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Overview of the 2004 Corporate Tax Provisions: Revenue Effects

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Summary

The corporate tax revisions that repealed the extraterritorial income tax (ETI) and adopted a domestic tax reduction for manufacturing (H.R. 4520) contained permanent provisions that gained revenue in some cases and lost it in other cases. The bills also contained some temporary revenue losers. The most important of the permanent revenue gain provisions were the ETI repeal itself and some tax shelter provisions; the most important provisions that lost revenue were the manufacturing subsidies and the provisions reducing tax on foreign source income. There were also a number of temporary provisions that lost revenue, and a temporary optional itemized deduction for state and local sales taxes in lieu of state income taxes. This report summarizes the revenue effects of the House, Senate, and conference versions. This report will not be updated.

Legislation in response to the World Trade Organization's finding that the extraterritorial income tax (ETI) provision in the U.S. tax code contravenes rules prohibiting export subsidies led to omnibus legislation.[1] In the Senate, S. 1637, the Jumpstart Our Business Strength (JOBS) Act contained about 250 separate provisions, but was relatively revenue neutral, losing $14.5 billion over the first five years and gaining $2.9 billion over the first 10 years. In the House, H.R. 4520, the American Jobs Creation Act, would lose $32.2 billion over the first six years and $35.3 billion over the first 11 years, although $9.5 billion of those amounts involved an expenditure for revision of the tobacco markets. The final conference version (H.R. 4520) cost $8.7 billion over the first five years (2005-2009) and was revenue neutral over ten years. The tobacco market revision was redesigned to pay for the expenditure with an assessment on tobacco companies, and this report does not contain information on the tobacco market revision.[2]

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[1] For background, see CRS Report RS20746, *Export Tax Benefits and the WTO: The Extraterritorial Income Exclusion and Foreign Sales Corporations,* by David Brumbaugh.

[2] See CRS Report RL31790, *Tobacco Quota Buyout Proposals in the 108th Congress*, by Jasper (continued...)

The legislation contains both permanent and temporary provisions and has both revenue losers and revenue gainers. This report compares the original proposals and the final version, focusing on revenue effects.[3] The conference adopted the Senate's version of the manufacturing subsidy (a deduction rather than a corporate rate cut), but with the House's broader definition of manufacturing.

Table 1 lists the major revenue gainers in the bill, for the year 2013, when all provisions have been phased in. To provide some perspective, in that year the corporate tax is estimated to raise $307 billion. The bill relies not only on corporate provisions (the ETI and most of the tax shelter provisions are largely corporate) but also on excise provisions. The ETI provision produces a gain in that year of close to $7 billion. The anti-shelter provisions produced a larger revenue gain in the Senate bill than in the House bill, for several reasons, while the final value was between the two. The provision restricting leasing arrangements between taxable and tax-exempt entities, which is the single largest tax shelter provision in any of the versions, appears more stringent than the one in the House bill.[4] The Senate bill contained a provision codifying and strengthening the economic substance doctrine and a tax on corporate inversions, while the House bill had no economic substance doctrine provision and its earnings stripping provision aimed at corporate inversions was not included in the final version.[5] Inversions occur when a U.S. firm moves its headquarters abroad to reduce U.S. tax, primarily through earnings stripping methods that allocate interest deductions to the United States.

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[2] (...continued)
Womach, for a discussion.

[3] For a tabular comparison of many of the major provisions, see CRS Report RL32444, *Comparison of the House and Senate ETI/Foreign Investment Bills*, by David Brumbaugh.

[4] See CRS Report RL32479, *Tax Implications of SILOs, QTEs, and Other Leasing Transactions with Tax-Exempt Entities*, by Maxim Shvedov.

[5] See CRS Report RL32193, *Anti-Tax-Shelter and Other Revenue-Raising Tax Proposals*, by Jane Gravelle for a discussion of anti-shelter provisions, including the economic substance doctrine and repatriation. See also CRS Report RL32125, *Tax Exemption for Repatriated Foreign Earnings: Proposals and Analysis*, by David Brumbaugh.

Table 1: Permanent Revenue Gainers, Gain in FY2013
(billions of dollars)

Provision Category	Senate (S. 1637)	House (H.R. 4520)	Conference (HR. 4520)
Repeal ETI Provision	6.8	6.8	6.8
Tax Shelter Provisions	9.9	4.2	6.8
Excise Taxes	2.4	2.4	1.1
Miscellaneous Revenue Raisers	0.9	0.0	0.4

Source: Estimates by the Joint Committee on Taxation.

Table 2 lists the major categories of permanent revenue losers. The most significant in either bill is the provision that allows a tax rate reduction for manufacturing. The Senate provided a 9% reduction that reduced the top 35% rate to slightly under 32%; a deduction reduces the rates for smaller corporations and is extended to unincorporated businesses as well. The House bill reduced the top rate to 32% and although it did not include smaller firms, other provisions for small businesses benefitted small corporations by reducing some of the intermediate rates. The conference bill was similar to the Senate version. The tax rate reduction accounted the bulk of the small business provisions in the House bill; a small part of the loss is associated with benefits for Subchapter S corporations (corporations taxed as partnerships) which was contained in all versions.[6] The second largest set of provisions reduced the tax burdens on income from foreign source investments. The largest provision (common to all bills) is a provision allowing foreign interest as well as domestic to be allocated between U.S. and foreign sources for purposes of determining the limit on the foreign tax credit, which accounted for $2.8 billion of the total. The next largest single provision in the Senate bill is extended carryovers and carrybacks of the foreign tax credit ($1.4 billion) and in the House bill combining foreign tax credit baskets ($1.1 billion) — versions of both provisions (costing $1.0 billion and $1.1 billion respectively) were included in the conference report, but other provisions were not.[7] Both bills contain some miscellaneous provisions and the Senate bill and conference bill contained some energy provisions.

