



Washington Council Ernst & Young

Legislative Alert

August 11, 2008

Energy & Tax Extenders Bills Left Pending at the Start of the August Recess

	The House-passed “Renewable Energy and Job Creation Act of 2008” (H.R. 6049)	The “Jobs, Energy, Families, and Disaster Relief Act of 2008,” Introduced on July 24 by Senate Finance Chairman Baucus (S. 3335)	Senate Republican substitute amendment ¹
1. Energy Tax Incentives			
a. Section 45 production tax credit	3-year extension through 2011 of placed-in-service date, 1-year through 2009 for wind facilities, with the addition of marine renewables as qualifying technology; clarification of the trash combustion facility definition; modification of definitions of open-loop and closed-loop biomass facilities; modification to definition of nonhydroelectric dam; aggregate amount of credits would be capped for facilities placed in service after 2009 to an amount that has present value equal to 35% of facility’s cost; sale of net electricity to regulated public utilities treated as sales to unrelated persons - \$7.046 billion ²	Same as House bill	Substantially similar to House bill, except 1-year extension of placed-in-service date through 2009 of placed- in-service date for all facilities; no cap on aggregate amount of credits; no modifications to open and closed-loop biomass definition; no modification to the definition of nonhydroelectric dam - \$3.652 billion

¹ July 30, 2008, version of substitute to GOP energy and extenders bill, the “Alternative Minimum Tax and Extenders Tax Relief Act of 2008” (S. 3098)

	The House-passed “Renewable Energy and Job Creation Act of 2008” (H.R. 6049)	The “Jobs, Energy, Families, and Disaster Relief Act of 2008,” Introduced on July 24 by Senate Finance Chairman Baucus (S. 3335)	Senate Republican substitute amendment ¹
b. Section 48 investment tax credit (ITC) for purchases of certain solar and fuel cell qualifying energy property	6-year extension of placed-in-service date through 2014 for 30% ITC for solar energy property and qualified fuel cell property and 10% ITC for microturbines; increase \$500 per half kilowatt of capacity for qualified fuel cells to \$1,500; remove public utility exclusion and allow credit to be used to offset AMT; new 10% ITC for combined heat and power systems - \$1.376 billion	Same as House bill, except 8-year extension of placed-in-service date through 2016 for 30% ITC for solar energy property, qualified fuel cell property, and 10% ITC for microturbines (statutory language reflects 9-year extension for fuel cell and microturbine provisions, though it is understood that the extension is intended for 8 years) - \$1.777 billion	Substantially identical to Chairman Baucus’s bill; does not include ITC for combined heat and power system property - \$1.774 billion
c. Section 25D investment tax credit for purchases of residential energy efficient property	6-year extension of placed-in service date through 2014; increase \$2,000 annual credit cap to \$4,000; include residential small wind equipment and geothermal heat pumps; allow credit to be used to offset AMT - \$666 million	Same as House bill, except 8-year extension of placed-in service date through 2016 - \$907 million	1-year extension of placed-in service date through 2009; repeal \$2,000 annual credit cap; and allow credit to be used to offset AMT - \$126 million
d. Extension and modification of special rule to implement FERC and State electric restructuring policy	Extended through 2009 <i>Revenue neutral</i>	Same as House bill	Same as House bill
e. Clean renewable energy bonds	\$2 billion of bond allocation for facilities that generate electricity from wind, closed-loop biomass, open-loop biomass, geothermal, small irrigation, hydropower, landfill gas, marine renewables, and trash combustion facilities, bonds divided three ways between State/local/tribal governments, public power	Similar to House bill, except no Davis-Bacon labor standards	Similar to House bill, except only \$400 million of bond allocation for the same facilities, and no Davis-Bacon labor standards

² Revenue estimates are for a 10-year period and based upon JCX-46-08; the “Very Preliminary” Estimate of S. 3335, dated July 24, 2008; and the July 11, 2008, Senate Finance Republican summary of the original version of the Senate Republican substitute amendment to S. 3098.

