

Senate by the President pro tempore (Mr. THURMOND).

MESSAGES FROM THE HOUSE

At 11:11 a.m., a message from the House of Representatives, delivered by Ms. Goetz, one of its reading clerks, announced that the House has passed the following bill, in which it requests the concurrence of the Senate:

H.R. 1601. An act to authorize appropriations to the National Aeronautics and Space Administration to develop, assemble, and operate the International Space Station.

The message also announced that the House has agreed to the following concurrent resolution, in which it requests the concurrence of the Senate:

H. Con. Res. 94. Concurrent resolution authorizing the use of the rotunda of the Capitol for a dedication ceremony incident to the placement of a bust of Raoul Wallenberg in the Capitol.

At 2:40 p.m., a message from the House of Representatives, delivered by Ms. Goetz, one of its reading clerks, announced that pursuant to section 203(b)(1)(G) of Public Law 102-166, the majority leader and minority leader appoint Mrs. KELLY of New York to serve as a member of the Glass Ceiling Commission.

MEASURES REFERRED

The following bill was read the first and second times by unanimous consent and referred as indicated:

H.R. 1601. An act to authorize appropriations to the National Aeronautics and Space Administration to develop, assemble, and operate the International Space Station; to the Committee on Commerce, Science, and Transportation.

MEASURES PLACED ON THE CALENDAR

The following measure was read the second time and placed on the calendar:

H.R. 927. An act to seek international sanctions against the Castro government in Cuba, to plan for support of a transition government leading to a democratically elected government in Cuba, and for other purposes.

ENROLLED BILL PRESENTED

The Secretary of the Senate reported that on October 3, 1995, he had presented to the President of the United States, the following enrolled bill:

S. 895. An act to amend the Small Business Act to reduce the level of participation by the Small Business Administration in certain loans guaranteed by the administration, and for other purposes.

EXECUTIVE AND OTHER COMMUNICATIONS

The following communications were laid before the Senate, together with accompanying papers, reports, and documents, which were referred as indicated:

EC-1474. A communication from the Assistant Secretary of State (Legislative Affairs), transmitting, pursuant to law, the report on the extent of compliance of the independent states of the former Soviet Union with the Biological Weapons Convention and other international agreements; to the Committee on Armed Services.

INTRODUCTION OF BILLS AND JOINT RESOLUTIONS

The following bills and joint resolutions were introduced, read the first and second time by unanimous consent, and referred as indicated:

By Mr. BINGAMAN:

S. 1298. A bill to authorize the Secretary of Transportation to issue a certificate of documentation with appropriate endorsement for employment in the coastwise trade for the vessel *Shooter*, and for other purposes; to the Committee on Commerce, Science, and Transportation.

By Mr. PRYOR:

S. 1299. A bill to amend the Internal Revenue Code of 1986 to bring opportunity to small business and taxpayers; to the Committee on Finance.

By Mr. BREAUX:

S. 1300. A bill to amend the Internal Revenue Code of 1986 to simplify the method of payment of taxes on distilled spirits; to the Committee on Finance.

By Mr. SPECTER:

S. 1301. A bill to amend the Goals 2000: Educate America Act to eliminate the National Education Standards and Improvement Council and requirements concerning opportunity-to-learn standards, to limit the authority of the Secretary of Education to review and approve State plans, to permit certain local educational agencies to receive funding directly from the Secretary of Education, and for other purposes; to the Committee on Labor and Human Resources.

By Ms. MIKULSKI:

S. 1302. A bill to restore competitiveness to the sugar industry by reforming the Federal Sugar Program and thereby ensuring that consumers have an uninterrupted supply of sugar at reasonable prices, and for other purposes; to the Committee on Agriculture, Nutrition, and Forestry.

By Mr. MCCAIN (for himself, Mr. BAUCUS, Mr. BINGAMAN, Mr. CAMPBELL, Mr. INOUE, Mr. KYL, Mr. STEVENS, and Mr. THOMAS):

S. 1303. A bill to amend the Internal Revenue Code of 1986 to provide tax credits for Indian investment and employment, and for other purposes; to the Committee on Finance.

By Mr. MCCAIN (for himself, Mr. BAUCUS, Mr. BINGAMAN, Mr. DOMENICI, Mr. FEINGOLD, Mr. INOUE, Mr. KOHL, Mr. KYL, Mr. STEVENS, and Mr. THOMAS):

S. 1304. A bill to provide for the treatment of Indian tribal governments under section 403(b) of the Internal Revenue Code of 1986; to the Committee on Finance.

