

1 (c) INCLUSION OF CERTAIN COUNTIES IN GULF OP-  
 2 PORTUNITY ZONE FOR PURPOSES OF TAX-EXEMPT BOND  
 3 FINANCING.—

4 (1) IN GENERAL.—Subsection (a) of section  
 5 1400N is amended by adding at the end the fol-  
 6 lowing new paragraph:

7 “(8) INCLUSION OF CERTAIN COUNTIES.—For  
 8 purposes of this subsection, the Gulf Opportunity  
 9 Zone includes Colbert County, Alabama and Dallas  
 10 County, Alabama.”.

11 (2) EFFECTIVE DATE.—The amendment made  
 12 by this subsection shall take effect as if included in  
 13 the provisions of the Gulf Opportunity Zone Act of  
 14 2005 to which it relates.

## 15 **TITLE IV—REVENUE**

### 16 **PROVISIONS**

17 **SEC. 401. NONQUALIFIED DEFERRED COMPENSATION**  
 18 **FROM CERTAIN TAX INDIFFERENT PARTIES.**

19 (a) IN GENERAL.—Subpart B of part II of sub-  
 20 chapter E of chapter 1 is amended by inserting after sec-  
 21 tion 457 the following new section:

22 **“SEC. 457A. NONQUALIFIED DEFERRED COMPENSATION**  
 23 **FROM CERTAIN TAX INDIFFERENT PARTIES.**

24 “(a) IN GENERAL.—Any compensation which is de-  
 25 ferred under a nonqualified deferred compensation plan of

1 a nonqualified entity shall be includible in gross income  
2 when there is no substantial risk of forfeiture of the rights  
3 to such compensation.

4 “(b) NONQUALIFIED ENTITY.—For purposes of this  
5 section, the term ‘nonqualified entity’ means—

6 “(1) any foreign corporation unless substan-  
7 tially all of its income is—

8 “(A) effectively connected with the conduct  
9 of a trade or business in the United States, or

10 “(B) subject to a comprehensive foreign in-  
11 come tax, and

12 “(2) any partnership unless substantially all of  
13 its income is allocated to persons other than—

14 “(A) foreign persons with respect to whom  
15 such income is not subject to a comprehensive  
16 foreign income tax, and

17 “(B) organizations which are exempt from  
18 tax under this title.

19 “(c) DETERMINABILITY OF AMOUNTS OF COMPENSA-  
20 TION.—

21 “(1) IN GENERAL.—If the amount of any com-  
22 pensation is not determinable at the time that such  
23 compensation is otherwise includible in gross income  
24 under subsection (a)—

1           “(A) such amount shall be so includible in  
2           gross income when determinable, and

3           “(B) the tax imposed under this chapter  
4           for the taxable year in which such compensation  
5           is includible in gross income shall be increased  
6           by the sum of—

7                   “(i) the amount of interest determined  
8                   under paragraph (2), and

9                   “(ii) an amount equal to 20 percent of  
10                  the amount of such compensation.

11           “(2) INTEREST.—For purposes of paragraph  
12           (1)(B)(i), the interest determined under this para-  
13           graph for any taxable year is the amount of interest  
14           at the underpayment rate under section 6621 plus  
15           1 percentage point on the underpayments that would  
16           have occurred had the deferred compensation been  
17           includible in gross income for the taxable year in  
18           which first deferred or, if later, the first taxable year  
19           in which such deferred compensation is not subject  
20           to a substantial risk of forfeiture.

21           “(d) OTHER DEFINITIONS AND SPECIAL RULES.—

22           For purposes of this section—

23                   “(1) SUBSTANTIAL RISK OF FORFEITURE.—

24                   “(A) IN GENERAL.—The rights of a person  
25                  to compensation shall be treated as subject to

1 a substantial risk of forfeiture only if such per-  
2 son's rights to such compensation are condi-  
3 tioned upon the future performance of substan-  
4 tial services by any individual.

5 “(B) EXCEPTION FOR COMPENSATION  
6 BASED ON GAIN RECOGNIZED ON AN INVEST-  
7 MENT ASSET.—

8 “(i) IN GENERAL.—To the extent pro-  
9 vided in regulations prescribed by the Sec-  
10 retary, if compensation is determined solely  
11 by reference to the amount of gain recog-  
12 nized on the disposition of an investment  
13 asset, such compensation shall be treated  
14 as subject to a substantial risk of for-  
15 feiture until the date of such disposition.

