114TH CONGRESS
2d Session
HOUSE OF REPRESENTATIVES
REPORT
114–749

EMERGENCY CITRUS DISEASE RESPONSE ACT OF 2016

SEPTEMBER 16, 2016.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. BRADY of Texas, from the Committee on Ways and Means, submitted the following

R E P O R T

[To accompany H.R. 3957]

[Including cost estimate of the Congressional Budget Office]

The Committee on Ways and Means, to whom was referred the bill (H.R. 3957) to amend the Internal Revenue Code of 1986 to temporarily allow expensing of certain costs of replanting citrus plants lost by reason of casualty, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

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59–006

The amendment is as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the "Emergency Citrus Disease Response Act of 2016".

SEC. 2. EXPENSING OF CERTAIN COSTS OF REPLANTING CITRUS PLANTS LOST BY REASON OF CASUALTY.

(a) IN GENERAL.—Section 263A(d)(2) of the Internal Revenue Code of 1986 is amended by adding at the end the following new subparagraph:

"(C) SPECIAL TEMPORARY RULE FOR CITRUS PLANTS LOST BY REASON OF CASUALTY.—

"(i) IN GENERAL.—In the case of the replanting of citrus plants, subparagraph (A) shall apply to amounts paid or incurred by a person (other than the taxpayer described in subparagraph (A)) if—

"(I) the taxpayer described in subparagraph (A) has an equity interest of not less than 50 percent in the replanted citrus plants at all times during the taxable year in which such amounts were paid or incurred and such other person holds any part of the remaining equity interest, or

"(II) such other person acquired the entirety of such taxpayer's equity interest in the land on which the lost or damaged citrus plants were located at the time of such loss or damage, and the replanting is on such land.

"(ii) TERMINATION.—Clause (i) shall not apply to any cost paid or incurred after December 31, 2025.".

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to costs paid or incurred after the date of the enactment of this Act.

I. SUMMARY AND BACKGROUND

A. PURPOSE AND SUMMARY

The bill, H.R. 3957, as reported by the Committee on Ways and Means, provides that certain taxpayers who invest in citrus groves may deduct their share of costs associated with replacing citrus trees blighted by a bacterial plant disease known as citrus greening.

B. BACKGROUND AND NEED FOR LEGISLATION

Citrus growers in the United States are facing a dire situation caused by huanglongbing (HLB), a bacterial plant disease commonly referred to as citrus greening, which adversely affects the citrus fruit and eventually kills the citrus tree. Because there is no known cure for HLB, the infected trees must be destroyed and replaced with new trees. Experts estimate that tens of millions of citrus trees in the United States will have to be replaced over the next several years for the citrus industry to continue in this country. The Committee believes it is important to provide assistance to citrus growers to recover from this disease and to enable them to raise the capital necessary to replace blighted citrus groves. H.R. 3957 will encourage investment in the citrus industry by allowing new investors to expense their share of the replacement costs of diseased trees. The bill also will encourage investors to purchase

entire groves of diseased citrus trees that might otherwise be sold off (e.g., to use the land for business or residential development), thereby maintaining the property for citrus production and helping to preserve the U.S. citrus industry. H.R. 3957 will provide for expensing of replanting costs through 2025 in order to cover the duration of the replanting process.

C. Legislative History

Background

H.R. 3957 was introduced on November 5, 2015 and was referred to the Committee on Ways and Means.

Committee action

The Committee on Ways and Means marked up H.R. 3957, the "Emergency Citrus Disease Response Act of 2016" on September 14, 2016, and ordered the bill, as amended, favorably reported (with a quorum being present).

Committee hearings

The need for assistance to citrus growers working to recover from citrus greening was discussed at the Committee's Member Day Hearing on Tax Legislation on May 12, 2016.

II. EXPLANATION OF THE BILL

A. Expensing of Certain Costs of Replanting Citrus Plants Lost by Reason of Casualty (sec. 2 of the bill and sec. 263A of the Code)

PRESENT LAW

In general

The uniform capitalization ("UNICAP") rules, which were enacted as part of the Tax Reform Act of 1986,[1] require certain direct and indirect costs allocable to real or tangible personal property produced by the taxpayer to be either capitalized into the basis of such property or included in inventory, as applicable.[2] For real or personal property acquired by the taxpayer for resale, section 263A generally requires certain direct and indirect costs allocable to such property to be either capitalized into the basis of such property or included in inventory, as applicable.

Section 263A generally requires the capitalization of the direct and indirect costs allocable to the production of any property in a farming business, including animals and plants without regard to the length of their preproductive period.[3] The costs of a plant generally required to be capitalized under section 263(a) include preparatory costs incurred so that the plant's growing process may begin, such as the acquisition costs of the seed, seedling, or plant. Under section 263A, the costs of producing a plant generally required to be capitalized also include the preproductive period costs of planting, cultivating, maintaining, and developing the plant dur-

[1] Sec. 803(a) of Pub. L. No. 99–514 (1986).
[2] Sec. 263A.
[3] Treas. Reg. sec. 1.263A–4(b)(1).

ing the preproductive period.[4] Preproductive period costs may include management, irrigation, pruning, soil and water conservation, fertilizing, frost protection, spraying, harvesting, storage and handling, upkeep, electricity, tax depreciation and repairs on buildings and equipment used in raising the plants, farm overhead, taxes, and interest, as applicable.[5]

Special rules for plant farmers

Section 263A provides an exception to the general capitalization requirements for taxpayers who raise, harvest, or grow trees.[6] Under this exception, section 263A does not apply to trees raised, harvested, or grown by the taxpayer (other than trees bearing fruit, nuts, or other crops, or ornamental trees) and any real property underlying such trees. Similarly, the UNICAP rules do not apply to any plant having a preproductive period of two years or less, which is produced by a taxpayer in a farming business (unless the taxpayer is required to use an accrual method of accounting under section 447 or 448(a)(3)).[7] Hence, in general, the UNICAP rules apply to the production of plants that have a preproductive period of more than two years, and to taxpayers required to use an accrual method of accounting.

Plant farmers otherwise required to capitalize preproductive period costs may elect to deduct such costs currently, provided the alternative depreciation system described in section 168(g)(2) is used on all farm assets and the preproductive period costs are recaptured upon disposition of the product.[8] The election is not available to taxpayers required to use the accrual method of accounting. Moreover, the election is not available with respect to certain costs attributable to planting, cultivating, maintaining, or developing citrus or almond groves.