	The House-passed “Renewable Energy and Job Creation Act of 2008” (H.R. 6049)	The “Jobs, Energy, Families, and Disaster Relief Act of 2008,” Introduced on July 24 by Senate Finance Chairman Baucus (S. 3335)	Senate Republican substitute amendment ¹
	providers, and electric cooperatives; apply Davis-Bacon labor standards - \$548 million		- \$206 million
f. Carbon Capture and Sequestration (CCS) Demonstration Projects	\$1.5 billion of tax credits for the creation of advanced coal electricity projects and certain coal gasification projects: \$1.25 billion would be awarded to advanced coal electricity projects and \$250 million would be awarded to certain coal gasification projects; provide competitive certification award authority to Department of Energy - \$1.422 billion	Substantially identical to House bill, except no competitive certification award authority to Department of Energy - \$1.423 billion	Same as Chairman Baucus’s bill
g. Coal excise tax	Extend excise tax on coal at current rates through 2018 \$1.287 billion	Same as House bill	Same as House bill
h. Coal excise tax refund	Special rules for refund of coal excise taxes paid by certain coal producers and exporters - \$199 million	Same as House bill	Same as House bill
i. Carbon audit	Carbon audit of the tax code from National Academy of Sciences within 2 years of enactment <i>No revenue effect</i>	Same as House bill	No provision
j. Cellulosic biofuels	Inclusion of cellulosic biofuels in bonus depreciation <i>Revenue neutral</i>	Same as House bill	Same as House bill
k. Biodiesel, renewable diesel credits	1-year extension through 2009 of \$1.00 biodiesel production tax credit, \$.10 small biodiesel producer credit, \$1.00 renewable diesel credit;	Same as House bill	Same as House bill except no provision to qualify biomass jet fuel for renewable diesel credit under Section 40A

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	<p>harmonize credit rates for biodiesel and agri-biodiesel; eliminate thermal depolymerization requirement; disallow credit to renewable diesel coproduced with petroleum products; qualify biomass jet fuel for renewable diesel credit under Section 40A; deny certain fuel credits for fuels produced and used outside the United States (this provision effective May 15, 2008)</p> <p>- \$401 million</p>		- \$401 million
I. Credit for alternative jet fuel	No provision	No provision	<p>New Section 6426 credit of \$1.00 per gallon for fuels using coal as a feedstock (sunsets September 30, 2014)</p> <p><i>Estimate pending</i></p>
m. Treatment of qualified alcohol fuel mixtures and qualified biodiesel fuel mixtures	No provision	No provision	<p>Include qualified alternative fuel mixtures made from alcohol or biodiesel as taxable fuels when the credit is claimed</p> <p>\$24 million</p>
n. Plug-in electric drive vehicles	<p>New credit for qualified plug-in electric drive vehicles: base amount of the credit is \$3,000. If the qualified vehicle draws propulsion from a battery with at least 5 kilowatt hours of capacity, the credit amount is increased by \$200, plus another \$200 for each kilowatt hour of battery capacity in excess of 5 kilowatt hours up to 15 kilowatt hours; available in full up to the end of the first calendar quarter after the quarter in which the manufacturer records 60,000 sales, and reduced</p>	Same as House bill	<p>Similar to House bill, except base amount of the credit is \$2,500. If the qualified vehicle draws propulsion from a battery with at least 5 kilowatt hours of capacity, the credit amount is increased by \$400, plus another \$400 for each kilowatt hour of battery capacity in excess of 5 kilowatt hours up to 15 kilowatt hours; available in full up to the end of the first calendar quarter after the quarter in which the total number of qualified plug-in electric drive vehicles sold in the U.S. is at least</p>

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	in subsequent quarters - \$1.056 billion		250,000, and reduced in subsequent quarters - \$760 million
o. Idling truck exclusion	Exclusion from heavy vehicles excise tax for the cost of idling reduction units and advanced insulation - \$95 million	Same as House bill	Same as House bill
p. New York Liberty Zone	Restructure New York Liberty Zone incentives - \$1.117 billion	Same as House bill	No provision
q. Bicycle benefit	Extend transportation fringe benefit to bicycle commuters - \$10 million	Same as House bill	No provision
r. Alternative fuel vehicle refueling property credit	2-year extension through 2010; increase the credit from 30% capped at \$30,000 to 50% capped at \$50,000 - \$154 million	Same as House bill	Same as House bill
s. Credit for alternative fuels	No provision	No provision	Extend 50-cent excise tax credit from 9/30/09 to 12/31/09 <i>Estimate pending</i>
t. Qualified energy conservation bonds	\$3 billion of new tax credit bonds would be allocated to States, municipalities, and tribal governments to finance State and local government programs and initiatives designed to reduce greenhouse gas emissions - \$1.025 billion	Same as House bill	No provision
u. Section 25C Investment Tax	1-year extension through 2008 and	Same as House bill, plus	2-year extension through 2009 and

