of any wind facility the

construction of which begins in calendar year 2019. The credit for wind facilities expires for facilities the construction of which begins after calendar year 2019.

In general, a taxpayer may establish the beginning of construction of a facility by beginning physical work of a significant nature (the "physical work test").[933] Alternatively, a taxpayer may establish the beginning of construction by meeting the safe harbor test which generally requires that the taxpayer have paid or incurred five percent of the total cost of constructing the facility (the "five percent safe harbor").[934] Both methods require that a taxpayer make continuous progress towards completion once construction has begun.[935] To demonstrate that continuous progress is being made, taxpayers relying on the physical work test must show that the project is undergoing "continuous construction," and taxpayer relying on the five percent safe harbor must show "continuous effort" to complete the project.[936] Collectively, these two tests are referred to as the "continuity requirement."[937]

## House Bill

The provision extends the energy credit for fiber optic solar, fuel cell, microturbine, geothermal heat pump, small wind, and combined heat and power property. In each case, the credit is extended for property the construction of which begins before January 1, 2022. In the case of fiber optic solar, fuel cell, and small wind property, the credit rate is reduced to 26 percent for property the construction of which begins in calendar year 2020 and to 22 percent for property the construction of which begins in calendar year 2021. Qualified property must be placed in service before January 1, 2024.

The provision terminates the permanent credits for solar and geothermal property the construction of which begins after December 31, 2027.

The provision includes a special rule for determining the beginning of construction, which is intended to adopt Treasury guidance for determining when construction of a facility has begun, including the physical work test, the five percent safe harbor, and the continuity requirement.

Effective date.–The provision generally applies to periods after December 31, 2016, under rules similar to the rules of section 48(m), as in effect on the day before the date of enactment of the Revenue Reconciliation Act of 1990. The extension of the credit for combined heat and power system property applies to property placed in service after December 31, 2016. The reduced credit rates and the termination of the permanent credits are effective on the date of the enactment of the provision. The special rule for determining the beginning of construction of

[933] IRS Notice 2013-29, 2013-20 I.R.B. 1085, April 14, 2013.

[934] *Ibid.*

[935] *Ibid.* See also, Notice 2016-31, 2016-23 I.R.B. 1025, May 5, 2016.

[936] *Ibid.*

[937] Notice 2016-31, 2016-23 I.R.B. 1025, May 5, 2016.

qualified property applies to taxable years beginning before, on, or after the date of enactment of the provision.

### Senate Amendment

No provision.

### Conference Agreement

The conference agreement does not follow the House bill provision.

## 3. Extension and phaseout of residential energy efficient property credit (sec. 3503 of the House bill and sec. 25D of the Code)

### Present Law

#### In general

Section 25D provides a personal tax credit for the purchase of qualified solar electric property and qualified solar water heating property that is used exclusively for purposes other than heating swimming pools and hot tubs. The credit is equal to 30 percent of qualifying expenditures.

Section 25D also provides a 30 percent credit for the purchase of qualified geothermal heat pump property, qualified small wind energy property, and qualified fuel cell power plants. The credit for any fuel cell may not exceed $500 for each 0.5 kilowatt of capacity.

The credit is nonrefundable. The credit with respect to all qualifying property may be claimed against the alternative minimum tax.

With the exception of solar property, the credit expires for property placed in service after December 31, 2016. In the case of qualified solar electric property and solar water heating property, the credit expires for property placed in service after December 31, 2021. In addition, the credit rate for such solar property is reduced to 26 percent for property placed in service in calendar year 2020 and to 22 percent for property placed in service in calendar year 2021.

#### Qualified property

Qualified solar electric property is property that uses solar energy to generate electricity for use in a dwelling unit. Qualifying solar water heating property is property used to heat water for use in a dwelling unit located in the United States and used as a residence if at least half of the energy used by such property for such purpose is derived from the sun.

A qualified fuel cell power plant is an integrated system comprised of a fuel cell stack assembly and associated balance of plant components that (1) converts a fuel into electricity using electrochemical means, (2) has an electricity-only generation efficiency of greater than 30 percent, and (3) has a nameplate capacity of at least 0.5 kilowatt. The qualified fuel cell

the provision clarifies that there is no gain deferral available with respect to any sale or exchange made after December 31, 2026, and there is no exclusion available for investments in qualified opportunity zones made after December 31, 2026. The agreement also makes some technical changes to the Senate amendment to make it clear which taxpayer may claim the tax benefits.