Section 263A does not apply to costs incurred in replanting edible crops for human consumption following loss or damage due to freezing temperatures, disease, drought, pests, or casualty.[9] The same type of crop as the lost or damaged crop must be replanted. However, the exception to capitalization still applies if the replanting occurs on a parcel of land other than the land on which the damage occurred, provided the acreage of the new land does not exceed that of the land to which the damage occurred and the new land is located in the United States. This exception also may apply to costs incurred by persons other than the taxpayer who incurred the loss or damage, provided (1) the taxpayer who incurred the loss or damage retains an equity interest of more than 50 percent in the property on which the loss or damage occurred at all times during the taxable year in which the replanting costs are paid or incurred, and (2) the person holding a minority equity interest and claiming the deduction materially participates in the planting,

[4] Treas. Reg. sec. 1.263A–4(b)(1)(i).
[5] *Ibid.*
[6] Sec. 263A(c)(5).
[7] Sec. 263A(d).
[8] Sec. 263A(d)(3), (e)(1), and (e)(2).
[9] Sec. 263A(d)(2). Such replanting costs generally include costs attributable to the replanting, cultivating, maintaining, and developing of the plants that were lost or damaged that are incurred during the preproductive period. Treas. Reg. sec. 1.263A–4(e)(1). The acquisition costs of the replacement trees or seedlings must still be capitalized under section 263(a) (see, e.g., T.D. 8897, 65 FR 50638, Treas. Reg. sec. 1.263A–4(e)(3), Examples 1–3, and TAM 9547002 (July 18, 1995)), potentially subject to the special bonus depreciation deduction in the year of planting under section 168(k)(5).

maintenance, cultivation, or development of the property during the taxable year in which the replanting costs are paid or incurred.[10]

REASONS FOR CHANGE

The Committee believes the special rule for farmers under the UNICAP rules should be expanded temporarily to apply to costs incurred by persons other than the taxpayer in connection with replanting citrus plants following a casualty. This change will encourage investment necessary to replace diseased citrus trees and ensure the continuity of the citrus crops in the United States.

EXPLANATION OF PROVISION

The provision modifies the special rule for costs incurred by persons other than the taxpayer in connection with replanting an edible crop for human consumption following loss or damage due to casualty. Under the provision, with respect to replanting costs paid or incurred before January 1, 2026, for citrus plants lost or damaged due to casualty, such costs may also be deducted by a person other than the taxpayer if (1) the taxpayer has an equity interest of not less than 50 percent in the replanted citrus plants at all times during the taxable year in which the replanting costs are paid or incurred and such other person holds any part of the remaining equity interest, or (2) such other person acquires all of the taxpayer's equity interest in the land on which the lost or damaged citrus plants were located at the time of such loss or damage, and the replanting is on such land.

EFFECTIVE DATE

The provision is effective for costs paid or incurred after the date of enactment.

III. VOTES OF THE COMMITTEE

In compliance with clause 3(b) of rule XIII of the Rules of the House of Representatives, the following statement is made concerning the vote of the Committee on Ways and Means in its consideration of H.R. 3957, the "Emergency Citrus Disease Response Act of 2016" on September 14, 2016.

The Chairman's amendment in the nature of a substitute was adopted by a voice vote (with a quorum being present).

The bill, H.R. 3957, as amended, was ordered favorably reported to the House of Representatives by a voice vote (with a quorum being present).

IV. BUDGET EFFECTS OF THE BILL

A. Committee Estimate of Budgetary Effects

In compliance with clause 3(d) of rule XIII of the Rules of the House of Representatives, the following statement is made concerning the effects on the budget of the bill, H.R. 3957, as reported.

[10] Sec. 263A(d)(2)(B). Material participation for this purpose is determined in a similar manner as under section 2032A(e)(6) (relating to qualified use valuation of farm property upon death of the taxpayer).

The bill, as reported, is estimated to have the following effect on Federal budget receipts for fiscal years 2017–2026:

FISCAL YEARS

[Millions of dollars]

2017	2018	2019	2020	2021	2022	2023	2024	2025	2026	2017–21	2017–26
-2	−4	−5	−5	−4	−3	−2	−2	−2	−1	−20	−30

Pursuant to clause 8 of rule XIII of the Rules of the House of Representatives, the following statement is made by the Joint Committee on Taxation with respect to the provisions of the bill amending the Internal Revenue Code of 1986: The gross budgetary effect (before incorporating macroeconomic effects) in any fiscal year is less than 0.25 percent of the current projected gross domestic product of the United States for that fiscal year; therefore, the bill is not major legislation for purposes of requiring that the estimate include the budgetary effects of changes in economic output, employment, capital stock and other macroeconomic variables.

B. Statement Regarding New Budget Authority and Tax Expenditures Budget Authority

In compliance with clause 3(c)(2) of rule XIII of the Rules of the House of Representatives, the Committee states that the bill involves no new or increased budget authority. The Committee further states that the revenue-reducing tax provisions involve increased tax expenditures. See amounts in table in Part IV.A. above.

C. Cost Estimate Prepared by the Congressional Budget Office

In compliance with clause 3(c)(3) of rule XIII of the Rules of the House of Representatives, requiring a cost estimate prepared by the CBO, the following statement by CBO is provided.

U.S. Congress,
Congressional Budget Office,
Washington, DC, September 16, 2016.

Hon. Kevin Brady,
Chairman, Committee on Ways and Means,
House of Representatives, Washington, DC.

Dear Mr. Chairman: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 3957, the Emergency Citrus Disease Response Act of 2016.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Peter Huether.

Sincerely,

Keith Hall.

Enclosure.

H.R. 3957—Emergency Citrus Disease Response Act of 2016

H.R. 3957 would amend the Internal Revenue Code to allow certain investors to deduct the costs of replanting lost or damaged citrus plants in the year in which the costs are paid or incurred. Under current law, only the taxpayer who incurs the casualty loss

to citrus plants or an investor with a minority interest who materially participates in the planting and related activities can deduct the replanting costs in the year of the activity rather than capitalizing those costs and taking the deductions over a number of years. H.R. 3957 would allow minority owners who do not materially participate in the business to similarly deduct the costs of replanting. The bill would also allow a person who purchases the entire property for the purpose of replanting the lost or damaged citrus plants to take the same accelerated deduction. The provisions would expire for costs paid or incurred after December 31, 2025.