16 “(ii) INVESTMENT ASSET.—For pur-  
17 poses of clause (i), the term ‘investment  
18 asset’ means any single asset (other than  
19 an investment fund or similar entity)—

20 “(I) acquired directly by an in-  
21 vestment fund or similar entity,

22 “(II) with respect to which such  
23 entity does not (nor does any person  
24 related to such entity) participate in  
25 the active management of such asset

1 (or if such asset is an interest in an  
2 entity, in the active management of  
3 the activities of such entity), and

4 “(III) substantially all of any  
5 gain on the disposition of which (other  
6 than such deferred compensation) is  
7 allocated to investors in such entity.

8 “(iii) COORDINATION WITH SPECIAL  
9 RULE.—Paragraph (3)(B) shall not apply  
10 to any compensation to which clause (i)  
11 applies.

12 “(2) COMPREHENSIVE FOREIGN INCOME TAX.—  
13 The term ‘comprehensive foreign income tax’ means,  
14 with respect to any foreign person, the income tax  
15 of a foreign country if—

16 “(A) such person is eligible for the benefits  
17 of a comprehensive income tax treaty between  
18 such foreign country and the United States, or

19 “(B) such person demonstrates to the sat-  
20 isfaction of the Secretary that such foreign  
21 country has a comprehensive income tax.

22 “(3) NONQUALIFIED DEFERRED COMPENSA-  
23 TION PLAN.—

24 “(A) IN GENERAL.—The term ‘non-  
25 qualified deferred compensation plan’ has the

1 meaning given such term under section  
2 409A(d), except that such term shall include  
3 any plan that provides a right to compensation  
4 based on the appreciation in value of a specified  
5 number of equity units of the service recipient.

6 “(B) EXCEPTION.—Compensation shall  
7 not be treated as deferred for purposes of this  
8 section if the service provider receives payment  
9 of such compensation not later than 12 months  
10 after the end of the taxable year of the service  
11 recipient during which the right to the payment  
12 of such compensation is no longer subject to a  
13 substantial risk of forfeiture.

14 “(4) EXCEPTION FOR CERTAIN COMPENSATION  
15 WITH RESPECT TO EFFECTIVELY CONNECTED IN-  
16 COME.—In the case a foreign corporation with in-  
17 come which is taxable under section 882, this section  
18 shall not apply to compensation which, had such  
19 compensation had been paid in cash on the date that  
20 such compensation ceased to be subject to a sub-  
21 stantial risk of forfeiture, would have been deduct-  
22 ible by such foreign corporation against such income.

23 “(5) APPLICATION OF RULES.—Rules similar to  
24 the rules of paragraphs (5) and (6) of section  
25 409A(d) shall apply.

1       “(e) REGULATIONS.—The Secretary shall prescribe  
2 such regulations as may be necessary or appropriate to  
3 carry out the purposes of this section, including regula-  
4 tions disregarding a substantial risk of forfeiture in cases  
5 where necessary to carry out the purposes of this sec-  
6 tion.”.

7       (b) CONFORMING AMENDMENT.—Section 26(b)(2) is  
8 amended by striking “and” at the end of subparagraph  
9 (U), by striking the period at the end of subparagraph  
10 (V) and inserting “, and”, and by adding at the end the  
11 following new subparagraph:

12                       “(W) section 457A(c)(1)(B) (relating to  
13                       determinability of amounts of compensation).”.

14       (c) CLERICAL AMENDMENT.—The table of sections  
15 of subpart B of part II of subchapter E of chapter 1 is  
16 amended by inserting after the item relating to section  
17 457 the following new item:

                          “Sec. 457A. Nonqualified deferred compensation from certain tax indifferent  
                          parties.”.

18       (d) EFFECTIVE DATE.—

19               (1) IN GENERAL.—Except as otherwise pro-  
20 vided in this subsection, the amendments made by  
21 this section shall apply to amounts deferred which  
22 are attributable to services performed after Decem-  
23 ber 31, 2008.

1           (2) APPLICATION TO EXISTING DEFERRALS.—

2           In the case of any amount deferred to which the  
3           amendments made by this section do not apply solely  
4           by reason of the fact that the amount is attributable  
5           to services performed before January 1, 2009, to the  
6           extent such amount is not includible in gross income  
7           in a taxable year beginning before 2018, such  
8           amounts shall be includible in gross income in the  
9           later of—

10                   (A) the last taxable year beginning before  
11                   2018, or

12                   (B) the taxable year in which there is no  
13                   substantial risk of forfeiture of the rights to  
14                   such compensation (determined in the same  
15                   manner as determined for purposes of section  
16                   457A of the Internal Revenue Code of 1986, as  
17                   added by this section).