By Mr. MCCAIN (for himself, Mr. BAUCUS, Mr. CAMPBELL, Mr. DOMENICI, Mr. INOUE, Mr. KYL, Mr. STEVENS, and Mr. THOMAS):

S. 1305. A bill to amend the Internal Revenue Code of 1986 to treat for unemployment compensation purposes Indian tribal governments the same as State or local units of government or nonprofit organizations; to the Committee on Finance.

By Mr. MCCAIN (for himself, Mr. BAUCUS, Mr. CAMPBELL, Mr. DOMENICI, Mr. INOUE, and Mr. KYL):

S. 1306. A bill to amend the Internal Revenue Code of 1986 to provide for the issuance

of tax-exempt bonds by Indian tribal governments, and for other purposes; to the Committee on Finance.

By Mr. MCCAIN (for himself, Mr. BAUCUS, Mr. DOMENICI, and Mr. INOUE):

S. 1307. A bill to amend the Internal Revenue Code of 1986 to exempt from income taxation income derived by a member of an Indian tribe directly or through a qualified Indian entity derived from natural resources activities; to the Committee on Finance.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. PRYOR:

S. 1299. A bill to amend the Internal Revenue Code of 1986 to bring opportunity to small business and taxpayers; to the Committee on Finance.

THE BRINGING OPPORTUNITY TO OUR SMALL BUSINESS AND TAXPAYERS ACT

Mr. PRYOR. Madam President, on December 27, 1994, while in Arkansas over the last Christmas holiday, I announced one of the most important legislative initiatives for the 104th Congress. I call it, Bringing Opportunity to Our Small Businesses and Taxpayers—or BOOST.

BOOST is a five-point initiative that addresses problems faced by everyday individual taxpayers, small businesses, and family farms.

Madam President, BOOST delivers a much-needed dose of fairness to small taxpayers, and it provides a clear path toward capitalizing on two of our country's greatest assets—small business and the family farm.

Over these past 9 months, I have worked with my colleagues on both sides of the aisle to introduce the five bills which make up the BOOST package. Today, I am introducing these five important bills as a combined package. I believe this is important because it represents a collective vision for helping small business and the average individual taxpayer—one which we can do quickly with bipartisan support while causing very little drain, if any, or the Federal budget.

We can act quickly because the Finance Committee will meet this week to consider tax legislation as part of the budget reconciliation package which will soon come to the Senate floor. Madam President, the issues raised by the BOOST package are not politically charged, in fact, they are all issues that can pull us together.

The five bills I am referring to are as follows:

First, the Taxpayer Bill of Rights II, S. 258, introduced by Senator GRASSLEY and myself;

Second, a bill to make the 100 percent health care deduction for the self-employed, S. 262, introduced by Senator GRASSLEY, Senator ROTH, and myself;

Third, the S Corporation Reform Act of 1995, S. 758, introduced by Senator HATCH and myself;

Fourth, the Pension Simplification Act of 1995, S. 1006, introduced by Senator HATCH and myself; and

Fifth, the American Family-Owned Business Act of 1995, S. 1086, introduced by Senator DOLE and myself.

Madam President, each of these bills enjoys a broad base of support from small business and agriculture organizations; each has a balanced cosponsor list of both Republican and Democratic Senators; and each has been introduced in the House of Representatives with similar strong bipartisan support.

The bills have three primary goals.

The first is to create capital formation opportunities for American small business owners and their employees. The resulting payoff will be more jobs created in a sector that already creates over one-half of all new jobs in our country.

The second is to simplify the rules that small businesses must comply with in dealing with the Internal Revenue Service, resulting in reduced cost to small business whose resources may be better spent on business expansion and their employees' retirement savings.

And third, a very important goal of the BOOST package is to safeguard the rights of smaller taxpayers in their dealings with the IRS. The goal: to inspire greater taxpayer confidence in our tax system by making it more fair and more accountable.

Of course, these are all goals that every one of us can support in principle. But it is important to point out that BOOST is more than just a set of worthy goals. It is an actual nuts and bolts proposal which has attracted strong and broad bipartisan support. And even more than that, it carries only a modest revenue cost in times when it is very difficult to act in light of our Federal budget deficit.

Madam President, the enactment of BOOST will send a message that Congress can work together to achieve practical solutions to the very real problems faced by American small business and the individual American taxpayer. I hope we can enact this legislation very soon and send this message.