The staff of the Joint Committee on Taxation (JCT) estimates that the legislation would reduce revenues, thus increasing federal budget deficits, by $30 million over the 2016–2026 period.

The Statutory Pay-As-You-Go Act of 2010 establishes budget-reporting and enforcement procedures for legislation affecting revenues and direct spending. Enacting HR. 3957 would reduce revenues; therefore, pay-as-you-go procedures apply. The net changes in revenues and that are subject to those pay-as-you-go procedures are shown in the following table. Enacting the bill would not affect direct spending.

CBO ESTIMATE OF PAY-AS-YOU-GO EFFECTS FOR H.R. 3957, AS ORDERED REPORTED BY THE HOUSE COMMITTEE ON WAYS AND MEANS ON SEPTEMBER 14, 2016

	By fiscal year, in millions of dollars												
	2016	2017	2018	2019	2020	2021	2022	2023	2024	2025	2026	2016–2021	2016–2026
	NET INCREASE IN THE DEFICIT												
Statutory Pay-As-You-Go Effects	0	2	4	5	5	4	3	2	2	2	1	20	30

Source: Staff of the Joint Committee on Taxation.

JCT and CB0 estimate that enacting the bill would not increase net direct spending in any of the four consecutive 10-year periods beginning in 2027, and would increase on-budget deficits after 2027 by negligible amounts.

JCT has determined that the bill contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act.

The CBO staff contact for this estimate is Peter Huether. The estimate was approved by John McClelland, Assistant Director for Tax Analysis.

V. OTHER MATTERS TO BE DISCUSSED UNDER THE RULES OF THE HOUSE

A. COMMITTEE OVERSIGHT FINDINGS AND RECOMMENDATIONS

With respect to clause 3(c)(1) of rule XIII of the Rules of the House of Representatives (relating to oversight findings), the Committee advises that it was as a result of the Committee's review of the provisions of H.R. 3957 that the Committee concluded that it is appropriate to report the bill, as amended, favorably to the House of Representatives with the recommendation that the bill do pass.

B. Statement of General Performance Goals and Objectives

With respect to clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, the Committee advises that the bill contains no measure that authorizes funding, so no statement of general performance goals and objectives for which any measure authorizes funding is required.

C. Information Relating to Unfunded Mandates

This information is provided in accordance with section 423 of the Unfunded Mandates Reform Act of 1995 (Pub. L. No. 104–4).

The Committee has determined that the bill does not contain Federal mandates on the private sector. The Committee has determined that the bill does not impose a Federal intergovernmental mandate on State, local, or tribal governments.

D. Applicability of House Rule XXI 5(b)

Rule XXI 5(b) of the Rules of the House of Representatives provides, in part, that "A bill or joint resolution, amendment, or conference report carrying a Federal income tax rate increase may not be considered as passed or agreed to unless so determined by a vote of not less than three-fifths of the Members voting, a quorum being present." The Committee has carefully reviewed the bill, and states that the bill does not involve any Federal income tax rate increases within the meaning of the rule.

E. Tax Complexity Analysis

Section 4022(b) of the Internal Revenue Service Restructuring and Reform Act of 1998 ("IRS Reform Act") requires the staff of the Joint Committee on Taxation (in consultation with the Internal Revenue Service and the Treasury Department) to provide a tax complexity analysis. The complexity analysis is required for all legislation reported by the Senate Committee on Finance, the House Committee on Ways and Means, or any committee of conference if the legislation includes a provision that directly or indirectly amends the Internal Revenue Code of 1986 and has widespread applicability to individuals or small businesses.

Pursuant to clause 3(h)(1) of rule XIII of the Rules of the House of Representatives, the staff of the Joint Committee on Taxation has determined that a complexity analysis is not required under section 4022(b) of the IRS Reform Act because the bill contains no provisions that amend the Internal Revenue Code of 1986 and that have "widespread applicability" to individuals or small businesses, within the meaning of the rule.

F. Congressional Earmarks, Limited Tax Benefits, and Limited Tariff Benefits

With respect to clause 9 of rule XXI of the Rules of the House of Representatives, the Committee has carefully reviewed the provisions of the bill and states that the provisions of the bill do not contain any congressional earmarks, limited tax benefits, or limited tariff benefits within the meaning of the rule.

G. Duplication of Federal Programs

In compliance with Sec. 3(g)(2) of H. Res. 5 (114th Congress), the Committee states that no provision of the bill establishes or reauthorizes: (1) a program of the Federal Government known to be duplicative of another Federal program, (2) a program included in any report from the Government Accountability Office to Congress pursuant to section 21 of Public Law 111–139, or (3) a program related to a program identified in the most recent Catalog of Federal Domestic Assistance, published pursuant to the Federal Program Information Act (Public Law 95–220, as amended by Public Law 98–169).

H. Disclosure of Directed Rule Makings

In compliance with Sec. 3(i) of H. Res. 5 (114th Congress), the following statement is made concerning directed rule makings: The Committee estimates that the bill requires no directed rule makings within the meaning of such section.

VI. CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

A. Text of Existing Law Amended or Repealed by the Bill, as Reported

In compliance with clause 3(e)(1)(A) of rule XIII of the Rules of the House of Representatives, the text of each section proposed to be amended or repealed by the bill, as reported, is shown below:

Changes in Existing Law Made by the Bill, as Reported

In compliance with clause 3(e)(1)(A) of rule XIII of the Rules of the House of Representatives, the text of each section proposed to be amended or repealed by the bill, as reported, is shown below:

INTERNAL REVENUE CODE OF 1986

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Subtitle A—Income Taxes

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CHAPTER 1—NORMAL TAXES AND SURTAXES

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Subchapter B—Computation of Taxable Income

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PART IX—ITEMS NOT DEDUCTIBLE

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SEC. 263A. CAPITALIZATION AND INCLUSION IN INVENTORY COSTS OF CERTAIN EXPENSES.

(a) NONDEDUCTIBILITY OF CERTAIN DIRECT AND INDIRECT COSTS.—

(1) IN GENERAL.—In the case of any property to which this section applies, any costs described in paragraph (2)—

(A) in the case of property which is inventory in the hands of the taxpayer, shall be included in inventory costs, and

(B) in the case of any other property, shall be capitalized.