### 18. Provisions relating to the low-income housing credit (secs. 13411 and 13412 of the Senate amendment and sec. 42 of the Code)

#### Present Law

#### In general

The low-income housing credit may be claimed over a 10-year period for the cost of building rental housing a sufficient portion of which is rent restricted and occupied by tenants having incomes below specified levels.[1193] Qualified basis is the low-income portion of the building times the eligible basis. The amount of the credit for any taxable year in the credit period is the applicable percentage of the qualified basis of each qualified low-income building. The applicable percentage for new buildings that are not Federally subsidized, is computed to yield a present value of 70 percent of the qualified basis over a 10-year period. For other buildings the applicable percentage is calculated to yield 30 percent. Rehabilitation expenses are treated as a separate new building.

#### Increase in credit for certain high cost areas

In the case of a building located in a qualified census tract or difficult development area, the eligible basis of a building is 130 percent of eligible basis. This "basis boost also applies to rehabilitation expenditures that are treated as a separate new building.

A "difficult development area" is an area designated by the Secretary of Housing and Urban Development ("HUD") as having high construction, land, and utility costs relative to the area's median income. The portions of metropolitan statistical areas that may be designated for this purpose cannot exceed an aggregate area having 20 percent of the population of such metropolitan statistical areas. A comparable rule applies to nonmetropolitan areas.

A "qualified census tract" means any census tract which is designated by HUD in which either: (1) 50 percent or more of the households have an income which is less than 60 percent of the area median income for the year; or (2) the poverty rate in that tract is 25 percent. The portion of a metropolitan statistical area that may be designated for this purpose cannot exceed an area having 20 percent of the population of such metropolitan statistical area. Each metropolitan statistical area is treated as a separate area and all nonmetropolitan areas in a State are treated as one area.

In addition, a building which is designated by a State housing credit agency as requiring an increase in credit to be financially feasible is treated as located in a HUD-designated difficult

[1193] Sec. 42.

development area. This rule does not apply to a building if any portion of the eligible basis is financed with tax-exempt bonds.

**General public use**

In order to be eligible for the low-income housing credit, the residential units in a qualified low-income housing project must be available for use by the general public. A project is available for general public use if the project complies with housing non-discrimination policies including those set forth in the Fair Housing Act (42 U.S.C. sec. 3601) and (2) the project does not restrict occupancy based on membership in a social organization or employment by specific employers In addition, any residential unit that is part of a hospital, nursing home, sanitarium, lifecare facility, trailer park, or intermediate care facility for the mentally or physically handicapped is not available for use by the general public.

However, a project that otherwise meets the general public use requirements above shall not fail to meet the general public use requirement solely because of occupancy restrictions or preferences that favor tenants with (1) special needs; (2) who are members of a specified group under a Federal program or State program or policy that supports housing for such specified group; or (3) who are involved in artistic or literary activities.

**House Bill**

No provision.

**Senate Amendment**

**Treatment of veterans' preference as not violating general public use requirements**

The provision replaces the exception to the general public use requirement for tenants engaged in artistic and literary activities with an exception for veterans.

**Increase in credit for certain rural housing**

For buildings eligible for the 70 percent present-value credit, the provision makes two changes. First, the provision treats such buildings located in rural areas (as defined in section 520 of the Fair Housing Act of 1949) as located in a HUD-designated difficult development area. Second, the provision reduces the eligible basis for difficult to develop areas and qualified census tracts from 130 percent to 125 percent.[1194]

Effective date.–The provisions generally apply to buildings placed in service after the date of enactment. The changes related to the treatment of a veterans preference as not violating general public use requirements applies to buildings placed in service before, on, or after the date of enactment.

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[1194] A correction to the language is needed to conform to the intent that the change be limited to buildings eligible for the 70 percent credit only.

**Conference Agreement**

The conference agreement does not follow the Senate amendment provisions.