

115TH CONGRESS  
1ST SESSION

# H. R. 4397

To provide tax relief with respect to California wildfires.

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## IN THE HOUSE OF REPRESENTATIVES

NOVEMBER 15, 2017

Mrs. MIMI WALTERS of California (for herself, Mr. THOMPSON of California, Mr. MCCARTHY, Mr. LAMALFA, Mr. ROYCE of California, Mr. DENHAM, Mr. CALVERT, Ms. BROWNLEY of California, Mr. BERA, Ms. LOFGREN, Mr. HUFFMAN, Mr. COSTA, Ms. MATSUI, Mr. GARAMENDI, Ms. SPEIER, Ms. LEE, Mr. DESAULNIER, Ms. ESHOO, and Mr. GOMEZ) introduced the following bill; which was referred to the Committee on Ways and Means, and in addition to the Committee on the Budget, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

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## A BILL

To provide tax relief with respect to California wildfires.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “California Wildfire  
5 Disaster Tax Relief Act of 2017”.

6 **SEC. 2. DEFINITIONS.**

7 For purposes of this Act—

1           (1) CALIFORNIA WILDFIRE DISASTER ZONE.—  
2           The term “California wildfire disaster zone” means  
3           that portion of the California wildfire disaster area  
4           determined by the President to warrant individual or  
5           individual and public assistance from the Federal  
6           Government under the Robert T. Stafford Disaster  
7           Relief and Emergency Assistance Act by reason of  
8           wildfires in California.

9           (2) CALIFORNIA WILDFIRE DISASTER AREA.—  
10          The term “California wildfire disaster area” means  
11          an area with respect to which a major disaster has  
12          been declared by the President before November 15,  
13          2017, under section 401 of such Act by reason of  
14          wildfires in California.

15 **SEC. 3. SPECIAL DISASTER-RELATED RULES FOR USE OF**  
16 **RETIREMENT FUNDS.**

17          (a) TAX-FAVORED WITHDRAWALS FROM RETIRE-  
18          MENT PLANS.—

19               (1) IN GENERAL.—Section 72(t) of the Internal  
20               Revenue Code of 1986 shall not apply to any quali-  
21               fied wildfire distribution.

22               (2) AGGREGATE DOLLAR LIMITATION.—

23                     (A) IN GENERAL.—For purposes of this  
24                     subsection, the aggregate amount of distribu-  
25                     tions received by an individual which may be

1 treated as qualified wildfire distributions for  
2 any taxable year shall not exceed the excess (if  
3 any) of—

4 (i) \$100,000, over

5 (ii) the aggregate amounts treated as  
6 qualified wildfire distributions received by  
7 such individual for all prior taxable years.

8 (B) TREATMENT OF PLAN DISTRIBUTIONS.—If a distribution to an individual would  
9 (without regard to subparagraph (A)) be a  
10 qualified wildfire distribution, a plan shall not  
11 be treated as violating any requirement of the  
12 Internal Revenue Code of 1986 merely because  
13 the plan treats such distribution as a qualified  
14 wildfire distribution, unless the aggregate  
15 amount of such distributions from all plans  
16 maintained by the employer (and any member  
17 of any controlled group which includes the em-  
18 ployer) to such individual exceeds \$100,000.

19 (C) CONTROLLED GROUP.—For purposes  
20 of subparagraph (B), the term “controlled  
21 group” means any group treated as a single  
22 employer under subsection (b), (c), (m), or (o)  
23 of section 414 of the Internal Revenue Code of  
24 1986.  
25

1 (3) AMOUNT DISTRIBUTED MAY BE REPAYED.—

2 (A) IN GENERAL.—Any individual who re-  
3 ceives a qualified wildfire distribution may, at  
4 any time during the 3-year period beginning on  
5 the day after the date on which such distribu-  
6 tion was received, make one or more contribu-  
7 tions in an aggregate amount not to exceed the  
8 amount of such distribution to an eligible retire-  
9 ment plan of which such individual is a bene-  
10 ficiary and to which a rollover contribution of  
11 such distribution could be made under section  
12 402(c), 403(a)(4), 403(b)(8), 408(d)(3), or  
13 457(e)(16), of the Internal Revenue Code of  
14 1986, as the case may be.