Madam President, I do want to comment on each of the five-points of the BOOST package.

TAXPAYER BILL OF RIGHTS II

On January 23 of this year, Senator GRASSLEY and I came to the Senate floor and introduced the Taxpayer Bill of Rights II, along with 20 cosponsors—12 Democrats and 8 Republicans. The Taxpayer Bill of Rights II builds on the foundation laid by the original Taxpayer Bill of Rights passed in 1988 and is the next natural step in requiring the IRS achieve higher standards of accuracy, timeliness and fair play in providing taxpayer service.

The Taxpayer Bill of Rights II achieves these new standards through 27 provisions, including:

First, expanding the authority of the Taxpayer Advocate to prevent hardships on taxpayers.

Second, requiring the IRS to abate interest when it has made an unreason-

able error or delay, and enable the courts the power to review the interest abatement determination.

Third, strengthen the code so a taxpayer can recover out-of-pocket costs incurred in a case in which the IRS position was not substantially justified.

Finally, prohibit the IRS from issuing retroactive proposed regulations.

Madam President, the Taxpayer Bill of Rights II contains many more commonsense provisions designed to safeguard the rights of taxpayers and instill some confidence into our system of taxation.

Madam President, I would like to point out that the Taxpayer Bill of Rights II was passed twice in 1992 but was vetoed because it was included as part of two large tax bills with which President Bush did not agree. I believe the time is now to enact this legislation, and I am committed to work along with my friend Senator Grassley to push the Taxpayer Bill of Rights II into law.

100 PERCENT DEDUCTION FOR SELF-EMPLOYED

The next important piece of the BOOST package is a bill, introduced by Senator GRASSLEY, Senator ROTH, and myself to make the health insurance premiums for the self-employed 100 percent deductible.

Earlier this year, the Congress passed, and the President signed into law, H.R. 831 which restored the 25 percent care deduction in 1994, increased the deduction to 30 percent for 1995, and permanently extended the 30 percent deduction for all years in the future. This was an important and positive step. The fact that the Senate could move such a tax bill without amendment underscored the widespread bipartisan support and importance of this effort.

It is now important to take the next step of making health insurance premiums 100 percent deductible for the self-employed.

Madam President, large corporations now enjoy a 100 percent deduction, and on top of this, they typically pay smaller insurance premiums because they have a larger number of employees.

So, the self-employed pay higher insurance premiums, and to compound it, they can only take a 30 percent tax deduction for premiums paid—a double penalty. These over 9 million self-employed small businessmen and women are innovators and job creators—people we should encourage, not penalize. That is why BOOST contains this important provision to make the deduction 100 percent.

THE S CORPORATION REFORM ACT OF 1995

On May 4, 1995, my friend and colleague, Senator HATCH, and I introduced the S Corporation Reform Act of 1995, S. 758.

The bill is endorsed by the U.S. Chamber of Commerce, National Federation of Independent Business, the American Institute of Certified Public Accountants, and the members of the S

Corporation Subcommittee of the American Bar Association. Today, we have 32 Senate cosponsors—12 Democrats and 20 Republicans.

As you can tell, this legislation is the culmination of the efforts of many, and certainly represents a step Congress can and should take in order to capitalize on one of our country's most valuable resources—small business.

Today, close to 2 million U.S. businesses are S Corporations, and these businesses are still subject to many of the oppressive restraints which date back to its original enactment in 1958.

Madam President, it goes without saying that times have changed since 1958. The financial environment is far more complex, and the 1950's Sub S limitations restrict growth opportunities. Frankly, Sub S needs an overhaul.

This legislation is the overhaul we need. It is an overhaul that is doable. And it is an overhaul that can give a boost to our economic recovery by creating more opportunities for capital growth and jobs in our country.

PENSION SIMPLIFICATION FOR SMALL BUSINESS

On June 30, 1995, Senator HATCH and I introduced the Pension Simplification Act of 1995. This legislation contains provisions that target complex and costly rules effecting pension plans offered by small businesses—and there is a very good reason for this action.

In 1993, 83 percent of companies with 100 or more employees offered some type of retirement plan. In contrast, in businesses with less than 25 employees, only 19.6 percent of these employees had an employer-provided pension plan available to them, and only 15 percent of these employees participated in the plan.

A major factor contributing to this dismal statistic is the sky-high per-participant cost of establishing and maintaining a pension plan for small business. This legislation alleviates the high cost barriers for small business by creating a tax credit which can be applied toward the start-up costs of providing a new plan for employers with 50 or fewer employees.

