

116TH CONGRESS
1ST SESSION

S. 1133

To provide disaster tax relief for certain disasters occurring in 2019.

IN THE SENATE OF THE UNITED STATES

APRIL 10, 2019

Mrs. FISCHER (for herself, Ms. ERNST, Mr. SASSE, and Mr. GRASSLEY) introduced the following bill; which was read twice and referred to the Committee on Finance

A BILL

To provide disaster tax relief for certain disasters occurring
in 2019.

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 “Disaster Tax Relief
5 Act of 2019”.

6 **SEC. 2. DEFINITIONS.**

7 For purposes of this Act—

8 (1) **QUALIFIED DISASTER AREA.**—The term
9 “qualified disaster area” means any area with re-
10 spect to which a major disaster was declared after

1 December 31, 2018, and before April 15, 2019, by
2 the President under section 401 of the Robert T.
3 Stafford Disaster Relief and Emergency Assistance
4 Act if the incident period of the disaster with respect
5 to which such declaration is made begins after De-
6 cember 31, 2018.

7 (2) QUALIFIED DISASTER ZONE.—The term
8 “qualified disaster zone” means that portion of any
9 qualified disaster area which was determined by the
10 President after December 31, 2018, and before April
11 15, 2019, to warrant individual or individual and
12 public assistance from the Federal Government
13 under the Robert T. Stafford Disaster Relief and
14 Emergency Assistance Act by reason of the qualified
15 disaster with respect to such disaster area.

16 (3) QUALIFIED DISASTER.—The term “quali-
17 fied disaster” means, with respect to any qualified
18 disaster area, the disaster by reason of which a
19 major disaster was declared with respect to such
20 area.

21 (4) INCIDENT PERIOD.—The term “incident pe-
22 riod” means, with respect to any qualified disaster,
23 the period specified by the Federal Emergency Man-
24 agement Agency as the period during which such
25 disaster occurred (except that for purposes of this

1 Act such period shall not be treated as beginning be-
 2 fore January 1, 2019, or ending after April 15,
 3 2019).

4 **SEC. 3. SPECIAL DISASTER-RELATED RULES FOR USE OF**
 5 **RETIREMENT FUNDS.**

6 (a) TAX-FAVORED WITHDRAWALS FROM RETIRE-
 7 MENT PLANS.—

8 (1) IN GENERAL.—Section 72(t) of the Internal
 9 Revenue Code of 1986 shall not apply to any quali-
 10 fied disaster distribution.

11 (2) AGGREGATE DOLLAR LIMITATION.—

12 (A) IN GENERAL.—For purposes of this
 13 subsection, the aggregate amount of distribu-
 14 tions received by an individual which may be
 15 treated as qualified disaster distributions for
 16 any taxable year shall not exceed the excess (if
 17 any) of—

18 (i) \$100,000, over

19 (ii) the aggregate amounts treated as
 20 qualified disaster distributions received by
 21 such individual for all prior taxable years.

22 (B) TREATMENT OF PLAN DISTRIBUTIONS.—If a distribution to an individual would
 23 (without regard to subparagraph (A)) be a
 24 qualified disaster distribution, a plan shall not
 25

be treated as violating any requirement of the Internal Revenue Code of 1986 merely because the plan treats such distribution as a qualified disaster distribution, unless the aggregate amount of such distributions from all plans maintained by the employer (and any member of any controlled group which includes the employer) to such individual exceeds \$100,000.

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

(D) SPECIAL RULE FOR INDIVIDUALS AFFECTED BY MORE THAN ONE DISASTER.—The limitation of subparagraph (A) shall be applied separately with respect to distributions made with respect to each qualified disaster.

(3) AMOUNT DISTRIBUTED MAY BE REPAYED.—

(A) IN GENERAL.—Any individual who receives a qualified disaster distribution may, at any time during the 3-year period beginning on the day after the date on which such distribution was received, make one or more contribu-

1 tions in an aggregate amount not to exceed the
2 amount of such distribution to an eligible retire-
3 ment plan of which such individual is a bene-
4 ficiary and to which a rollover contribution of
5 such distribution could be made under section
6 402(c), 403(a)(4), 403(b)(8), 408(d)(3), or
7 457(e)(16), of the Internal Revenue Code of
8 1986, as the case may be.

