

**Amendment to the Amendment in the Nature of a Substitute to H.R. 1  
Offered by Mr. Brady of Texas**

The amendment makes improvements to the amendment in the nature of a substitute relating to the exclusion from income for employer-provided dependent care assistance, protects the integrity of the Earned Income Tax Credit program, focuses the excise tax on net investment income of educational institutions on application to institutions with endowment assets of at least \$250,000 per student, ensures that other changes in the bill do not disturb the characterization for tax purposes of income earned by songwriters when they sell their catalogue of compositions, ensures that employees of start-up companies can share in the success of the business they are helping to build by better aligning the recognition of stock-based compensation for tax purposes, imposes an additional holding period requirement with respect to gains on a carried interest, and better tailors the bill's international base erosion rules.

1 inserting “for ‘calendar year 2016’ in clause (ii)  
2 thereof”, and  
3 (C) in clause (ii), by striking “for ‘calendar  
4 year 1992’ in subparagraph (B) of such section  
5 1” and inserting “for ‘calendar year 2016’ in  
6 clause (ii) thereof”.

Page 76, after line 20, insert the following:

7 **SEC. 1104. PROCEDURES TO REDUCE IMPROPER CLAIMS**  
8 **OF EARNED INCOME CREDIT.**

9 (a) CLARIFICATION REGARDING DETERMINATION OF  
10 SELF-EMPLOYMENT INCOME WHICH IS TREATED AS  
11 EARNED INCOME.—Section 32(c)(2)(B) is amended by  
12 striking “and” at the end of clause (v), by striking the  
13 period at the end of clause (vi) and inserting “, and”, and  
14 by adding at the end the following new clause:

15 “(vii) in determining the taxpayer’s  
16 net earnings from self-employment under  
17 subparagraph (A)(ii) there shall not fail to  
18 be taken into account any deduction which  
19 is allowable to the taxpayer under this sub-  
20 title.”.

21 (b) REQUIRED QUARTERLY REPORTING OF WAGES  
22 OF EMPLOYEES.—Section 6011 is amended by adding at  
23 the end the following new subsection:

1       “(n) INCONSISTENT INCOME REPORTING.—If the  
2 earned income of a taxpayer claimed on a return for pur-  
3 poses of this section is not substantiated by statements  
4 or returns under sections 6051, 6052, 6041(a), or 6050W  
5 with respect to such taxpayer, the Secretary may require  
6 such taxpayer to provide books and records to substantiate  
7 such income, including for the purpose of preventing  
8 fraud.”.

9       (b) EXCLUSION OF UNSUBSTANTIATED AMOUNT  
10 FROM EARNED INCOME.—Section 32(c)(2) is amended by  
11 adding at the end the following new subparagraph:

12               “(C) EXCLUSION.—In the case of a tax-  
13 payer with respect to which there is an incon-  
14 sistency described in subsection (n) who fails to  
15 substantiate such inconsistency to the satisfac-  
16 tion of the Secretary, the term ‘earned income’  
17 shall not include amounts to the extent of such  
18 inconsistency.”.

19       (c) EFFECTIVE DATE.—The amendments made by  
20 this section shall apply to taxable years ending after the  
21 date of the enactment of this Act.

Page 138, strike line 19, and all that follows  
through page 139, line 24, and insert the following:

1 **SEC. 3314. RECHARACTERIZATION OF CERTAIN GAINS IN**  
2 **THE CASE OF PARTNERSHIP PROFITS INTER-**  
3 **ESTS HELD IN CONNECTION WITH PERFORM-**  
4 **ANCE OF INVESTMENT SERVICES.**

5 (a) IN GENERAL.—Part IV of subchapter O of chap-  
6 ter 1 is amended—

7 (1) by redesignating section 1061 as section  
8 1062, and

9 (2) by inserting after section 1060 the following  
10 new section:

11 **“SEC. 1061. PARTNERSHIP INTERESTS HELD IN CONNEC-**  
12 **TION WITH PERFORMANCE OF SERVICES.**

13 “(a) IN GENERAL.—If one or more applicable part-  
14 nership interests are held by a taxpayer at any time during  
15 the taxable year, the excess (if any) of—

16 “(1) the taxpayer’s net long-term capital gain  
17 with respect to such interests for such taxable year,  
18 over

19 “(2) the taxpayer’s net long-term capital gain  
20 with respect to such interests for such taxable year  
21 computed by applying paragraphs (3) and (4) of sec-  
22 tions 1222 by substituting ‘3 years’ for ‘1 year’,  
23 shall be treated as short-term capital gain.