15 (B) TREATMENT OF REPAYMENTS OF DIS-  
16 TRIBUTIONS FROM ELIGIBLE RETIREMENT  
17 PLANS OTHER THAN IRAS.—For purposes of  
18 the Internal Revenue Code of 1986, if a con-  
19 tribution is made pursuant to subparagraph (A)  
20 with respect to a qualified wildfire distribution  
21 from an eligible retirement plan other than an  
22 individual retirement plan, then the taxpayer  
23 shall, to the extent of the amount of the con-  
24 tribution, be treated as having received the  
25 qualified wildfire distribution in an eligible roll-

1 over distribution (as defined in section  
2 402(c)(4) of such Code) and as having trans-  
3 ferred the amount to the eligible retirement  
4 plan in a direct trustee to trustee transfer with-  
5 in 60 days of the distribution.

6 (C) TREATMENT OF REPAYMENTS FOR  
7 DISTRIBUTIONS FROM IRAS.—For purposes of  
8 the Internal Revenue Code of 1986, if a con-  
9 tribution is made pursuant to subparagraph (A)  
10 with respect to a qualified wildfire distribution  
11 from an individual retirement plan (as defined  
12 by section 7701(a)(37) of such Code), then, to  
13 the extent of the amount of the contribution,  
14 the qualified wildfire distribution shall be treat-  
15 ed as a distribution described in section  
16 408(d)(3) of such Code and as having been  
17 transferred to the eligible retirement plan in a  
18 direct trustee to trustee transfer within 60 days  
19 of the distribution.

20 (4) DEFINITIONS.—For purposes of this sub-  
21 section—

22 (A) QUALIFIED WILDFIRE DISTRIBUTION.—Except as provided in paragraph (2),  
23 the term “qualified wildfire distribution” means  
24 any distribution from an eligible retirement  
25

1 plan made on or after October 8, 2017, and be-  
2 fore January 1, 2019, to an individual whose  
3 principal place of abode on October 8, 2017, is  
4 located in the California wildfire disaster area  
5 and who has sustained an economic loss by rea-  
6 son of the wildfires to which the declaration of  
7 such area relates.

8 (B) ELIGIBLE RETIREMENT PLAN.—The  
9 term “eligible retirement plan” shall have the  
10 meaning given such term by section  
11 402(c)(8)(B) of the Internal Revenue Code of  
12 1986.

13 (5) INCOME INCLUSION SPREAD OVER 3-YEAR  
14 PERIOD.—

15 (A) IN GENERAL.—In the case of any  
16 qualified wildfire distribution, unless the tax-  
17 payer elects not to have this paragraph apply  
18 for any taxable year, any amount required to be  
19 included in gross income for such taxable year  
20 shall be so included ratably over the 3-taxable-  
21 year period beginning with such taxable year.

22 (B) SPECIAL RULE.—For purposes of sub-  
23 paragraph (A), rules similar to the rules of sub-  
24 paragraph (E) of section 408A(d)(3) of the In-  
25 ternal Revenue Code of 1986 shall apply.

1 (6) SPECIAL RULES.—

2 (A) EXEMPTION OF DISTRIBUTIONS FROM  
3 TRUSTEE TO TRUSTEE TRANSFER AND WITH-  
4 HOLDING RULES.—For purposes of sections  
5 401(a)(31), 402(f), and 3405 of the Internal  
6 Revenue Code of 1986, qualified wildfire dis-  
7 tributions shall not be treated as eligible roll-  
8 over distributions.

9 (B) QUALIFIED WILDFIRE DISTRIBUTIONS  
10 TREATED AS MEETING PLAN DISTRIBUTION RE-  
11 QUIREMENTS.—For purposes the Internal Rev-  
12 enue Code of 1986, a qualified wildfire distribu-  
13 tion shall be treated as meeting the require-  
14 ments of sections 401(k)(2)(B)(i),  
15 403(b)(7)(A)(ii), 403(b)(11), and 457(d)(1)(A)  
16 of such Code.

17 (b) RECONTRIBUTIONS OF WITHDRAWALS FOR  
18 HOME PURCHASES.—

19 (1) RECONTRIBUTIONS.—

20 (A) IN GENERAL.—Any individual who re-  
21 ceived a qualified distribution may, during the  
22 period beginning on October 8, 2017, and end-  
23 ing on April 30, 2018, make one or more con-  
24 tributions in an aggregate amount not to exceed  
25 the amount of such qualified distribution to an

1 eligible retirement plan (as defined in section  
2 402(c)(8)(B) of the Internal Revenue Code of  
3 1986) of which such individual is a beneficiary  
4 and to which a rollover contribution of such dis-  
5 tribution could be made under section 402(c),  
6 403(a)(4), 403(b)(8), or 408(d)(3), of such  
7 Code, as the case may be.