9 (B) TREATMENT OF REPAYMENTS OF DIS-
10 TRIBUTIONS FROM ELIGIBLE RETIREMENT
11 PLANS OTHER THAN IRAS.—For purposes of
12 the Internal Revenue Code of 1986, if a con-
13 tribution is made pursuant to subparagraph (A)
14 with respect to a qualified disaster distribution
15 from an eligible retirement plan other than an
16 individual retirement plan, then the taxpayer
17 shall, to the extent of the amount of the con-
18 tribution, be treated as having received the
19 qualified disaster distribution in an eligible roll-
20 over distribution (as defined in section
21 402(c)(4) of such Code) and as having trans-
22 ferred the amount to the eligible retirement
23 plan in a direct trustee to trustee transfer with-
24 in 60 days of the distribution.

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

15 (4) DEFINITIONS.—For purposes of this sub-
 16 section—

17 (A) QUALIFIED DISASTER DISTRIBUTION.—Except as provided in paragraph (2),
 18 the term “qualified disaster distribution” means
 19 any distribution from an eligible retirement
 20 plan made—
 21

22 (i) on or after the first day of the in-
 23 cident period of a qualified disaster and
 24 before the date which is 180 days after the
 25 date of the enactment of this Act, and

(ii) to an individual whose principal place of abode at any time during the incident period of such qualified disaster is located in the qualified disaster area with respect to such qualified disaster and who has sustained an economic loss by reason of such qualified disaster.

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

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

(A) IN GENERAL.—In the case of any qualified disaster distribution, unless the taxpayer elects not to have this paragraph apply for any taxable year, any amount required to be included in gross income for such taxable year shall be so included ratably over the 3-taxable-year period beginning with such taxable year.

(B) SPECIAL RULE.—For purposes of subparagraph (A), rules similar to the rules of subparagraph (E) of section 408A(d)(3) of the Internal 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 disaster dis-
 7 tributions shall not be treated as eligible roll-
 8 over distributions.

9 (B) QUALIFIED DISASTER DISTRIBUTIONS
 10 TREATED AS MEETING PLAN DISTRIBUTION RE-
 11 QUIREMENTS.—For purposes the Internal Rev-
 12 enue Code of 1986, a qualified disaster dis-
 13 tribution shall be treated as meeting the re-
 14 quirements 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 applicable period, make one or more contribu-
 23 tions in an aggregate amount not to exceed the
 24 amount of such qualified distribution to an eli-
 25 gible retirement plan (as defined in section

402(c)(8)(B) of the Internal Revenue Code of 1986) of which such individual is a beneficiary and to which a rollover contribution of such distribution could be made under section 402(c), 403(a)(4), 403(b)(8), or 408(d)(3), of such Code, as the case may be.

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

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

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

(B) which was to be used to purchase or construct a principal residence in a qualified disaster area, but which was not so used on account of the qualified disaster with respect to such area, and

(C) which was received during the period beginning on the date which is 180 days before

1 the first day of the incident period of such
 2 qualified disaster and ending on the date which
 3 is 30 days after the last day of such incident
 4 period.

5 (3) APPLICABLE PERIOD.—For purposes of this
 6 subsection, the term “applicable period” means, in
 7 the case of a principal residence in a qualified dis-
 8 aster area with respect to any qualified disaster, the
 9 period beginning on the first day of the incident pe-
 10 riod of such qualified disaster and ending on the
 11 date which is 180 days after the date of the enact-
 12 ment of this Act.

13 (c) LOANS FROM QUALIFIED PLANS.—

14 (1) INCREASE IN LIMIT ON LOANS NOT TREAT-
 15 ED AS DISTRIBUTIONS.—In the case of any loan
 16 from a qualified employer plan (as defined under
 17 section 72(p)(4) of the Internal Revenue Code of
 18 1986) to a qualified individual made during the 180-
 19 day period beginning on the date of the enactment
 20 of this Act—

21 (A) clause (i) of section 72(p)(2)(A) of
 22 such Code shall be applied by substituting
 23 “\$100,000” for “\$50,000”, and

24 (B) clause (ii) of such section shall be ap-
 25 plied by substituting “the present value of the

1 nonforfeitable accrued benefit of the employee
2 under the plan” for “one-half of the present
3 value of the nonforfeitable accrued benefit of
4 the employee under the plan”.