24 “(b) SPECIAL RULE.—To the extent provided by the  
25 Secretary, subsection (a) shall not apply to income or gain



1 change of any asset held for not more than 3  
2 years as is allocable to such interest, over

3 “(B) any amount treated as short term  
4 capital gain under subsection (a) with respect  
5 to the transfer of such interest.

6 “(2) RELATED PERSON.—For purposes of this  
7 paragraph, a person is related to the taxpayer if—

8 “(A) the person is a member of the tax-  
9 payer’s family within the meaning of section  
10 318(a)(1), or

11 “(B) the person performed a service within  
12 the current calendar year or the preceding three  
13 calendar years in any applicable trade or busi-  
14 ness in which or for which the taxpayer per-  
15 formed a service.

16 “(e) REPORTING.—The Secretary shall require such  
17 reporting (at the time and in the manner prescribed by  
18 the Secretary) as is necessary to carry out the purposes  
19 of this section.

20 “(f) REGULATIONS.—The Secretary shall issue such  
21 regulations or other guidance as is necessary or appro-  
22 priate to carry out the purposes of this section”.

23 (b) COORDINATION WITH SECTION 83.—Subsection  
24 (e) of section 83 is amended by striking “or” at the end  
25 of paragraph (4), by striking the period at the end of para-

1 “(A) except as provided in subparagraph  
2 (B), no amount shall be included in income  
3 under subsection (a) for the first taxable year  
4 in which the rights of the employee in such  
5 stock are transferable or are not subject to a  
6 substantial risk of forfeiture, whichever is appli-  
7 cable, and

8 “(B) an amount equal to the amount  
9 which would be included in income of the em-  
10 ployee under subsection (a) (determined without  
11 regard to this subsection) shall be included in  
12 income for the taxable year of the employee  
13 which includes the earliest of—

14 “(i) the first date such qualified stock  
15 becomes transferable (including transfer-  
16 able to the employer),

17 “(ii) the date the employee first be-  
18 comes an excluded employee,

19 “(iii) the first date on which any stock  
20 of the corporation which issued the quali-  
21 fied stock becomes readily tradable on an  
22 established securities market (as deter-  
23 mined by the Secretary, but not including  
24 any market unless such market is recog-  
25 nized as an established securities market

1 “(ii) such option or restricted stock  
2 unit was provided by the corporation—

3 “(I) in connection with the per-  
4 formance of services as an employee,  
5 and

6 “(II) during a calendar year in  
7 which such corporation was an eligible  
8 corporation.

9 “(B) LIMITATION.—The term ‘qualified  
10 stock’ shall not include any stock if the em-  
11 ployee may sell such stock to, or otherwise re-  
12 ceive cash in lieu of stock from, the corporation  
13 at the time that the rights of the employee in  
14 such stock first become transferable or not sub-  
15 ject to a substantial risk of forfeiture.

16 “(C) ELIGIBLE CORPORATION.—For pur-  
17 poses of subparagraph (A)(ii)(II)—

18 “(i) IN GENERAL.—The term ‘eligible  
19 corporation’ means, with respect to any  
20 calendar year, any corporation if—

21 “(I) no stock of such corporation  
22 (or any predecessor of such corpora-  
23 tion) is readily tradable on an estab-  
24 lished securities market (as deter-  
25 mined under paragraph (1)(B)(iii))



1 equal in amount, so long as the num-  
2 ber of shares available to each em-  
3 ployee is more than a de minimis  
4 amount, and

5 “(III) rights and privileges with  
6 respect to the exercise of an option  
7 shall not be treated as the same as  
8 rights and privileges with respect to  
9 the settlement of a restricted stock  
10 unit.

11 “(iii) EMPLOYEE.—For purposes of  
12 clause (i)(II), the term ‘employee’ shall not  
13 include any employee described in section  
14 4980E(d)(4) or any excluded employee.

15 “(iv) SPECIAL RULE FOR CALENDAR  
16 YEARS BEFORE 2018.—In the case of any  
17 calendar year beginning before January 1,  
18 2018, clause (i)(II) shall be applied with-  
19 out regard to whether the rights and privi-  
20 leges with respect to the qualified stock are  
21 the same.