18           (3) CHARITABLE CONTRIBUTIONS OF EXISTING  
19           DEFERRALS PERMITTED.—

20                   (A) IN GENERAL.—Subsection (b) of sec-  
21                   tion 170 of the Internal Revenue Code of 1986  
22                   shall not apply to (and subsections (b) and (d)  
23                   of such section shall be applied without regard  
24                   to) so much of the taxpayer's qualified con-  
25                   tributions made during the taxpayer's last tax-

1           able year beginning before 2018 as does not ex-  
2           ceed the taxpayer’s qualified inclusion amount.  
3           For purposes of subsection (b) of section 170 of  
4           such Code, the taxpayer’s contribution base for  
5           such last taxable year shall be reduced by the  
6           amount of the taxpayer’s qualified contributions  
7           to which such subsection does not apply by rea-  
8           son the preceding sentence.

9           (B) QUALIFIED CONTRIBUTIONS.—For  
10          purposes of this paragraph, the term “qualified  
11          contributions” means the aggregate charitable  
12          contributions (as defined in section 170(c) of  
13          such Code) paid in cash by the taxpayer to or-  
14          ganizations described in section 170(b)(1)(A) of  
15          such Code (other than any organization de-  
16          scribed in section 509(a)(3) of such Code or  
17          any fund or account described in section  
18          4966(d)(2) of such Code).

19          (C) QUALIFIED INCLUSION AMOUNT.—For  
20          purposes of this paragraph, the term “qualified  
21          inclusion amount” means the amount includible  
22          in the taxpayer’s gross income for the last tax-  
23          able year beginning before 2018 by reason of  
24          paragraph (2).

1           (4) ACCELERATED PAYMENTS.—No later than  
2           120 days after the date of the enactment of this Act,  
3           the Secretary shall issue guidance providing a lim-  
4           ited period of time during which a nonqualified de-  
5           ferred compensation arrangement attributable to  
6           services performed on or before December 31, 2008,  
7           may, without violating the requirements of section  
8           409A(a) of the Internal Revenue Code of 1986, be  
9           amended to conform the date of distribution to the  
10          date the amounts are required to be included in in-  
11          come.

12          (5) CERTAIN BACK-TO-BACK ARRANGEMENTS.—  
13          If the taxpayer is also a service recipient and main-  
14          tains one or more nonqualified deferred compensa-  
15          tion arrangements for its service providers under  
16          which any amount is attributable to services per-  
17          formed on or before December 31, 2008, the guid-  
18          ance issued under paragraph (4) shall permit such  
19          arrangements to be amended to conform the dates of  
20          distribution under such arrangement to the date  
21          amounts are required to be included in the income  
22          of such taxpayer under this subsection.

23          (6) ACCELERATED PAYMENT NOT TREATED AS  
24          MATERIAL MODIFICATION.—Any amendment to a  
25          nonqualified deferred compensation arrangement

1 made pursuant to paragraph (4) or (5) shall not be  
2 treated as a material modification of the arrange-  
3 ment for purposes of section 409A of the Internal  
4 Revenue Code of 1986.

5 **SEC. 402. DELAY IN APPLICATION OF WORLDWIDE ALLOCA-**  
6 **TION OF INTEREST.**

7 (a) IN GENERAL.—Paragraphs (5)(D) and (6) of sec-  
8 tion 864(f) are each amended by striking “December 31,  
9 2008” and inserting “December 31, 2018”.

10 (b) EFFECTIVE DATE.—The amendments made by  
11 this section shall apply to taxable years beginning after  
12 December 31, 2008.

13 **SEC. 403. TIME FOR PAYMENT OF CORPORATE ESTIMATED**  
14 **TAXES.**

15 (a) REPEAL OF ADJUSTMENT FOR 2012.—Subpara-  
16 graph (B) of section 401(1) of the Tax Increase Preven-  
17 tion and Reconciliation Act of 2005 is amended by striking  
18 the percentage contained therein and inserting “100 per-  
19 cent”.

20 (b) MODIFICATION OF ADJUSTMENT FOR 2013.—  
21 The percentage under subparagraph (C) of section 401(1)  
22 of the Tax Increase Prevention and Reconciliation Act of