Next, the bill slashes extensive annual nondiscrimination testing requirements for firms where no employee is highly compensated. These two provisions alone will significantly reduce the cost of starting up and maintaining a retirement plan for employers of small business. With these barriers lowered, we will be encouraging retirement savings for our Nation's small business worker.

AMERICAN FAMILY-OWNED BUSINESS ACT

The fifth point of BOOST was introduced on July 28, 1995, by Senator DOLE and myself—we call it the American Family-Owned Business Act.

Madam President, the impact of the estate tax on a family-owned business is devastating because of one simple fact—the rates are too high. The rates reach 55 percent of the value of an estate very quickly, and the tax bill comes due abruptly on the death of a loved one who also happens to be an invaluable asset to the family business.

For families whose major asset is its business, many times these enterprises are literally forced out of business because of the imposition of the estate tax. The effect is a disruption in not only the family's life but the lives of the employees of the business and the community that depends on or enjoys the goods or services provided by the business.

Contrast this scenario with the little to no impact the estate tax has on widely held businesses and you discover a disturbing reality in our current tax code—we place closely-held, family-owned businesses at a significant disadvantage when compared to widely held businesses.

Senator DOLE and I introduced the American Family-Owned Business Act with 44 cosponsors. Virtually every small business and agriculture organization in America has endorsed this bill. It carefully targets estate tax relief to family businesses whose major asset is its business and whose family members will materially participate in the business for years to come.

The message of the American Family-Owned Business Act is that we will treat family businesses more fairly, and in doing so, we will foster an environment which encourages family entrepreneurship. I am proud to work with the Majority Leader on this effort and I look forward to its passage.

PAY-FOR

Madam President, although BOOST package has only a moderate cost to the Federal Treasury, I do believe we must pay for these tax code reforms through cuts in spending.

I propose to pay for these important reforms from the provisions from my bill, S. 573, the Spending Reductions Act of 1996, which would save \$5.374 billion in fiscal year 1996.

In order to achieve these savings, I first proposed a modest reduction in the Government's spending on Federal contractors. This is a broad topic I have focused on for over 14 years. But today, I am not proposing to address all of the problems involved with the Federal Government's extensive reliance on contractors and consultants. I simply want to address the concern expressed by the voters in the 1992 and 1994 elections to shrink the size of Government.

The Congress only acted half-way in responding to this message when it voted to cut the number of Federal employees by 12 percent, because Congress has yet to order a corresponding reduction in the contractor work force. This contractor work force has been growing at a rapid rate over the past 10 years, while at the same time, the number of Federal workers has actually declined. In the early 1980's, the Federal Government spent roughly \$40 billion on service contracts. Last year, in fiscal year 1994, the Federal Government spent \$110 billion on service contracts. My proposal is to reduce this amount for 1996, a modest 4.5 percent.

Madam President, this reduction will still permit agencies to get their work done, but it will also reduce some of the waste that comes from too much money being spent without adequate oversight. For example, at my request, the inspector general at the Pentagon has been looking at some contracts awarded by the star wars program. Listen to some of the problems they found with the three contracts they audited:

First, cost overruns on the contracts totalled \$3.1 million.

Second, the contractor awarded prohibited subcontracts worth several million dollars.

Third, one contractor charged the Government for 588 hours of work that it did not actually perform.

I believe a reduction in spending, as I have proposed, will force agencies to spend money more wisely and eliminate such waste.

My next spending cut proposal will reduce spending on Federally Funded Research and Development Centers [FFRDC's] at the Department of Defense. FFRDC's, like Mitre, Rand, and the Center for Naval Analysis are contractors who work solely for the Federal Government. While these contractors perform some valuable service, I believe it is appropriate to cut back a modest amount on these in-house consulting companies, as we have on the Federal work force and as I am proposing on service contracts.

Madam President, our taxpayers should not continue being billed for the very high salaries and overhead being charged by these Government-run consulting firms. For example, the head of Aerospace made \$230,000 in 1991 and \$265,000 in 1992. I have no idea what they made in 1993 and 1994, but I imagine the increase has been alarming. This in-house Government contractor was making more than the President of the United States. My proposal would reduce spending on FFRDC's by \$162.7 million from the amount authorized by the Department of Defense authorization bill. This would still leave over \$1 billion for these companies.