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Credit for purchases of energy-efficiency improvements to existing homes	inclusion of energy-efficient biomass fuel stoves as a new class of energy-efficient property eligible for consumer tax credit of \$300 - \$1.061 billion	modification of water heater and energy efficiency improvement requirements - \$1.067 billion	modification of energy efficient building property standards - \$1.819 billion
v. Section 179D deduction for the cost of installing energy-efficient improvements in commercial buildings	5-year extension through 2013 - \$891 million	Same as House bill	1-year extension through 2009 and increase in maximum deduction amount - \$242 million
w. Section 45M energy efficient appliance tax credits	3-year extension through 2010 and modification - \$323 million	Same as House bill	Same as House bill
x. Smart electric distribution property	Halve the 20-year applicable MACRS depreciation recovery period for qualified smart electric distribution property to 10 years - \$921 million	Same as House bill	No provision
y. Qualified green building and sustainable design project bonds	3-year, 3-month extension through 2012 of the authority to issue qualified green building and sustainable design project bonds (\$2 billion authority) - \$45 million	Same as House bill	No provision
z. Percentage depletion for marginal well production	No provision	No provision	2-year extension through 2009 - \$198 million
aa. Extension and modification to expense certain refineries	No provision	No provision	2-year extension through 2013; 2-year extension through 2009 of the placed-in-service requirement and the building construction contract requirement; provide 50% bonus depreciation for costs incurred for a new refinery or an existing refinery

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			to increase total capacity by 5% or process nonconventional feedstocks at a rate equal to or greater than 25% of the total throughput of the refinery - \$922 million
bb. Recycling property	No provision	Special depreciation allowance for certain reuse and recycling property - \$162 million	No provision
cc. Publicly traded partnership income treatment of alternative fuels	No provision	Allow publicly traded partnerships to treat the income derived from the transportation, storage or marketing of certain alternative fuels as qualifying income for tax purposes - \$61 million	Same as Chairman Baucus’s bill
Total of energy provisions	\$17.074 billion	\$16.824 billion	Estimate incomplete

2. Extenders

	The House-passed “Renewable Energy and Job Creation Act of 2008” (H.R. 6049)	The “Jobs, Energy, Families, and Disaster Relief Act of 2008,” Introduced on July 24 by Senate Finance Chairman Baucus (S. 3335)	Senate Republican substitute amendment
a. Deduction for State and local general sales taxes	1-year extension through 2008 - \$1.742 billion	Same as House bill	2-year extension through 2009 - \$4.369 billion
b. Deduction for qualified tuition and related expenses	1-year extension through 2008 - \$2.603 billion	1-year extension through 2008 - \$1.223 billion	2-year extension through 2009 - \$3.953 billion
c. Treatment of certain dividends of regulated investment companies	1-year extension through 2008 - \$71 million	Same as House bill	2-year extension through 2009 - \$144 million
d. Tax-free distributions from IRAs to certain public charities from age 70 ½ or older, not to	1-year extension through 2008	Same as House bill	2-year extension through 2009