(2) ALLOCABLE COSTS.—The costs described in this paragraph with respect to any property are—

(A) the direct costs of such property, and

(B) such property's proper share of those indirect costs (including taxes) part or all of which are allocable to such property.

Any cost which (but for this subsection) could not be taken into account in computing taxable income for any taxable year shall not be treated as a cost described in this paragraph.

(b) PROPERTY TO WHICH SECTION APPLIES.—Except as otherwise provided in this section, this section shall apply to—

(1) PROPERTY PRODUCED BY TAXPAYER.—Real or tangible personal property produced by the taxpayer.

(2) PROPERTY ACQUIRED FOR RESALE.—

(A) IN GENERAL.—Real or personal property described in section 1221(a)(1) which is acquired by the taxpayer for resale.

(B) EXCEPTION FOR TAXPAYER WITH GROSS RECEIPTS OF $10,000,000 OR LESS.—Subparagraph (A) shall not apply to any personal property acquired during any taxable year by the taxpayer for resale if the average annual gross receipts of the taxpayer (or any predecessor) for the 3-taxable year period ending with the taxable year preceding such taxable year do not exceed $10,000,000.

(C) AGGREGATION RULES, ETC..—For purposes of subparagraph (B), rules similar to the rules of paragraphs (2) and (3) of section 448(c) shall apply.

For purposes of paragraph (1), the term "tangible personal property" shall include a film, sound recording, video tape, book, or similar property.

(c) GENERAL EXCEPTIONS.—

(1) PERSONAL USE PROPERTY.—This section shall not apply to any property produced by the taxpayer for use by the taxpayer other than in a trade or business or an activity conducted for profit.

(2) RESEARCH AND EXPERIMENTAL EXPENDITURES.—This section shall not apply to any amount allowable as a deduction under section 174.

(3) CERTAIN DEVELOPMENT AND OTHER COSTS OF OIL AND GAS WELLS OR OTHER MINERAL PROPERTY.—This section shall not apply to any cost allowable as a deduction under section 167(h), 179B, 263(c), 263(i), 291(b)(2), 616, or 617.

(4) COORDINATION WITH LONG-TERM CONTRACT RULES.—This section shall not apply to any property produced by the taxpayer pursuant to a long-term contract.

(5) TIMBER AND CERTAIN ORNAMENTAL TREES.—This section shall not apply to—

(A) trees raised, harvested, or grown by the taxpayer other than trees described in clause (ii) of subsection (e)(4)(B) (after application of the last sentence thereof), and

(B) any real property underlying such trees.

(6) COORDINATION WITH SECTION 59(E).—Paragraphs (2) and (3) shall apply to any amount allowable as a deduction under section 59(e) for qualified expenditures described in subparagraphs (B), (C), (D), and (E) of paragraph (2) thereof.

(7) COORDINATION WITH SECTION 168(K)(5).—This section shall not apply to any amount allowed as a deduction by reason of section 168(k)(5) (relating to special rules for certain plants bearing fruits and nuts).

(d) EXCEPTION FOR FARMING BUSINESSES.—

(1) SECTION NOT TO APPLY TO CERTAIN PROPERTY.—

(A) IN GENERAL.—This section shall not apply to any of the following which is produced by the taxpayer in a farming business:

(i) Any animal.

(ii) Any plant which has a preproductive period of 2 years or less.

(B) EXCEPTION FOR TAXPAYERS REQUIRED TO USE ACCRUAL METHOD.—Subparagraph (A) shall not apply to any corporation, partnership, or tax shelter required to use an accrual method of accounting under section 447 or 448(a)(3).

(2) TREATMENT OF CERTAIN PLANTS LOST BY REASON OF CASUALTY.—

(A) IN GENERAL.—If plants bearing an edible crop for human consumption were lost or damaged (while in the hands of the taxpayer) by reason of freezing temperatures, disease, drought, pests, or casualty, this section shall not apply to any costs of the taxpayer of replanting plants bearing the same type of crop (whether on the same parcel of land on which such lost or damaged plants were located or any other parcel of land of the same acreage in the United States).

(B) SPECIAL RULE FOR PERSON WITH MINORITY INTEREST WHO MATERIALLY PARTICIPATES.—Subparagraph (A) shall apply to amounts paid or incurred by a person (other than the taxpayer described in subparagraph (A)) if—

(i) the taxpayer described in subparagraph (A) has an equity interest of more than 50 percent in the plants described in subparagraph (A) at all times during the taxable year in which such amounts were paid or incurred, and

(ii) such other person holds any part of the remaining equity interest and materially participates in the planting, maintenance, cultivation, or development of such the plants described in subparagraph (A) during

the taxable year in which such amounts were paid or incurred.

The determination of whether an individual materially participates in any activity shall be made in a manner similar to the manner in which such determination is made under section 2032A(e)(6).

(3) ELECTION TO HAVE THIS SECTION NOT APPLY.—

(A) IN GENERAL.—If a taxpayer makes an election under this paragraph, this section shall not apply to any plant produced in any farming business carried on by such taxpayer.

(B) CERTAIN PERSONS NOT ELIGIBLE.—No election may be made under this paragraph by a corporation, partnership, or tax shelter, if such corporation, partnership, or tax shelter is required to use an accrual method of accounting under section 447 or 448(a)(3).

(C) SPECIAL RULE FOR CITRUS AND ALMOND GROWERS.—An election under this paragraph shall not apply with respect to any item which is attributable to the planting, cultivation, maintenance, or development of any citrus or almond grove (or part thereof) and which is incurred before the close of the 4th taxable year beginning with the taxable year in which the trees were planted. For purposes of the preceding sentence, the portion of a citrus or almond grove planted in 1 taxable year shall be treated separately from the portion of such grove planted in another taxable year.

(D) ELECTION.—Unless the Secretary otherwise consents, an election under this paragraph may be made only for the taxpayer's 1st taxable year which begins after December 31, 1986, and during which the taxpayer engages in a farming business. Any such election, once made, may be revoked only with the consent of the Secretary.