8 (B) TREATMENT OF REPAYMENTS.—Rules  
9 similar to the rules of subparagraphs (B) and  
10 (C) of subsection (a)(3) shall apply for purposes  
11 of this subsection.

12 (2) QUALIFIED DISTRIBUTION.—For purposes  
13 of this subsection, the term “qualified distribution”  
14 means any distribution—

15 (A) described in section  
16 401(k)(2)(B)(i)(IV), 403(b)(7)(A)(ii) (but only  
17 to the extent such distribution relates to finan-  
18 cial hardship), 403(b)(11)(B), or 72(t)(2)(F),  
19 of the Internal Revenue Code of 1986,

20 (B) received after March 31, 2017, and be-  
21 fore November 15, 2017, and

22 (C) which was to be used to purchase or  
23 construct a principal residence in the California  
24 wildfire disaster area but which was not so pur-  
25 chased or constructed on account of the



1           wildfires to which the declaration of such area  
2           relates.

3           (c) LOANS FROM QUALIFIED PLANS.—

4           (1) INCREASE IN LIMIT ON LOANS NOT TREAT-  
5           ED AS DISTRIBUTIONS.—In the case of any loan  
6           from a qualified employer plan (as defined under  
7           section 72(p)(4) of the Internal Revenue Code of  
8           1986) to a qualified individual made during the pe-  
9           riod beginning on the date of the enactment of this  
10          Act and ending on December 31, 2018—

11                   (A) clause (i) of section 72(p)(2)(A) of  
12                   such Code shall be applied by substituting  
13                   “\$100,000” for “\$50,000”, and

14                   (B) clause (ii) of such section shall be ap-  
15                   plied by substituting “the present value of the  
16                   nonforfeitable accrued benefit of the employee  
17                   under the plan” for “one-half of the present  
18                   value of the nonforfeitable accrued benefit of  
19                   the employee under the plan”.

20          (2) DELAY OF REPAYMENT.—In the case of a  
21          qualified individual with an outstanding loan on or  
22          after October 8, 2017, from a qualified employer  
23          plan (as defined in section 72(p)(4) of the Internal  
24          Revenue Code of 1986)—

1 (A) if the due date pursuant to subpara-  
2 graph (B) or (C) of section 72(p)(2) of such  
3 Code for any repayment with respect to such  
4 loan occurs during the period beginning on Oc-  
5 tober 8, 2017, and ending on December 31,  
6 2018, such due date shall be delayed for 1 year,

7 (B) any subsequent repayments with re-  
8 spect to any such loan shall be appropriately  
9 adjusted to reflect the delay in the due date  
10 under paragraph (1) and any interest accruing  
11 during such delay, and

12 (C) in determining the 5-year period and  
13 the term of a loan under subparagraph (B) or  
14 (C) of section 72(p)(2) of such Code, the period  
15 described in subparagraph (A) shall be dis-  
16 regarded.

17 (3) QUALIFIED INDIVIDUAL.—For purposes of  
18 this subsection, the term “qualified individual”  
19 means any individual whose principal place of abode  
20 on October 8, 2017, is located in the California wild-  
21 fire disaster area and who has sustained an eco-  
22 nomic loss by reason of wildfires to which the dec-  
23 laration of such area relates.

24 (d) PROVISIONS RELATING TO PLAN AMEND-  
25 MENTS.—

1           (1) IN GENERAL.—If this subsection applies to  
2 any amendment to any plan or annuity contract,  
3 such plan or contract shall be treated as being oper-  
4 ated in accordance with the terms of the plan during  
5 the period described in paragraph (2)(B)(i).

6           (2) AMENDMENTS TO WHICH SUBSECTION AP-  
7 PLIES.—

8           (A) IN GENERAL.—This subsection shall  
9 apply to any amendment to any plan or annuity  
10 contract which is made—

11           (i) pursuant to any provision of this  
12 section, or pursuant to any regulation  
13 issued by the Secretary or the Secretary of  
14 Labor under any provision of this section,  
15 and

16           (ii) on or before the last day of the  
17 first plan year beginning on or after Janu-  
18 ary 1, 2019, or such later date as the Sec-  
19 retary may prescribe.

20           In the case of a governmental plan (as defined  
21 in section 414(d) of the Internal Revenue Code  
22 of 1986), clause (ii) shall be applied by sub-  
23 stituting the date which is 2 years after the  
24 date otherwise applied under clause (ii).