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exceed \$100,000 per taxpayer per year	- \$465 million		- \$795 million
e. Above-the-line deduction of up to \$250 for teacher classroom expenses	1-year extension through 2008 - \$204 million	1-year extension through 2008 - \$190 million	2-year extension through 2009 - \$397 million
f. Estate tax look-through for certain RIC stock held by nonresidents	1-year extension through 2008 <i>Negligible revenue effect</i>	Same as House bill	2-year extension through 2009 <i>Negligible revenue effect</i>
g. Extend the treatment of RICs as "qualified investment entities" under section 897 (FIRPTA)	1-year extension through 2008 - \$10 million	Same as House bill	2-year extension through 2009 - \$20 million
h. Reinstate the exclusion from gross income for amounts received under qualified group legal services plans	In place through 2008 - \$40 million	Same as House bill	No provision
i. R&D tax credit	1-year extension through 2008 - \$8.761 billion	1-year extension through 2008; alternative simplified credit increased to 14%; alternative incremental research credit repealed - \$9.897 billion	2-year extension through 2009; alternative simplified credit increased to 14% in 2008, 16% in 2009; alternative incremental research credit repealed - \$21.543 billion
j. Indian employment tax credit	1-year extension through 2008 - \$59 million	Same as House bill	2-year extension through 2009 - \$119 million
k. New markets tax credit	1-year extension through 2009 - \$1.315 billion	1-year extension through 2009, expands definition to include counties whose average wage is 75% less than the national average or that are located in states whose average wage is less than 75% of the national average - \$1.315 billion	Same as House bill
l. 50% tax credit for certain expenditures for maintaining railroad tracks	1-year extension through 2008 - \$165 million	1-year extension through 2008 and allow to apply against AMT - \$165 million	2-year extension through 2009 and allow to apply against AMT - \$331 million

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m. 15-year straight-line cost recovery for qualified leasehold improvements and qualified restaurant property	1-year extension through 2008 - \$5.399 billion	1-year extension through 2008; extended to new restaurant construction and improvements made by retail property owners for property placed in service after date of enactment - \$6.728 billion	Similar to Chairman Baucus’s bill except a 2-year extension through 2009 - \$9.388 billion (estimate pending for the provision providing 15-year straight-line cost recovery for certain improvements to retail space)
n. 7-year recovery period for certain motorsports racing track facilities	1-year extension through 2008 - \$48 million	Same as House bill	2-year extension through 2009 - \$128 million
o. Accelerated depreciation for business property on Indian reservations	1-year extension through 2008 - \$151 million	Same as House bill	2-year extension through 2009 - \$295 million
p. Mine rescue team training credit	No provision	1-year extension through 2009 - \$4 million	Same as Chairman Baucus’s bill
q. Expensing of “Brownfields” environmental remediation costs	1-year extension through 2008 - \$178 million	Same as House bill	2-year extension through 2009 - \$201 million
r. Election to expense advanced mine safety equipment	No provision	1-year extension through 2009 <i>Revenue neutral</i>	1-year extension through 2009 - \$153 million
s. Deduction allowable with respect to income attributable to domestic production activities in Puerto Rico	1-year extension through 2008 - \$116 million	Same as House bill	2-year extension through 2009 - \$243 million
t. Modify tax treatment of certain payments under existing arrangements to controlling exempt organizations	1-year extension through 2008 - \$35 million	Same as House bill	2-year extension through 2009 - \$50 million
u. Extension and modification of credit to holders of qualified zone academy bonds - allocations of bond authority	1-year extension through 2008 - \$201 million	Same as House bill	2-year extension through 2009 - \$337 million
v. Tax incentives for investment in the District of Columbia	1-year extension through 2008 - \$129 million	Same as House bill	No provision

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w. Extension of economic development credit for American Samoa	1-year extension through 2008 - \$16 million	Same as House bill	2-year extension through 2009 - \$33 million
x. Enhanced charitable deduction for contributions of food inventory	1-year extension through 2008 - \$71 million	1-year extension through 2008, plus allows farmer to treat the basis of the contributed food as being equal to 25 percent of the food's fair market value - \$87 million	2-year extension through 2009 - \$137 million
y. Enhanced charitable deduction for contributions of book inventories to public schools	1-year extension through 2008 - \$31 million	1-year extension through 2008 - \$22 million	2-year extension through 2009 - \$57 million
z. Enhanced charitable deduction for qualified computer contributions	1-year extension through 2008 - \$260 million	1-year extension through 2008 - \$252 million	2-year extension through 2009 No estimate available
aa. Basis adjustment to stock of S corporations making charitable contributions of property	1-year extension through 2008 - \$63 million	Same as House bill	2-year extension through 2009 - \$134 million
bb. Extension of WOTC for Hurricane Katrina employees	Extension until 8/28/08 - \$16 million	Same as House bill	Extension until 8/28/09 - \$29 million
cc. Exception under subpart F for active financing income	1-year extension through 2009 - \$3.97 billion	Same as House bill	Same as House bill
dd. Look-through treatment of payments between related CFCs under foreign personal holding company income rules	1-year extension through 2009 - \$611 million	Same as House bill	Same as House bill
ee. Extension of treatment of certain qualified film and television productions	1-year extension through 2008 - \$10 million	Same as House bill	Same as House bill
ff. Wool provision	No provision	Extension and modification of duty suspension on wool products, wool research fund; wool duty refunds	No provision