Madam President, my final proposal to reduce spending involves an issue that I have worked on for a number of years—the export of arms to countries around the world. I am not proud of the fact that the United States is the leading arms exporter. We sell 53 percent of all the arms in international trade. However, my proposal is not targeted at totally reforming this arms trade, that is a battle for the future. I simply propose that we reduce the spending in our foreign military financing program by \$271.5 million from the total budget of \$3.7 billion.

Taken together, these spending reductions amount to over \$5 billion in 1996. It is more than enough to cover the costs of the BOOST package for this year and to give the small family owned business and the family farmers a real break that they justly deserve.

CONCLUSION

In conclusion, I would just like to say that—while some in Washington are consumed with passing or blocking the huge tax cuts reported on the front page of every newspaper, we, in Congress, should all be concerned with the practical, commonsense, and relatively inexpensive changes that will help the American taxpayer believe that Government can work for, not against, them. Also, to allow and to encourage those entrepreneurs to create jobs for people who will be paying taxes and who will be boosting our local communities.

Our program, the BOOST program, is such a change. It offers an opportunity. It gives people a chance, it should give people hope where hope has not been present. It reaffirms a commitment to fairness for small taxpayers and capitalizes on one of our country's greatest assets—small business and the family farm.

I am urging, Madam President, my colleagues to join me in supporting BOOST to be included in any tax legislation sent from this Senate. Madam President, I ask unanimous consent that a copy of the bill and a brief summary be included in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

S. 1299

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE; AMENDMENT OF 1986 CODE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the "Bringing Opportunity to Our Small Business and Taxpayers (BOOST) Act".

(b) AMENDMENT OF 1986 CODE.—Except as otherwise expressly provided, whenever in this Act an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of the Internal Revenue Code of 1986.

(c) TABLE OF CONTENTS.—The table of contents of this Act is as follows:

Sec. 1. Short title; amendment of 1986 Code; table of contents.

TITLE I—TAXPAYER BILL OF RIGHTS 2

Sec. 1001. Short title.

Subtitle A—Taxpayer Advocate

Sec. 1011. Establishment of position of Taxpayer Advocate within Internal Revenue Service.

Sec. 1012. Expansion of authority to issue taxpayer assistance orders.

Subtitle B—Modifications to Installment Agreement Provisions

Sec. 1021. Taxpayer's right to installment agreement.

Sec. 1022. Running of failure to pay penalty suspended during period installment agreement in effect.

Sec. 1023. Notification of reasons for termination or denial of installment agreements.

Sec. 1024. Administrative review of denial of request for, or termination of, installment agreement.

Subtitle C—Interest

Sec. 1031. Expansion of authority to abate interest.

Sec. 1032. Extension of interest-free period for payment of tax after notice and demand.

Subtitle D—Joint Returns

Sec. 1041. Disclosure of collection activities.

Sec. 1042. Joint return may be made after separate returns without full payment of tax.

Subtitle E—Collection Activities

Sec. 1051. Modifications to lien and levy provisions.

Sec. 1052. Offers-in-compromise.

Sec. 1053. Notification of examination.

Sec. 1054. Increase in limit on recovery of civil damages for unauthorized collection actions.

Sec. 1055. Safeguards relating to designated summons.

Subtitle F—Information Returns

Sec. 1061. Phone number of person providing payee statements required to be shown on such statement.

Sec. 1062. Civil damages for fraudulent filing of information returns.

Sec. 1063. Requirement to conduct reasonable investigations of information returns.

Subtitle G—Modifications to Penalty for Failure To Collect and Pay Over Tax

Sec. 1071. Preliminary notice requirement.

Sec. 1072. Disclosure of certain information where more than 1 person subject to penalty.

Sec. 1073. Penalties under section 6672.

Subtitle H—Awarding of Costs and Certain Fees

Sec. 1081. Motion for disclosure of information.

Sec. 1082. Increased limit on attorney fees.

Sec. 1083. Failure to agree to extension not taken into account.

Sec. 1084. Authority for court to award reasonable administrative costs.

Sec. 1085. Effective date.

Subtitle I—Other Provisions

Sec. 1091. Required content of certain notices.

Sec. 1092. Treatment of substitute returns under section 6651.

Sec. 1093. Relief from retroactive application of Treasury Department regulations.

Sec. 1094. Required notice of certain payments.

Sec. 1095. Unauthorized enticement of information disclosure.

Subtitle J—Form Modifications; Studies

Sec. 1100. Definitions.