1 (B) CONDITIONS.—This subsection shall  
2 not apply to any amendment unless—

3 (i) during the period—

4 (I) beginning on the date that  
5 this section or the regulation de-  
6 scribed in subparagraph (A)(i) takes  
7 effect (or in the case of a plan or con-  
8 tract amendment not required by this  
9 section or such regulation, the effec-  
10 tive date specified by the plan), and

11 (II) ending on the date described  
12 in subparagraph (A)(ii) (or, if earlier,  
13 the date the plan or contract amend-  
14 ment is adopted),

15 the plan or contract is operated as if such plan  
16 or contract amendment were in effect, and

17 (ii) such plan or contract amendment  
18 applies retroactively for such period.

19 **SEC. 4. EMPLOYEE RETENTION CREDIT FOR EMPLOYERS**  
20 **AFFECTED BY CALIFORNIA WILDFIRES.**

21 (a) IN GENERAL.—For purposes of section 38 of the  
22 Internal Revenue Code of 1986, in the case of an eligible  
23 employer, the California wildfire employee retention credit  
24 shall be treated as a credit listed in subsection (b) of such  
25 section. For purposes of this subsection, the California

1 wildfire employee retention credit for any taxable year is  
2 an amount equal to 40 percent of the qualified wages with  
3 respect to each eligible employee of such employer for such  
4 taxable year. For purposes of the preceding sentence, the  
5 amount of qualified wages which may be taken into ac-  
6 count with respect to any individual shall not exceed  
7 \$6,000.

8 (b) DEFINITIONS.—For purposes of this section—

9 (1) ELIGIBLE EMPLOYER.—The term “eligible  
10 employer” means any employer—

11 (A) which conducted an active trade or  
12 business on October 8, 2017, in the California  
13 wildfire disaster zone, and

14 (B) with respect to whom the trade or  
15 business described in subparagraph (A) is inop-  
16 erable on any day after October 8, 2017, and  
17 before January 1, 2018, as a result of damage  
18 sustained by reason of the wildfires to which  
19 such declaration of such area relates.

20 (2) ELIGIBLE EMPLOYEE.—The term “eligible  
21 employee” means with respect to an eligible em-  
22 ployer an employee whose principal place of employ-  
23 ment on October 8, 2017, with such eligible em-  
24 ployer was in the California wildfire disaster zone.

1           (3) QUALIFIED WAGES.—The term “qualified  
2 wages” means wages (as defined in section 51(c)(1)  
3 of the Internal Revenue Code of 1986, but without  
4 regard to section 3306(b)(2)(B) of such Code) paid  
5 or incurred by an eligible employer with respect to  
6 an eligible employee on any day after October 8,  
7 2017, and before January 1, 2018, which occurs  
8 during the period—

9           (A) beginning on the date on which the  
10 trade or business described in paragraph (1)  
11 first became inoperable at the principal place of  
12 employment of the employee immediately before  
13 the wildfires to which the declaration of the  
14 California wildfire disaster area relates, and

15           (B) ending on the date on which such  
16 trade or business has resumed significant oper-  
17 ations at such principal place of employment.

18 Such term shall include wages paid without regard  
19 to whether the employee performs no services, per-  
20 forms services at a different place of employment  
21 than such principal place of employment, or per-  
22 forms services at such principal place of employment  
23 before significant operations have resumed.

1 (c) CERTAIN RULES TO APPLY.—For purposes of  
2 this section, rules similar to the rules of sections 51(i)(1)  
3 and 52, of the Internal Revenue Code of 1986, shall apply.

4 (d) EMPLOYEE NOT TAKEN INTO ACCOUNT MORE  
5 THAN ONCE.—An employee shall not be treated as an eli-  
6 gible employee for purposes of this section for any period  
7 with respect to any employer if such employer is allowed  
8 a credit under section 51 of the Internal Revenue Code  
9 of 1986 with respect to such employee for such period.

10 **SEC. 5. ADDITIONAL DISASTER-RELATED TAX RELIEF PRO-**  
11 **VISIONS.**

12 (a) TEMPORARY SUSPENSION OF LIMITATIONS ON  
13 CHARITABLE CONTRIBUTIONS.—

14 (1) IN GENERAL.—Except as otherwise pro-  
15 vided in paragraph (2), subsection (b) of section 170  
16 of the Internal Revenue Code of 1986 shall not  
17 apply to qualified contributions and such contribu-  
18 tions shall not be taken into account for purposes of  
19 applying subsections (b) and (d) of such section to  
20 other contributions.