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		- \$148 million	
gg. Authority to disclose information related to terrorist activities	Made permanent <i>No revenue effect</i>	Same as House bill	2-year extension through 2009 <i>No revenue effect</i>
hh. Authority for undercover operations	Made permanent <i>Gain of less than \$500,000</i>	Same as House bill	Same as House bill
ii. Disclosures of certain tax return information	Permanently extend current law disclosure provisions and authority for purposes of coordination with Department of Veterans Affairs <i>No revenue effect</i>	No provision	No provision
jj. Increase in limit on cover over of rum excise tax revenues (from \$10.50 to \$13.25 per proof gallon) to Puerto Rico and the Virgin Islands	1-year extension through 2008 <i>- \$96 million</i>	1-year extension through 2008 <i>- \$192 million</i>	Same as Chairman Baucus’s bill
kk. Mental health parity	Extension of parity in the application of certain limits to mental health benefits <i>- \$25 million</i>	Parity in mental health and substance use disorder benefits, <i>- \$3.9 billion</i>	No provision
ll. Child tax credit	Set refundable threshold for the child tax credit at \$8,500 for 2008 <i>- \$3.129 billion</i>	Substantially identical to House bill <i>- \$3.129 billion</i>	No provision
mm. Tax treatment of certain income received in connection with Exxon Valdez litigation	No provision	Three-year income averaging with maximum retirement plan contribution up to \$100,000 <i>- \$223 million</i>	Same as Chairman Baucus’s bill
nn. Uniform treatment of attorney-advanced expenses and court costs in contingency fee cases	Conform the tax treatment of “net” fee arrangements to the tax treatment of “gross” fee arrangements by allowing all advanced litigation costs to be	No provision	No provision

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	deducted currently by the attorney in contingency fee cases - \$1.572 billion		
oo. Modification of treatment of certain qualified film and television productions	Technical changes to film and television expensing provisions - \$71 million	Same as House bill	No provision
pp. Section 199 for film production	Modification of domestic production activities deduction for film production under section 199 - \$397 million	Same as House bill	No provision
qq. Modification of excise tax on wooden arrows used by children	No provision	Exempt from the excise tax any shaft consisting of all natural wood with no laminations or artificial means to enhance the spine of the shaft used in the manufacture of an arrow that measures 5/16 of an inch or less and is unsuited for use with a bow with a peak draw weight of 30 pounds or more. - \$2 million	No provision
rr. Section 6694 preparer penalty conformity	Conform the penalty standards for return preparers with the standards for taxpayers - \$22 million	Same as House bill	Same as House bill
ss. Rural schools	No provision	Secure rural schools and community self-determination program - \$3.264 billion	Same as Chairman Baucus’s bill
tt. Uniform definition of a child	No provision	Clarify uniform definition of a child \$1.749 billion	No provision
uu. Modification to exclusion for gain from certain small business stock	No provision	No provision	Provide a 100% exclusion, instead of the current law 50% exclusion, for capital gains for qualified small