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[6] For a discussion of the domestic manufacturing incentive, see CRS Report RL32103, *Comparison of Tax Incentives for Domestic Manufacturing in Current Legislative Proposals*, by Jane Gravelle. For a discussion of relative effects on domestic and foreign investments, see CRS Report RL32066, *Taxes, Exports, and Investment: ETI/FSC and Domestic Investment Proposals in the 108th Congress*, by David Brumbaugh.

[7] For background, see CRS Report RL32429, *Foreign Investment and Tax Incentives: Analysis of Current Law and Legislative Proposals*, by David Brumbaugh.

Table 2: Permanent Revenue Losers, Loss in FY2013

(billions of dollars)

Provision Category	Senate (S. 1637)	House (H.R. 4520)	Conference (H.R. 4520)
Rate Reduction for Manufacturing	-12.4	-8.7	-11.5
Small and Intermediate Business	-0.1	-3.1	-0.1
International Provisions	-6.2	-5.2	-6.1
Other Business Benefits	-0.8	-0.3	-0.3
Energy Provisions	-1.3	0.0	-0.0

Source: Joint Committee on Taxation

Tables 3 and 4 report the temporary revenue gainer and losers. In this case, because of the unevenness of the revenue effect, the provisions are reported as the averages over budget horizons (e.g., the average annual cost over the first five years). The years for the conference report are moved forward by one year, due to the lapse in time before the proposals were finalized.

Table 3. Temporary Revenue Gainers in the House and Senate Bills, Average Annual Cost

(billions of dollars)

Provision	House 2004-2008	Senate 2004-2008	House 2004-2014	Senate 2004-2013	Conference 2005-2009	Conference 2005-2014
Extension of Customs Duties	1.4	1.3	1.6	1.7	1.5	1.0

Source: Joint Committee on Taxation.

Table 4. Temporary Revenue Losers in the House and Senate Bills, Average Annual Cost
(billions of dollars)

Provision	House 2004-2008	Senate 2004-2008	House 2004-2014	Senate 2004-2013	Conference 2005-2009	Conference 2005-2014
Extenders	-2.2	-2.4	-1.3	-1.4	0.0	0.0
Small Business Expensing	-3.6	-0.0	-0.1	-0.0	-1.4	-0.1
Lower Tax On Repatriations	-0.4	-0.4	-0.3	-0.4	-2.0	-3.3
State and Local Tax Deduction	-0.5		-0.3		-0.5	-0.3
Depreciation, Film and Broadcasting		-0.3		-0.1	0.3	(1)
Net Operating Loss Election		-1.1		-0.4		
Personal Holding Company Tax		-0.2		-0.1		
Energy Sunsets		-1.9		-0.8	-0.4	(1)
Other Sunsets		-0.5		-0.4	-1.8	-0.5

Source: Joint Committee on Taxation.
(1) Less than $50 million.

The temporary gainer is an extension of custom fees. The most significant temporary revenue losers in the initial bills were provisions known as the "extenders" — temporary provisions that have been in the tax law for some time, and have frequently been extended. There are also some energy provisions among the extenders and some new energy provisions in the Senate bill.[8] The single most important extender was the provision extending the research and experimentation tax credit, which accounts for $1.8 billion in the first five years and $0.9 billion in the second five years in the Senate bill ($1.2 and $0.7 in the House bill).[9] This provision was addressed in a different tax bill, H.R. 1308, which extended some other provisions. A significant temporary provision in the House bill and in the final conference version was the extension of the expanded limit

[8] See CRS Report RL32439, *Temporary Tax Provisions ('Extenders') Expiring in 2004* and CRS Report RL32367, *Temporary Tax Provisions ('Extenders') Expired in 2003*, by Pamela Jackson; and CRS Report RL32265, *Expired and Expiring Energy Tax Incentives*, by Salvatore Lazzari.

[9] For background, see CRS Report RL31181, *Research and Experimentation Tax Credit: Current Status and Policy Issues for the 108th Congress*, by Gary Guenther.

on expensing of investment in equipment.[10] The House bill and conference bill also contained a temporary provision allowing state and local sales tax deductions for itemizers in lieu of the state income tax deduction, a provision that will primarily benefit itemizers in the eight states with a sales tax but without a broad based state income tax.[11] The Senate bill also contained some other temporary provisions including energy provisions and allowing a firm to choose to a longer period of time to carry back losses in lieu of the bonus depreciation provisions (which allow half of investment in equipment to be deducted when incurred). This latter provision benefits firms without current tax liability by allowing losses to be offset against prior year income, but was not included in the final bill.

[10] See CRS Report RL31852, *Small Business Expensing Allowance Under the Jobs and Growth Tax Relief Reconciliation Act of 2003: Changes and Likely Economic Effects,* by Gary Guenther.

[11] See CRS Report RL32455, *State and Local Sales Tax Deductibility: Proposed Legislation*, by Pamela Jackson and Steven Maguire.