5 (2) DELAY OF REPAYMENT.—In the case of a
6 qualified individual (with respect to any qualified
7 disaster) with an outstanding loan (on or after the
8 first day of the incident period of such qualified dis-
9 aster) from a qualified employer plan (as defined in
10 section 72(p)(4) of the Internal Revenue Code of
11 1986)—

12 (A) if the due date pursuant to subpara-
13 graph (B) or (C) of section 72(p)(2) of such
14 Code for any repayment with respect to such
15 loan occurs during the period beginning on the
16 first day of the incident period of such qualified
17 disaster and ending on the date which is 180
18 days after the last day of such incident period,
19 such due date shall be delayed for 1 year (or,
20 if later, until the date which is 180 days after
21 the date of the enactment of this Act),

22 (B) any subsequent repayments with re-
23 spect to any such loan shall be appropriately
24 adjusted to reflect the delay in the due date

1 under subparagraph (A) and any interest accru-
 2 ing during such delay, and

3 (C) in determining the 5-year period and
 4 the term of a loan under subparagraph (B) or
 5 (C) of section 72(p)(2) of such Code, the period
 6 described in subparagraph (A) of this para-
 7 graph shall be disregarded.

8 (3) QUALIFIED INDIVIDUAL.—For purposes of
 9 this subsection, the term “qualified individual”
 10 means any individual—

11 (A) whose principal place of abode at any
 12 time during the incident period of any qualified
 13 disaster is located in the qualified disaster area
 14 with respect to such qualified disaster, and

15 (B) who has sustained an economic loss by
 16 reason of such qualified disaster.

17 (d) PROVISIONS RELATING TO PLAN AMEND-
 18 MENTS.—

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

24 (2) AMENDMENTS TO WHICH SUBSECTION AP-
 25 PLIES.—

1 (A) IN GENERAL.—This subsection shall
 2 apply to any amendment to any plan or annuity
 3 contract which is made—

4 (i) pursuant to any provision of this
 5 section, or pursuant to any regulation
 6 issued by the Secretary or the Secretary of
 7 Labor under any provision of this section,
 8 and

9 (ii) on or before the last day of the
 10 first plan year beginning on or after Janu-
 11 ary 1, 2020, or such later date as the Sec-
 12 retary may prescribe.

13 In the case of a governmental plan (as defined
 14 in section 414(d) of the Internal Revenue Code
 15 of 1986), clause (ii) shall be applied by sub-
 16 stituting the date which is 2 years after the
 17 date otherwise applied under clause (ii).

18 (B) CONDITIONS.—This subsection shall
 19 not apply to any amendment unless—

20 (i) during the period—

21 (I) beginning on the date that
 22 this section or the regulation de-
 23 scribed in subparagraph (A)(i) takes
 24 effect (or in the case of a plan or con-
 25 tract amendment not required by this

1 section or such regulation, the effective date specified by the plan), and
 2
 3 (II) ending on the date described
 4 in subparagraph (A)(ii) (or, if earlier,
 5 the date the plan or contract amendment is adopted),
 6
 7 the plan or contract is operated as if such plan
 8 or contract amendment were in effect, and
 9 (ii) such plan or contract amendment
 10 applies retroactively for such period.

11 **SEC. 4. EMPLOYEE RETENTION CREDIT FOR EMPLOYERS**
 12 **AFFECTED BY QUALIFIED DISASTERS.**

13 (a) IN GENERAL.—For purposes of section 38 of the
 14 Internal Revenue Code of 1986, in the case of an eligible
 15 employer, the 2019 qualified disaster employee retention
 16 credit shall be treated as a credit listed at the end of sub-
 17 section (b) of such section. For purposes of this section,
 18 the 2019 qualified disaster employee retention credit for
 19 any taxable year is an amount equal to 40 percent of the
 20 qualified wages with respect to each eligible employee of
 21 such employer for such taxable year. The amount of qualified wages with respect to any employee which may be
 22 taken into account under this section by the employer for
 23 any taxable year shall not exceed \$6,000 (reduced by the
 24 amount of qualified wages with respect to such employee
 25

1 which may be so taken into account for any prior taxable
2 year).