21 (2) TREATMENT OF EXCESS CONTRIBUTIONS.—  
22 For purposes of section 170 of the Internal Revenue  
23 Code of 1986—

24 (A) INDIVIDUALS.—In the case of an indi-  
25 vidual—

1 (i) LIMITATION.—Any qualified con-  
2 tribution shall be allowed only to the ex-  
3 tent that the aggregate of such contribu-  
4 tions does not exceed the excess of the tax-  
5 payer’s contribution base (as defined in  
6 subparagraph (G) of section 170(b)(1) of  
7 such Code) over the amount of all other  
8 charitable contributions allowed under sec-  
9 tion 170(b)(1) of such Code.

10 (ii) CARRYOVER.—If the aggregate  
11 amount of qualified contributions made in  
12 the contribution year (within the meaning  
13 of section 170(d)(1) of such Code) exceeds  
14 the limitation of clause (i), such excess  
15 shall be added to the excess described in  
16 the portion of subparagraph (A) of such  
17 section which precedes clause (i) thereof  
18 for purposes of applying such section.

19 (B) CORPORATIONS.—In the case of a cor-  
20 poration—

21 (i) LIMITATION.—Any qualified con-  
22 tribution shall be allowed only to the ex-  
23 tent that the aggregate of such contribu-  
24 tions does not exceed the excess of the tax-  
25 payer’s taxable income (as determined



1 under paragraph (2) of section 170(b) of  
2 such Code) over the amount of all other  
3 charitable contributions allowed under such  
4 paragraph.

5 (ii) CARRYOVER.—Rules similar to the  
6 rules of subparagraph (A)(ii) shall apply  
7 for purposes of this subparagraph.

8 (3) EXCEPTION TO OVERALL LIMITATION ON  
9 ITEMIZED DEDUCTIONS.—So much of any deduction  
10 allowed under section 170 of the Internal Revenue  
11 Code of 1986 as does not exceed the qualified con-  
12 tributions paid during the taxable year shall not be  
13 treated as an itemized deduction for purposes of sec-  
14 tion 68 of such Code.

15 (4) QUALIFIED CONTRIBUTIONS.—

16 (A) IN GENERAL.—For purposes of this  
17 subsection, the term “qualified contribution”  
18 means any charitable contribution (as defined  
19 in section 170(c) of the Internal Revenue Code  
20 of 1986) if—

21 (i) such contribution—

22 (I) is paid during the period be-  
23 ginning on October 8, 2017, and end-  
24 ing on December 31, 2017, in cash to

1 an organization described in section  
2 170(b)(1)(A) of such Code, and

3 (II) is made for relief efforts in  
4 the California wildfire disaster area,

5 (ii) the taxpayer obtains from such or-  
6 ganization contemporaneous written ac-  
7 knowledgment (within the meaning of sec-  
8 tion 170(f)(8) of such Code) that such con-  
9 tribution was used (or is to be used) for  
10 relief efforts described in clause (i)(II),  
11 and

12 (iii) the taxpayer has elected the ap-  
13 plication of this subsection with respect to  
14 such contribution.

15 (B) EXCEPTION.—Such term shall not in-  
16 clude a contribution by a donor if the contribu-  
17 tion is—

18 (i) to an organization described in sec-  
19 tion 509(a)(3) of the Internal Revenue  
20 Code of 1986, or

21 (ii) for the establishment of a new, or  
22 maintenance of an existing, donor advised  
23 fund (as defined in section 4966(d)(2) of  
24 such Code).

1 (C) APPLICATION OF ELECTION TO PART-  
2 NERSHIPS AND S CORPORATIONS.—In the case  
3 of a partnership or S corporation, the election  
4 under subparagraph (A)(iii) shall be made sepa-  
5 rately by each partner or shareholder.

6 (b) SPECIAL RULES FOR QUALIFIED DISASTER-RE-  
7 LATED PERSONAL CASUALTY LOSSES.—

8 (1) IN GENERAL.—If an individual has a net  
9 disaster loss for any taxable year—

10 (A) the amount determined under section  
11 165(h)(2)(A)(ii) of the Internal Revenue Code  
12 of 1986 shall be equal to the sum of—

13 (i) such net disaster loss, and  
14 (ii) so much of the excess referred to  
15 in the matter preceding clause (i) of sec-  
16 tion 165(h)(2)(A) of such Code (reduced  
17 by the amount in clause (i) of this sub-  
18 paragraph) as exceeds 10 percent of the  
19 adjusted gross income of the individual,

20 (B) section 165(h)(1) of such Code shall  
21 be applied by substituting “\$500” for “\$500  
22 (\$100 for taxable years beginning after Decem-  
23 ber 31, 2009”),

1 (C) the standard deduction determined  
2 under section 63(c) of such Code shall be in-  
3 creased by the net disaster loss, and

4 (D) section 56(b)(1)(E) of such Code shall  
5 not apply to so much of the standard deduction  
6 as is attributable to the increase under sub-  
7 paragraph (C) of this paragraph.