(e) DEFINITIONS AND SPECIAL RULES FOR PURPOSES OF SUBSECTION (D).—

(1) RECAPTURE OF EXPENSED AMOUNTS ON DISPOSITION.—

(A) IN GENERAL.—In the case of any plant with respect to which amounts would have been capitalized under subsection (a) but for an election under subsection (d)(3)—

(i) such plant (if not otherwise section 1245 property) shall be treated as section 1245 property, and

(ii) for purposes of section 1245, the recapture amount shall be treated as a deduction allowed for depreciation with respect to such property.

(B) RECAPTURE AMOUNT.—For purposes of subparagraph (A), the term "recapture amount" means any amount allowable as a deduction to the taxpayer which, but for an election under subsection (d)(3), would have been capitalized with respect to the plant.

(2) EFFECTS OF ELECTION ON DEPRECIATION.—

(A) IN GENERAL.—If the taxpayer (or any related person) makes an election under subsection (d)(3), the provisions of section 168(g)(2) (relating to alternative depreciation) shall apply to all property of the taxpayer used predominantly

in the farming business and placed in service in any taxable year during which any such election is in effect.

(B) RELATED PERSON.—For purposes of subparagraph (A), the term "related person" means—

(i) the taxpayer and members of the taxpayer's family,

(ii) any corporation (including an S corporation) if 50 percent or more (in value) of the stock of such corporation is owned (directly or through the application of section 318) by the taxpayer or members of the taxpayer's family,

(iii) a corporation and any other corporation which is a member of the same controlled group described in section 1563(a)(1), and

(iv) any partnership if 50 percent or more (in value) of the interests in such partnership is owned directly or indirectly by the taxpayer or members of the taxpayer's family.

(C) MEMBERS OF FAMILY.—For purposes of this paragraph, the term "family" means the taxpayer, the spouse of the taxpayer, and any of their children who have not attained age 18 before the close of the taxable year.

(3) PREPRODUCTIVE PERIOD.—

(A) IN GENERAL.—For purposes of this section, the term "preproductive period" means—

(i) in the case of a plant which will have more than 1 crop or yield, the period before the 1st marketable crop or yield from such plant, or

(ii) in the case of any other plant, the period before such plant is reasonably expected to be disposed of.

For purposes of this subparagraph, use by the taxpayer in a farming business of any supply produced in such business shall be treated as a disposition.

(B) RULE FOR DETERMINING PERIOD.—In the case of a plant grown in commercial quantities in the United States, the preproductive period for such plant if grown in the United States shall be based on the nationwide weighted average preproductive period for such plant.

(4) FARMING BUSINESS.—For purposes of this section—

(A) IN GENERAL.—The term "farming business" means the trade or business of farming.

(B) CERTAIN TRADES AND BUSINESSES INCLUDED.—The term "farming business" shall include the trade or business of—

(i) operating a nursery or sod farm, or

(ii) the raising or harvesting of trees bearing fruit, nuts, or other crops, or ornamental trees.

For purposes of clause (ii), an evergreen tree which is more than 6 years old at the time severed from the roots shall not be treated as an ornamental tree.

(5) CERTAIN INVENTORY VALUATION METHODS PERMITTED.—The Secretary shall by regulations permit the taxpayer to use reasonable inventory valuation methods to compute the amount required to be capitalized under subsection (a) in the case of any plant.

(f) SPECIAL RULES FOR ALLOCATION OF INTEREST TO PROPERTY PRODUCED BY THE TAXPAYER.—

(1) INTEREST CAPITALIZED ONLY IN CERTAIN CASES.—Subsection (a) shall only apply to interest costs which are—

(A) paid or incurred during the production period, and

(B) allocable to property which is described in subsection (b)(1) and which has—

(i) a long useful life,

(ii) an estimated production period exceeding 2 years, or

(iii) an estimated production period exceeding 1 year and a cost exceeding $1,000,000.

(2) ALLOCATION RULES.—

(A) IN GENERAL.—In determining the amount of interest required to be capitalized under subsection (a) with respect to any property—

(i) interest on any indebtedness directly attributable to production expenditures with respect to such property shall be assigned to such property, and

(ii) interest on any other indebtedness shall be assigned to such property to the extent that the taxpayer's interest costs could have been reduced if production expenditures (not attributable to indebtedness described in clause (i)) had not been incurred.

(B) EXCEPTION FOR QUALIFIED RESIDENCE INTEREST.—Subparagraph (A) shall not apply to any qualified residence interest (within the meaning of section 163(h)).

(C) SPECIAL RULE FOR FLOW-THROUGH ENTITIES.—Except as provided in regulations, in the case of any flow-through entity, this paragraph shall be applied first at the entity level and then at the beneficiary level.

(3) INTEREST RELATING TO PROPERTY USED TO PRODUCE PROPERTY.—This subsection shall apply to any interest on indebtedness allocable (as determined under paragraph (2)) to property used to produce property to which this subsection applies to the extent such interest is allocable (as so determined) to the produced property.

(4) DEFINITIONS.—For purposes of this subsection—

(A) LONG USEFUL LIFE.—Property has a long useful life if such property is—

(i) real property, or

(ii) property with a class life of 20 years or more (as determined under section 168).

(B) PRODUCTION PERIOD.—The term "production period" means, when used with respect to any property, the period—

(i) beginning on the date on which production of the property begins, and

(ii) ending on the date on which the property is ready to be placed in service or is ready to be held for sale.

(C) PRODUCTION EXPENDITURES.—The term "production expenditures" means the costs (whether or not incurred during the production period) required to be capitalized under subsection (a) with respect to the property.

(g) PRODUCTION.—For purposes of this section—

(1) IN GENERAL.—The term "produce" includes construct, build, install, manufacture, develop, or improve.

(2) TREATMENT OF PROPERTY PRODUCED UNDER CONTRACT FOR THE TAXPAYER.—The taxpayer shall be treated as producing any property produced for the taxpayer under a contract with the taxpayer; except that only costs paid or incurred by the taxpayer (whether under such contract or otherwise) shall be taken into account in applying subsection (a) to the taxpayer.

(h) EXEMPTION FOR FREE LANCE AUTHORS, PHOTOGRAPHERS, AND ARTISTS.—

(1) IN GENERAL.—Nothing in this section shall require the capitalization of any qualified creative expense.

(2) QUALIFIED CREATIVE EXPENSE.—For purposes of this subsection, the term "qualified creative expense" means any expense—

(A) which is paid or incurred by an individual in the trade or business of such individual (other than as an employee) of being a writer, photographer, or artist, and

(B) which, without regard to this section, would be allowable as a deduction for the taxable year.