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

4 (1) ELIGIBLE EMPLOYER.—The term “eligible
5 employer” means any employer—

6 (A) which conducted an active trade or
7 business in a qualified disaster zone at any time
8 during the incident period of the qualified dis-
9 aster with respect to such qualified disaster
10 zone, and

11 (B) with respect to whom the trade or
12 business described in subparagraph (A) is inop-
13 erable at any time on or after the first day of
14 the incident period of such qualified disaster,
15 and before April 15, 2019, as a result of dam-
16 age sustained by reason of such qualified dis-
17 aster.

18 (2) ELIGIBLE EMPLOYEE.—The term “eligible
19 employee” means with respect to an eligible em-
20 ployer an employee whose principal place of employ-
21 ment with such eligible employer (determined imme-
22 diately before the qualified disaster referred to in
23 paragraph (1)) was in the qualified disaster zone re-
24 ferred to in such paragraph.

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 at any time on or after the date
 7 on which the trade or business described in para-
 8 graph (1) first became inoperable at the principal
 9 place of employment of the employee (determined
 10 immediately before the qualified disaster referred to
 11 in such paragraph) and before the earlier of—

12 (A) the date on which such trade or busi-
 13 ness has resumed significant operations at such
 14 principal place of employment, or

15 (B) the date which is 150 days after the
 16 last day of the incident period of the qualified
 17 disaster referred to in paragraph (1).

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.

24 (c) CERTAIN RULES TO APPLY.—For purposes of
 25 this section, rules similar to the rules of sections 51(i)(1),

1 52, and 280C(a), of the Internal Revenue Code of 1986,
2 shall apply.

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

9 **SEC. 5. OTHER DISASTER-RELATED TAX RELIEF PROVI-**
10 **SIONS.**

11 (a) TEMPORARY INCREASE IN LIMITATION ON
12 QUALIFIED CONTRIBUTIONS.—

13 (1) SUSPENSION OF CURRENT LIMITATION.—
14 Except as otherwise provided in paragraph (2),
15 qualified contributions shall be disregarded in apply-
16 ing subsections (b) and (d) of section 170 of the In-
17 ternal Revenue Code of 1986.

18 (2) APPLICATION OF INCREASED LIMITATION.—
19 For purposes of section 170 of the Internal Revenue
20 Code of 1986—

21 (A) INDIVIDUALS.—In the case of an indi-
22 vidual—

23 (i) LIMITATION.—Any qualified con-
24 tribution shall be allowed as a deduction
25 only to the extent that the aggregate of

1 such contributions does not exceed the ex-
2 cess of the taxpayer's contribution base (as
3 defined in subparagraph (H) of section
4 170(b)(1) of such Code) over the amount
5 of all other charitable contributions allowed
6 under section 170(b)(1) of such Code.

7 (ii) CARRYOVER.—If the aggregate
8 amount of qualified contributions made in
9 the contribution year (within the meaning
10 of section 170(d)(1) of such Code) exceeds
11 the limitation of clause (i), such excess
12 shall be added to the excess described in
13 section 170(b)(1)(G)(ii).

14 (B) CORPORATIONS.—In the case of a cor-
15 poration—

16 (i) LIMITATION.—Any qualified con-
17 tribution shall be allowed as a deduction
18 only to the extent that the aggregate of
19 such contributions does not exceed the ex-
20 cess of the taxpayer's taxable income (as
21 determined under paragraph (2) of section
22 170(b) of such Code) over the amount of
23 all other charitable contributions allowed
24 under such paragraph.

(ii) CARRYOVER.—If the aggregate amount of qualified contributions made in the contribution year (within the meaning of section 170(d)(2) of such Code) exceeds the limitation of clause (i), such excess shall be appropriately taken into account under section 170(d)(2) subject to the limitations thereof.

(3) QUALIFIED CONTRIBUTIONS.—

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

(i) such contribution—

(I) is paid during 2019 in cash to an organization described in section 170(b)(1)(A) of such Code, and

(II) is made for relief efforts in one or more qualified disaster areas,

(ii) the taxpayer obtains from such organization contemporaneous written acknowledgment (within the meaning of section 170(f)(8) of such Code) that such contribution was used (or is to be used) for

1 relief efforts described in clause (i)(II),
 2 and

3 (iii) the taxpayer has elected the ap-
 4 plication of this subsection with respect to
 5 such contribution.

6 (B) EXCEPTION.—Such term shall not in-
 7 clude a contribution by a donor if the contribu-
 8 tion is—

9 (i) to an organization described in sec-
 10 tion 509(a)(3) of the Internal Revenue
 11 Code of 1986, or

12 (ii) for the establishment of a new, or
 13 maintenance of an existing, donor advised
 14 fund (as defined in section 4966(d)(2) of
 15 such Code).