22 “(3) QUALIFIED EMPLOYEE; EXCLUDED EM-  
23 PLOYEE.—For purposes of this subsection—

24 “(A) IN GENERAL.—The term ‘qualified  
25 employee’ means any individual who—

1           vidual described in subclause (I) or (II) of  
2           clause (ii), or

3           “(iv) who has been for any of the 10  
4           preceding taxable years one of the 4 high-  
5           est compensated officers of such corpora-  
6           tion determined with respect to each such  
7           taxable year on the basis of the share-  
8           holder disclosure rules for compensation  
9           under the Securities Exchange Act of 1934  
10          (as if such rules applied to such corpora-  
11          tion).

12          “(4) ELECTION.—

13          “(A) TIME FOR MAKING ELECTION.—An  
14          election with respect to qualified stock shall be  
15          made under this subsection no later than 30  
16          days after the first time the rights of the em-  
17          ployee in such stock are transferable or are not  
18          subject to a substantial risk of forfeiture,  
19          whichever occurs earlier, and shall be made in  
20          a manner similar to the manner in which an  
21          election is made under subsection (b).

22          “(B) LIMITATIONS.—No election may be  
23          made under this section with respect to any  
24          qualified stock if—

1 “(C) DEFINITIONS AND SPECIAL RULES  
2 RELATED TO LIMITATION ON STOCK REDEMP-  
3 TIONS.—

4 “(i) DEFERRAL STOCK.—For pur-  
5 poses of this paragraph, the term ‘deferral  
6 stock’ means stock with respect to which  
7 an election is in effect under this sub-  
8 section.

9 “(ii) DEFERRAL STOCK WITH RE-  
10 SPECT TO ANY INDIVIDUAL NOT TAKEN  
11 INTO ACCOUNT IF INDIVIDUAL HOLDS DE-  
12 FERRAL STOCK WITH LONGER DEFERRAL  
13 PERIOD.—Stock purchased by a corpora-  
14 tion from any individual shall not be treat-  
15 ed as deferral stock for purposes of clause  
16 (iii) if such individual (immediately after  
17 such purchase) holds any deferral stock  
18 with respect to which an election has been  
19 in effect under this subsection for a longer  
20 period than the election with respect to the  
21 stock so purchased.

22 “(iii) PURCHASE OF ALL OUT-  
23 STANDING DEFERRAL STOCK.—The re-  
24 quirements of subclauses (I) and (II) of  
25 subparagraph (B)(iii) shall be treated as

1 (but for this subsection) first be includible in the  
2 gross income of such employee—

3 “(A) certify to such employee that such  
4 stock is qualified stock, and

5 “(B) notify such employee—

6 “(i) that the employee may elect to  
7 defer income on such stock under this sub-  
8 section, and

9 “(ii) that, if the employee makes such  
10 an election—

11 “(I) the amount of income recog-  
12 nized at the end of the deferral period  
13 will be based on the value of the stock  
14 at the time at which the rights of the  
15 employee in such stock first become  
16 transferable or not subject to substan-  
17 tial risk of forfeiture, notwithstanding  
18 whether the value of the stock has de-  
19 clined during the deferral period,

20 “(II) the amount of such income  
21 recognized at the end of the deferral  
22 period will be subject to withholding  
23 under section 3401(i) at the rate de-  
24 termined under section 3402(t), and

1       “(t) RATE OF WITHHOLDING FOR CERTAIN  
2 STOCK.—In the case of any qualified stock (as defined in  
3 section 83(i)) with respect to which an election is made  
4 under section 83(i)—

5               “(1) the rate of tax under subsection (a) shall  
6 not be less than the maximum rate of tax in effect  
7 under section 1, and

8               “(2) such stock shall be treated for purposes of  
9 section 3501(b) in the same manner as a non-cash  
10 fringe benefit.”.

11       (c) COORDINATION WITH OTHER DEFERRED COM-  
12 PENSATION RULES.—

13               (1) ELECTION TO APPLY DEFERRAL TO STATU-  
14 TORY OPTIONS.—

15                       (A) INCENTIVE STOCK OPTIONS.—Section  
16 422(b) is amended by adding at the end the fol-  
17 lowing: “Such term shall not include any option  
18 if an election is made under section 83(i) with  
19 respect to the stock received in connection with  
20 the exercise of such option.”.

21                       (B) EMPLOYEE STOCK PURCHASE  
22 PLANS.—Section 423(a) is amended by adding  
23 at the end the following flush sentence:

1 83(i), determined as of the close of the calendar  
2 year.”.