Such term does not include any expense related to printing, photographic plates, motion picture films, video tapes, or similar items.

(3) DEFINITIONS.—For purposes of this subsection—

(A) WRITER.—The term "writer" means any individual if the personal efforts of such individual create (or may reasonably be expected to create) a literary manuscript, musical composition (including any accompanying words), or dance score.

(B) PHOTOGRAPHER.—The term "photographer" means any individual if the personal efforts of such individual create (or may reasonably be expected to create) a photograph or photographic negative or transparency.

(C) ARTIST.—

(i) IN GENERAL.—The term "artist" means any individual if the personal efforts of such individual create (or may reasonably be expected to create) a picture, painting, sculpture, statue, etching, drawing, cartoon, graphic design, or original print edition.

(ii) CRITERIA.—In determining whether any expense is paid or incurred in the trade or business of being an artist, the following criteria shall be taken into account:

(I) The originality and uniqueness of the item created (or to be created).

(II) The predominance of aesthetic value over utilitarian value of the item created (or to be created).

(D) TREATMENT OF CERTAIN CORPORATIONS.—

(i) IN GENERAL.—If—

(I) substantially all of the stock of a corporation is owned by a qualified employee-owner and mem-

bers of his family (as defined in section 267(c)(4)), and

(II) the principal activity of such corporation is performance of personal services directly related to the activities of the qualified employee-owner and such services are substantially performed by the qualified employee-owner,

this subsection shall apply to any expense of such corporation which directly relates to the activities of such employee-owner in the same manner as if such expense were incurred by such employee-owner.

(ii) QUALIFIED EMPLOYEE-OWNER.—For purposes of this subparagraph, the term "qualified employee-owner" means any individual who is an employee-owner of the corporation (as defined in section 269A(b)(2)) and who is a writer, photographer, or artist.

(i) REGULATIONS.—The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of this section, including—

(1) regulations to prevent the use of related parties, pass-thru entities, or intermediaries to avoid the application of this section, and

(2) regulations providing for simplified procedures for the application of this section in the case of property described in subsection (b)(2).

* * * * * * *

B. CHANGES IN EXISTING LAW PROPOSED BY THE BILL, AS REPORTED

In compliance with clause 3(e)(1)(B) of rule XIII of the Rules of the House of Representatives, changes in existing law proposed by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italics, existing law in which no change is proposed is shown in roman):

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e)(1)(B) of rule XIII of the Rules of the House of Representatives, changes in existing law proposed by the bill, as reported, are shown as follows (new matter is printed in italics and existing law in which no change is proposed is shown in roman):

INTERNAL REVENUE CODE OF 1986

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Subtitle A—Income Taxes

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CHAPTER 1—NORMAL TAXES AND SURTAXES

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Subchapter B—Computation of Taxable Income

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PART IX—ITEMS NOT DEDUCTIBLE

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SEC. 263A. CAPITALIZATION AND INCLUSION IN INVENTORY COSTS OF CERTAIN EXPENSES.

(a) NONDEDUCTIBILITY OF CERTAIN DIRECT AND INDIRECT COSTS.—

(1) IN GENERAL.—In the case of any property to which this section applies, any costs described in paragraph (2)—

(A) in the case of property which is inventory in the hands of the taxpayer, shall be included in inventory costs, and

(B) in the case of any other property, shall be capitalized.

(2) ALLOCABLE COSTS.—The costs described in this paragraph with respect to any property are—

(A) the direct costs of such property, and

(B) such property's proper share of those indirect costs (including taxes) part or all of which are allocable to such property.

Any cost which (but for this subsection) could not be taken into account in computing taxable income for any taxable year shall not be treated as a cost described in this paragraph.

(b) PROPERTY TO WHICH SECTION APPLIES.—Except as otherwise provided in this section, this section shall apply to—

(1) PROPERTY PRODUCED BY TAXPAYER.—Real or tangible personal property produced by the taxpayer.

(2) PROPERTY ACQUIRED FOR RESALE.—

(A) IN GENERAL.—Real or personal property described in section 1221(a)(1) which is acquired by the taxpayer for resale.

(B) EXCEPTION FOR TAXPAYER WITH GROSS RECEIPTS OF $10,000,000 OR LESS.—Subparagraph (A) shall not apply to any personal property acquired during any taxable year by the taxpayer for resale if the average annual gross receipts of the taxpayer (or any predecessor) for the 3-taxable year period ending with the taxable year preceding such taxable year do not exceed $10,000,000.

(C) AGGREGATION RULES, ETC..—For purposes of subparagraph (B), rules similar to the rules of paragraphs (2) and (3) of section 448(c) shall apply.

For purposes of paragraph (1), the term "tangible personal property" shall include a film, sound recording, video tape, book, or similar property.

(c) GENERAL EXCEPTIONS.—

(1) PERSONAL USE PROPERTY.—This section shall not apply to any property produced by the taxpayer for use by the taxpayer

other than in a trade or business or an activity conducted for profit.

(2) RESEARCH AND EXPERIMENTAL EXPENDITURES.—This section shall not apply to any amount allowable as a deduction under section 174.

(3) CERTAIN DEVELOPMENT AND OTHER COSTS OF OIL AND GAS WELLS OR OTHER MINERAL PROPERTY.—This section shall not apply to any cost allowable as a deduction under section 167(h), 179B, 263(c), 263(i), 291(b)(2), 616, or 617.

(4) COORDINATION WITH LONG-TERM CONTRACT RULES.—This section shall not apply to any property produced by the taxpayer pursuant to a long-term contract.

(5) TIMBER AND CERTAIN ORNAMENTAL TREES.—This section shall not apply to—

(A) trees raised, harvested, or grown by the taxpayer other than trees described in clause (ii) of subsection (e)(4)(B) (after application of the last sentence thereof), and

(B) any real property underlying such trees.

(6) COORDINATION WITH SECTION 59(E).—Paragraphs (2) and (3) shall apply to any amount allowable as a deduction under section 59(e) for qualified expenditures described in subparagraphs (B), (C), (D), and (E) of paragraph (2) thereof.