16 (C) APPLICATION OF ELECTION TO PART-
 17 NERSHIPS AND S CORPORATIONS.—In the case
 18 of a partnership or S corporation, the election
 19 under subparagraph (A)(iii) shall be made sepa-
 20 rately by each partner or shareholder.

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

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

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

4 (i) such net disaster loss, and
 5 (ii) so much of the excess referred to
 6 in the matter preceding clause (i) of sec-
 7 tion 165(h)(2)(A) of such Code (reduced
 8 by the amount in clause (i) of this sub-
 9 paragraph) as exceeds 10 percent of the
 10 adjusted gross income of the individual,

11 (B) section 165(h)(1) of such Code shall
 12 be applied by substituting “\$500” for “\$500
 13 (\$100 for taxable years beginning after Decem-
 14 ber 31, 2009)”,

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

18 (D) section 56(b)(1)(E) of such Code shall
 19 not apply to so much of the standard deduction
 20 as is attributable to the increase under sub-
 21 paragraph (C) of this paragraph.

22 (2) NET DISASTER LOSS.—For purposes of this
 23 subsection, the term “net disaster loss” means the
 24 excess of qualified disaster-related personal casualty
 25 losses over personal casualty gains (as defined in

1 section 165(h)(3)(A) of the Internal Revenue Code
2 of 1986).

3 (3) QUALIFIED DISASTER-RELATED PERSONAL
4 CASUALTY LOSSES.—For purposes of this sub-
5 section, the term “qualified disaster-related personal
6 casualty losses” means losses described in section
7 165(c)(3) of the Internal Revenue Code of 1986
8 which arise in a qualified disaster area on or after
9 the first day of the incident period of the qualified
10 disaster to which such area relates, and which are
11 attributable to such qualified disaster.

12 (c) SPECIAL RULE FOR DETERMINING EARNED IN-
13 COME.—

14 (1) IN GENERAL.—In the case of a qualified in-
15 dividual, if the earned income of the taxpayer for the
16 applicable taxable year is less than the earned in-
17 come of the taxpayer for the preceding taxable year,
18 the credits allowed under sections 24(d) and 32 of
19 the Internal Revenue Code of 1986 may, at the elec-
20 tion of the taxpayer, be determined by sub-
21 stituting—

22 (A) such earned income for the preceding
23 taxable year, for

24 (B) such earned income for the applicable
25 taxable year.

1 (2) QUALIFIED INDIVIDUAL.—For purposes of
 2 this subsection, the term “qualified individual”
 3 means any individual whose principal place of abode
 4 at any time during the incident period of any quali-
 5 fied disaster was located—

6 (A) in the qualified disaster zone with re-
 7 spect to such qualified disaster, or

8 (B) in the qualified disaster area with re-
 9 spect to such qualified disaster (but outside the
 10 qualified disaster zone with respect to such
 11 qualified disaster) and such individual was dis-
 12 placed from such principal place of abode by
 13 reason of such qualified disaster.

14 (3) APPLICABLE TAXABLE YEAR.—The term
 15 “applicable taxable year” means, with respect to any
 16 qualified individual, any taxable year which includes
 17 any portion of the incident period of the qualified
 18 disaster to which the qualified disaster area referred
 19 to in paragraph (2) relates.

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

24 (5) SPECIAL RULES.—

1 (A) APPLICATION TO JOINT RETURNS.—

2 For purposes of paragraph (1), in the case of
3 a joint return for an applicable taxable year—

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

6 (ii) the earned income of the taxpayer
7 for the preceding taxable year shall be the
8 sum of the earned income of each spouse
9 for such preceding taxable year.

10 (B) UNIFORM APPLICATION OF ELEC-
11 TION.—Any election made under paragraph (1)
12 shall apply with respect to both sections 24(d)
13 and 32 of the Internal Revenue Code of 1986.

14 (C) ERRORS TREATED AS MATHEMATICAL
15 ERROR.—For purposes of section 6213 of the
16 Internal Revenue Code of 1986, an incorrect
17 use on a return of earned income pursuant to
18 paragraph (1) shall be treated as a mathe-
19 matical or clerical error.

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

○