3 (e) PENALTY FOR FAILURE OF EMPLOYER TO PRO-  
4 VIDE NOTICE OF TAX CONSEQUENCES.—Section 6652 is  
5 amended by adding at the end the following new sub-  
6 section:

7 “(o) FAILURE TO PROVIDE NOTICE UNDER SECTION  
8 83(i).—In the case of each failure to provide a notice as  
9 required by section 83(i)(6), at the time prescribed there-  
10 for, unless it is shown that such failure is due to reason-  
11 able cause and not to willful neglect, there shall be paid,  
12 on notice and demand of the Secretary and in the same  
13 manner as tax, by the person failing to provide such no-  
14 tice, an amount equal to \$100 for each such failure, but  
15 the total amount imposed on such person for all such fail-  
16 ures during any calendar year shall not exceed \$50,000.”.

17 (f) EFFECTIVE DATES.—

18 (1) IN GENERAL.—Except as provided in para-  
19 graph (2), the amendments made by this section  
20 shall apply to stock attributable to options exercised,  
21 or restricted stock units settled, after December 31,  
22 2017.

23 (2) REQUIREMENT TO PROVIDE NOTICE.—The  
24 amendments made by subsection (e) shall apply to  
25 failures after December 31, 2017.

1                   “(ii) the deduction allowable under  
2                   subsection (c) with respect to such  
3                   amounts, bears to  
4                   “(B) such amounts.”.

Page 372, line 12, strike “subsection (h) or (i)” and  
insert “subsection (c)(2)(C), (h), or (i)”.

Page 376, strike lines 3 through 7, and insert the  
following:

5                   “(1) COMMODITIES GROSS INCOME.—The term  
6                   ‘commodities gross income’ means, with respect to  
7                   any corporation—

8                   “(A) gross income of such corporation  
9                   from the disposition of commodities which are  
10                  produced or extracted by such corporation (or a  
11                  partnership in which such corporation is a part-  
12                  ner), and

13                  “(B) gross income of such corporation  
14                  from the disposition of property which gives rise  
15                  to income described in subparagraph (A).”.

Page 398, strike lines 7 through 10, and insert the  
following:

16                  “(C) the foreign corporation shall be al-  
17                  lowed a deduction for the taxable year referred

Page 400, strike lines 13 through 19, and insert the following:

1           “(C) METHOD OF DETERMINATION.—  
2           Amounts described in subparagraph (B) shall  
3           be determined with respect to the international  
4           financial reporting group on the basis of the  
5           consolidated financial statements referred to in  
6           paragraph (4)(A)(i) and the books and records  
7           of the members of the international financial  
8           reporting group which are used in preparing  
9           such statements, taking into account only reve-  
10          nues and expenses of the members of such  
11          group (other than the members of such group  
12          which are treated as domestic for purposes of  
13          this subsection) derived from, or incurred with  
14          respect to—  
15                 “(i) persons who are not members of  
16                 such group, and  
17                 “(ii) members of such group which  
18                 are treated as a domestic corporation for  
19                 purposes of this subsection.”.

Page 403, strike line 20 and all that follows through  
page 404, line 9, and insert the following:

20           “(8) TREATMENT OF FOREIGN TAXES.—



1 “(B) DISALLOWANCE OF FOREIGN TAX  
2 CREDIT.—No credit shall be allowed under sec-  
3 tion 901 for any taxes paid or accrued (or  
4 treated as paid or accrued) with respect to any  
5 specified amount to which paragraph (1) ap-  
6 plies.

7 “(C) DENIAL OF DEDUCTION.—No deduc-  
8 tion shall be allowed under this chapter for any  
9 tax for which credit is not allowable under sec-  
10 tion 901 by reason of subparagraph (B) (deter-  
11 mined by treating the taxpayer as having elect-  
12 ed the benefits of subpart A of part III of sub-  
13 chapter N).

14 “(D) EFFECTIVE FOREIGN TAX RATE.—  
15 For purposes of this paragraph, the term ‘effec-  
16 tive foreign tax rate’ means, with respect to any  
17 reporting year of any international financial re-  
18 porting group, the ratio (expressed as a per-  
19 centage and not less than zero) of—

20 “(i) the foreign income taxes paid by  
21 the international financial reporting group  
22 during such reporting year, divided by

23 “(ii) the net income of the inter-  
24 national financial reporting group deter-