(7) COORDINATION WITH SECTION 168(K)(5).—This section shall not apply to any amount allowed as a deduction by reason of section 168(k)(5) (relating to special rules for certain plants bearing fruits and nuts).

(d) EXCEPTION FOR FARMING BUSINESSES.—

(1) SECTION NOT TO APPLY TO CERTAIN PROPERTY.—

(A) IN GENERAL.—This section shall not apply to any of the following which is produced by the taxpayer in a farming business:

(i) Any animal.

(ii) Any plant which has a preproductive period of 2 years or less.

(B) EXCEPTION FOR TAXPAYERS REQUIRED TO USE ACCRUAL METHOD.—Subparagraph (A) shall not apply to any corporation, partnership, or tax shelter required to use an accrual method of accounting under section 447 or 448(a)(3).

(2) TREATMENT OF CERTAIN PLANTS LOST BY REASON OF CASUALTY.—

(A) IN GENERAL.—If plants bearing an edible crop for human consumption were lost or damaged (while in the hands of the taxpayer) by reason of freezing temperatures, disease, drought, pests, or casualty, this section shall not apply to any costs of the taxpayer of replanting plants bearing the same type of crop (whether on the same parcel of land on which such lost or damaged plants were located or any other parcel of land of the same acreage in the United States).

(B) SPECIAL RULE FOR PERSON WITH MINORITY INTEREST WHO MATERIALLY PARTICIPATES.—Subparagraph (A) shall apply to amounts paid or incurred by a person (other than the taxpayer described in subparagraph (A)) if—

(i) the taxpayer described in subparagraph (A) has an equity interest of more than 50 percent in the plants described in subparagraph (A) at all times during the taxable year in which such amounts were paid or incurred, and

(ii) such other person holds any part of the remaining equity interest and materially participates in the planting, maintenance, cultivation, or development of such the plants described in subparagraph (A) during the taxable year in which such amounts were paid or incurred.

The determination of whether an individual materially participates in any activity shall be made in a manner similar to the manner in which such determination is made under section 2032A(e)(6).

(C) SPECIAL TEMPORARY RULE FOR CITRUS PLANTS LOST BY REASON OF CASUALTY.—

(i) IN GENERAL.—In the case of the replanting of citrus plants, subparagraph (A) shall apply to amounts paid or incurred by a person (other than the taxpayer described in subparagraph (A)) if—

(I) the taxpayer described in subparagraph (A) has an equity interest of not less than 50 percent in the replanted citrus plants at all times during the taxable year in which such amounts were paid or incurred and such other person holds any part of the remaining equity interest, or

(II) such other person acquired the entirety of such taxpayer's equity interest in the land on which the lost or damaged citrus plants were located at the time of such loss or damage, and the replanting is on such land.

(ii) TERMINATION.—Clause (i) shall not apply to any cost paid or incurred after December 31, 2025.

(3) ELECTION TO HAVE THIS SECTION NOT APPLY.—

(A) IN GENERAL.—If a taxpayer makes an election under this paragraph, this section shall not apply to any plant produced in any farming business carried on by such taxpayer.

(B) CERTAIN PERSONS NOT ELIGIBLE.—No election may be made under this paragraph by a corporation, partnership, or tax shelter, if such corporation, partnership, or tax shelter is required to use an accrual method of accounting under section 447 or 448(a)(3).

(C) SPECIAL RULE FOR CITRUS AND ALMOND GROWERS.—An election under this paragraph shall not apply with respect to any item which is attributable to the planting, cultivation, maintenance, or development of any citrus or almond grove (or part thereof) and which is incurred before the close of the 4th taxable year beginning with the taxable year in which the trees were planted. For purposes of the preceding sentence, the portion of a citrus or almond grove planted in 1 taxable year shall be treated separately from the portion of such grove planted in another taxable year.

(D) ELECTION.—Unless the Secretary otherwise consents, an election under this paragraph may be made only for the taxpayer's 1st taxable year which begins after December 31, 1986, and during which the taxpayer engages in a farming business. Any such election, once made, may be revoked only with the consent of the Secretary.

(e) DEFINITIONS AND SPECIAL RULES FOR PURPOSES OF SUBSECTION (D).—

(1) RECAPTURE OF EXPENSED AMOUNTS ON DISPOSITION.—

(A) IN GENERAL.—In the case of any plant with respect to which amounts would have been capitalized under subsection (a) but for an election under subsection (d)(3)—

(i) such plant (if not otherwise section 1245 property) shall be treated as section 1245 property, and

(ii) for purposes of section 1245, the recapture amount shall be treated as a deduction allowed for depreciation with respect to such property.

(B) RECAPTURE AMOUNT.—For purposes of subparagraph (A), the term "recapture amount" means any amount allowable as a deduction to the taxpayer which, but for an election under subsection (d)(3), would have been capitalized with respect to the plant.

(2) EFFECTS OF ELECTION ON DEPRECIATION.—

(A) IN GENERAL.—If the taxpayer (or any related person) makes an election under subsection (d)(3), the provisions of section 168(g)(2) (relating to alternative depreciation) shall apply to all property of the taxpayer used predominantly in the farming business and placed in service in any taxable year during which any such election is in effect.

(B) RELATED PERSON.—For purposes of subparagraph (A), the term "related person" means—

(i) the taxpayer and members of the taxpayer's family,

(ii) any corporation (including an S corporation) if 50 percent or more (in value) of the stock of such corporation is owned (directly or through the application of section 318) by the taxpayer or members of the taxpayer's family,

(iii) a corporation and any other corporation which is a member of the same controlled group described in section 1563(a)(1), and

(iv) any partnership if 50 percent or more (in value) of the interests in such partnership is owned directly or indirectly by the taxpayer or members of the taxpayer's family.

(C) MEMBERS OF FAMILY.—For purposes of this paragraph, the term "family" means the taxpayer, the spouse of the taxpayer, and any of their children who have not attained age 18 before the close of the taxable year.

(3) PREPRODUCTIVE PERIOD.—

(A) IN GENERAL.—For purposes of this section, the term "preproductive period" means—

(i) in the case of a plant which will have more than 1 crop or yield, the period before the 1st marketable crop or yield from such plant, or

(ii) in the case of any other plant, the period before such plant is reasonably expected to be disposed of.

For purposes of this subparagraph, use by the taxpayer in a farming business of any supply produced in such business shall be treated as a disposition.