8 (2) NET DISASTER LOSS.—For purposes of this  
9 subsection, the term “net disaster loss” means the  
10 excess of qualified disaster-related personal casualty  
11 losses over personal casualty gains (as defined in  
12 section 165(h)(3)(A) of the Internal Revenue Code  
13 of 1986).

14 (3) QUALIFIED DISASTER-RELATED PERSONAL  
15 CASUALTY LOSSES.—For purposes of this sub-  
16 section, the term “qualified disaster-related personal  
17 casualty losses” means losses described in section  
18 165(c)(3) of the Internal Revenue Code of 1986  
19 which arise in the California wildfire disaster area  
20 on or after October 8, 2017, and which are attrib-  
21 utable to the wildfires to which the declaration of  
22 such area relates.

23 (c) SPECIAL RULE FOR DETERMINING EARNED IN-  
24 COME.—

1           (1) IN GENERAL.—In the case of a qualified in-  
2           dividual, if the earned income of the taxpayer for the  
3           taxable year which includes the applicable date is  
4           less than the earned income of the taxpayer for the  
5           preceding taxable year, the credits allowed under  
6           sections 24(d) and 32 of the Internal Revenue Code  
7           of 1986 may, at the election of the taxpayer, be de-  
8           termined by substituting—

9                   (A) such earned income for the preceding  
10                   taxable year, for

11                   (B) such earned income for the taxable  
12                   year which includes October 8, 2017.

13           (2) QUALIFIED INDIVIDUAL.—For purposes of  
14           this subsection, the term “qualified individual”  
15           means any individual whose principal place of abode  
16           on October 8, 2017, was located—

17                   (A) in the California wildfire disaster zone,

18                   or

19                   (B) in the California wildfire disaster area  
20                   (but outside the California wildfire disaster  
21                   zone) and such individual was displaced from  
22                   such principal place of abode by reason of the  
23                   wildfires to which the declaration of such area  
24                   relates.

1           (3) EARNED INCOME.—For purposes of this  
2 subsection, the term “earned income” has the mean-  
3 ing given such term under section 32(c) of the Inter-  
4 nal Revenue Code of 1986.

5           (4) SPECIAL RULES.—

6           (A) APPLICATION TO JOINT RETURNS.—

7 For purposes of paragraph (1), in the case of  
8 a joint return for a taxable year which includes  
9 October 8, 2017—

10           (i) such paragraph shall apply if ei-  
11 ther spouse is a qualified individual, and

12           (ii) the earned income of the taxpayer  
13 for the preceding taxable year shall be the  
14 sum of the earned income of each spouse  
15 for such preceding taxable year.

16           (B) UNIFORM APPLICATION OF ELEC-  
17 TION.—Any election made under paragraph (1)  
18 shall apply with respect to both sections 24(d)  
19 and 32, of the Internal Revenue Code of 1986.

20           (C) ERRORS TREATED AS MATHEMATICAL  
21 ERROR.—For purposes of section 6213 of the  
22 Internal Revenue Code of 1986, an incorrect  
23 use on a return of earned income pursuant to  
24 paragraph (1) shall be treated as a mathe-  
25 matical or clerical error.

1 (D) NO EFFECT ON DETERMINATION OF  
2 GROSS INCOME, ETC.—Except as otherwise pro-  
3 vided in this subsection, the Internal Revenue  
4 Code of 1986 shall be applied without regard to  
5 any substitution under paragraph (1).

6 **SEC. 6. BUDGETARY EFFECTS.**

7 (a) EMERGENCY DESIGNATION.—This Act is des-  
8 ignated as an emergency requirement pursuant to section  
9 4(g) of the Statutory Pay-As-You-Go Act of 2010 (2  
10 U.S.C. 933(g)).

11 (b) DESIGNATION IN SENATE.—In the Senate, this  
12 Act is designated as an emergency requirement pursuant  
13 to section 403(a) of S. Con. Res. 13 (111th Congress),  
14 the concurrent resolution on the budget for fiscal year  
15 2010.

○