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			business stock acquired after the date of enactment and prior to 1/1/2010 <i>Estimate pending</i>
vv. Abandoned mine interest payments	No provision	No provision	Transfer of interest earned by abandoned mine reclamation fund - \$9 million
ww. Modification of additional standard property deduction for real property taxes	No provision	No provision	Standard property tax deduction included in <i>Housing and Economic Recovery Act of 2008</i> disallowed for taxpayer in a jurisdiction that increases property taxes <i>No estimate available</i>
xx. Depreciation of farm machinery	No provision	No provision	Certain farming business machinery and equipment treated as having 5-year MACRS depreciation recovery period <i>No estimate available</i>
yy. Temporary Tax Relief for Federally declared disaster areas in 2008 and 2009	No provision	Expensing of qualified disaster expenses; relax mortgage revenue bond limitations for presidentially declared disasters; 5-year carry-back of NOLs for qualified disaster losses; allow amount of qualified disaster recovery assistance distribution to be repaid to an eligible retirement plan within three years and to be included in income ratably over three years (capped at \$100,000 per taxpayer); recontributions of withdrawals for home purchases cancelled due to qualified storm damage; loans from qualified plans to individuals sustaining an economic loss due to	Use of amended income tax returns to take into account receipt of certain casualty loss grants by disallowing previously taken casualty loss deductions; waivers of penalties and interest for certain underpayments; increase in low-income housing credit; expensing for demolition, clean-up, and remediation costs; NOL carry-back; credit to holders of tax credit bonds

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		Federal disaster areas; employee retention credit for employers affected by Federal disaster areas declared in 2008 and 2009; temporary suspension of limitations on qualified charitable contributions for relief efforts related to certain disaster areas <i>- \$2.848 billion</i>	<i>No estimate available</i>
zz. Modifications to the Katrina Emergency Tax Relief Act of 2005	No provision	Additional \$500 personal exemption for displaced individuals as a result of a Federally declared disaster area in 2008 and 2009 (staying as houseguests for at least 60 days) subject to maximum additional exemptions of \$2,000; increase in standard mileage rate for charitable use of a vehicle for providing relief related to the Federal disaster area; mileage reimbursements to charitable volunteers excluded from gross income for providing relief related to the Federal disaster area up to standard business mileage rate; exclusions of certain cancellations of indebtedness for certain taxpayers applicable to all federally declared disasters; extend replacement period for nonrecognition of gain for property located in Federally declared disaster areas in 2008 or 2009; individual casualty losses deductible for itemizers without regard to AGI <i>- \$1.283 billion</i>	No provision
aaa. Highway Trust Fund	No provision	Add \$8 billion	No provision

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		<i>No revenue effect</i>	
Total of tax provisions	\$34.738 billion	\$42.529 billion	(estimate incomplete)

3. Revenue Offsets

	The House-passed “Renewable Energy and Job Creation Act of 2008” (H.R. 6049)	The “Jobs, Energy, Families, and Disaster Relief Act of 2008,” Introduced on July 24 by Senate Finance Chairman Baucus (S. 3335)	Senate Republican substitute amendment
a. Modify tax treatment of nonqualified deferred compensation	Current inclusion of deferred compensation paid by tax indifferent third parties <i>\$24.289 billion</i>	Current inclusion of deferred compensation paid by tax indifferent third parties <i>\$23.79 billion</i>	No provision
b. Worldwide interest allocation	Delay Implementation until 2019 <i>\$29.962 billion</i>	Delay Implementation until 2019 <i>\$22.335 billion</i>	No provision
c. Corporate estimated tax payments	Repeal TIPRA adjustment for 2012 and increase 2013 amount by 37.75% <i>No revenue effect</i>	Increase TIPRA 2013 amount by 47.5% <i>No revenue effect</i>	No provision
d. Basis reporting	No provision	Broker reporting of customer's basis in securities transactions <i>\$7.98 billion</i>	No provision
Total of revenue provisions	\$54.251 billion	\$54.105 billion	\$0

4. AMT

	The House-passed “Renewable Energy and Job Creation Act of 2008” (H.R. 6049)	The “Jobs, Energy, Families, and Disaster Relief Act of 2008,” Introduced on July 24 by Senate Finance Chairman Baucus (S. 3335)	Senate Republican substitute amendment
AMT patch	No provision	Patch for 2008 <i>- \$61.8 billion</i>	Patch for 2008 <i>- \$61.5 billion</i>
ISO/AMT	Increase AMT refundable credit	Same as House bill	Same as House bill

	amount for individuals with long-term unused credits for prior year minimum tax liability, eliminate income phase-out - \$2.291 billion		
Total of AMT provisions	- \$2.291 billion	- \$63.582 billion	- \$63.791 billion
Net total of entire bill	\$148 million	\$42 million (excluding AMT)	(estimate incomplete)

If you have questions, or need additional information, please feel free to contact anyone here at Washington Council Ernst & Young at (202) 293-7474.