(B) RULE FOR DETERMINING PERIOD.—In the case of a plant grown in commercial quantities in the United States, the preproductive period for such plant if grown in the United States shall be based on the nationwide weighted average preproductive period for such plant.

(4) FARMING BUSINESS.—For purposes of this section—

(A) IN GENERAL.—The term "farming business" means the trade or business of farming.

(B) CERTAIN TRADES AND BUSINESSES INCLUDED.—The term "farming business" shall include the trade or business of—

(i) operating a nursery or sod farm, or

(ii) the raising or harvesting of trees bearing fruit, nuts, or other crops, or ornamental trees.

For purposes of clause (ii), an evergreen tree which is more than 6 years old at the time severed from the roots shall not be treated as an ornamental tree.

(5) CERTAIN INVENTORY VALUATION METHODS PERMITTED.—The Secretary shall by regulations permit the taxpayer to use reasonable inventory valuation methods to compute the amount required to be capitalized under subsection (a) in the case of any plant.

(f) SPECIAL RULES FOR ALLOCATION OF INTEREST TO PROPERTY PRODUCED BY THE TAXPAYER.—

(1) INTEREST CAPITALIZED ONLY IN CERTAIN CASES.—Subsection (a) shall only apply to interest costs which are—

(A) paid or incurred during the production period, and

(B) allocable to property which is described in subsection (b)(1) and which has—

(i) a long useful life,

(ii) an estimated production period exceeding 2 years, or

(iii) an estimated production period exceeding 1 year and a cost exceeding $1,000,000.

(2) ALLOCATION RULES.—

(A) IN GENERAL.—In determining the amount of interest required to be capitalized under subsection (a) with respect to any property—

(i) interest on any indebtedness directly attributable to production expenditures with respect to such property shall be assigned to such property, and

(ii) interest on any other indebtedness shall be assigned to such property to the extent that the taxpayer's interest costs could have been reduced if production expenditures (not attributable to indebtedness described in clause (i)) had not been incurred.

(B) EXCEPTION FOR QUALIFIED RESIDENCE INTEREST.—Subparagraph (A) shall not apply to any qualified residence interest (within the meaning of section 163(h)).

(C) SPECIAL RULE FOR FLOW-THROUGH ENTITIES.—Except as provided in regulations, in the case of any flow-through entity, this paragraph shall be applied first at the entity level and then at the beneficiary level.

(3) INTEREST RELATING TO PROPERTY USED TO PRODUCE PROPERTY.—This subsection shall apply to any interest on indebtedness allocable (as determined under paragraph (2)) to property used to produce property to which this subsection applies to the extent such interest is allocable (as so determined) to the produced property.

(4) DEFINITIONS.—For purposes of this subsection—

(A) LONG USEFUL LIFE.—Property has a long useful life if such property is—

(i) real property, or

(ii) property with a class life of 20 years or more (as determined under section 168).

(B) PRODUCTION PERIOD.—The term "production period" means, when used with respect to any property, the period—

(i) beginning on the date on which production of the property begins, and

(ii) ending on the date on which the property is ready to be placed in service or is ready to be held for sale.

(C) PRODUCTION EXPENDITURES.—The term "production expenditures" means the costs (whether or not incurred during the production period) required to be capitalized under subsection (a) with respect to the property.

(g) PRODUCTION.—For purposes of this section—

(1) IN GENERAL.—The term "produce" includes construct, build, install, manufacture, develop, or improve.

(2) TREATMENT OF PROPERTY PRODUCED UNDER CONTRACT FOR THE TAXPAYER.—The taxpayer shall be treated as producing any property produced for the taxpayer under a contract with the taxpayer; except that only costs paid or incurred by the taxpayer (whether under such contract or otherwise) shall be taken into account in applying subsection (a) to the taxpayer.

(h) EXEMPTION FOR FREE LANCE AUTHORS, PHOTOGRAPHERS, AND ARTISTS.—

(1) IN GENERAL.—Nothing in this section shall require the capitalization of any qualified creative expense.

(2) QUALIFIED CREATIVE EXPENSE.—For purposes of this subsection, the term "qualified creative expense" means any expense—

(A) which is paid or incurred by an individual in the trade or business of such individual (other than as an employee) of being a writer, photographer, or artist, and

(B) which, without regard to this section, would be allowable as a deduction for the taxable year.

Such term does not include any expense related to printing, photographic plates, motion picture films, video tapes, or similar items.

(3) DEFINITIONS.—For purposes of this subsection—

(A) WRITER.—The term "writer" means any individual if the personal efforts of such individual create (or may reasonably be expected to create) a literary manuscript, musical composition (including any accompanying words), or dance score.

(B) PHOTOGRAPHER.—The term "photographer" means any individual if the personal efforts of such individual create (or may reasonably be expected to create) a photograph or photographic negative or transparency.

(C) ARTIST.—

(i) IN GENERAL.—The term "artist" means any individual if the personal efforts of such individual create (or may reasonably be expected to create) a picture, painting, sculpture, statue, etching, drawing, cartoon, graphic design, or original print edition.

(ii) CRITERIA.—In determining whether any expense is paid or incurred in the trade or business of being an artist, the following criteria shall be taken into account:

(I) The originality and uniqueness of the item created (or to be created).

(II) The predominance of aesthetic value over utilitarian value of the item created (or to be created).

(D) TREATMENT OF CERTAIN CORPORATIONS.—

(i) IN GENERAL.—If—

(I) substantially all of the stock of a corporation is owned by a qualified employee-owner and members of his family (as defined in section 267(c)(4)), and

(II) the principal activity of such corporation is performance of personal services directly related to the activities of the qualified employee-owner and such services are substantially performed by the qualified employee-owner,

this subsection shall apply to any expense of such corporation which directly relates to the activities of such employee-owner in the same manner as if such expense were incurred by such employee-owner.

(ii) QUALIFIED EMPLOYEE-OWNER.—For purposes of this subparagraph, the term "qualified employee-owner" means any individual who is an employee-owner of the corporation (as defined in section 269A(b)(2)) and who is a writer, photographer, or artist.

(i) REGULATIONS.—The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of this section, including—

(1) regulations to prevent the use of related parties, pass-thru entities, or intermediaries to avoid the application of this section, and

(2) regulations providing for simplified procedures for the application of this section in the case of property described in subsection (b)(2).

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