CHAPTER 1—FORM MODIFICATIONS

Sec. 1101. Explanation of certain provisions.

Sec. 1102. Improved procedures for notifying service of change of address or name.

Sec. 1103. Rights and responsibilities of divorced individuals.

CHAPTER 2—STUDIES

Sec. 1111. Pilot program for appeal of enforcement actions.

Sec. 1112. Study on taxpayers with special needs.

Sec. 1113. Reports on taxpayer-rights education program.

Sec. 1114. Biennial reports on misconduct by Internal Revenue Service employees.

Sec. 1115. Study of notices of deficiency.

Sec. 1116. Notice and form accuracy study.

TITLE II—INCREASE OF DEDUCTION FOR HEALTH INSURANCE COSTS OF SELF-EMPLOYED INDIVIDUALS

Sec. 2001. Increase of deduction for health insurance costs of self-employed individuals.

TITLE III—S CORPORATION REFORM ACT OF 1995

Sec. 3001. Short title.

Subtitle A—Eligible Shareholders of S Corporation

CHAPTER 1—NUMBER OF SHAREHOLDERS

Sec. 3101. S corporations permitted to have 50 shareholders.

Sec. 3102. Members of family treated as 1 shareholder.

CHAPTER 2—PERSONS ALLOWED AS SHAREHOLDERS

Sec. 3111. Certain exempt organizations.

Sec. 3112. Financial institutions.

Sec. 3113. Nonresident aliens.

Sec. 3114. Electing small business trusts.

CHAPTER 3—OTHER PROVISIONS

Sec. 3121. Expansion of post-death qualification for certain trusts.

Subtitle B—Qualification and Eligibility Requirements for S Corporations

CHAPTER 1—ONE CLASS OF STOCK

Sec. 3201. Issuance of preferred stock permitted.

Sec. 3202. Financial institutions permitted to hold safe harbor debt.

CHAPTER 2—ELECTIONS AND TERMINATIONS

Sec. 3211. Rules relating to inadvertent terminations and invalid elections.

Sec. 3212. Agreement to terminate year.

Sec. 3213. Expansion of post-termination transition period.

Sec. 3214. Repeal of excessive passive investment income as a termination event.

CHAPTER 3—OTHER PROVISIONS

Sec. 3221. S corporations permitted to hold subsidiaries.

Sec. 3222. Treatment of distributions during loss years.

Sec. 3223. Consent dividend for AAA bypass election.

Sec. 3224. Treatment of S corporations under subchapter C.

Sec. 3225. Elimination of pre-1983 earnings and profits.

Sec. 3226. Allowance of charitable contributions of inventory and scientific property.

Sec. 3227. C corporation rules to apply for fringe benefit purposes.

Subtitle C—Taxation of S Corporation Shareholders

Sec. 3301. Uniform treatment of owner-employees under prohibited transaction rules.

Sec. 3302. Treatment of losses to shareholders.

Subtitle D—Effective Date

Sec. 3401. Effective date.

TITLE IV—PENSION SIMPLIFICATION

Subtitle A—Simplification of Nondiscrimination Provisions

Sec. 4000. Short title.

Sec. 4001. Definition of highly compensated employees; repeal of family aggregation.

Subtitle B—Targeted Access to Pension Plans for Small Employers

Sec. 4011. Credit for pension plan start-up costs of small employers.

Sec. 4012. Modifications of simplified employee pensions.

Sec. 4013. Exemption from top-heavy plan requirements.

Sec. 4014. Regulatory treatment of small employers.

TITLE V—ESTATE TAX EXCLUSION FOR FAMILY-OWNED BUSINESS

Sec. 5001. Short title.

Sec. 5002. Family-owned business exclusion.

TITLE VI—SPENDING REDUCTIONS

Sec. 6001. Short title.

Sec. 6002. Service contracts.

Sec. 6003. Federally funded research and development centers.

Sec. 6004. Foreign military financing.

TITLE I—TAXPAYER BILL OF RIGHTS 2

SEC. 1001. SHORT TITLE.

This title may be cited as the "Taxpayer Bill of Rights 2".

Subtitle A—Taxpayer Advocate

SEC. 1011. ESTABLISHMENT OF POSITION OF TAXPAYER ADVOCATE WITHIN INTERNAL REVENUE SERVICE.

(a) GENERAL RULE.—Section 7802 (relating to Commissioner of Internal Revenue; Assistant Commissioner (Employee Plans and Exempt Organizations)) is amended by adding at the end the following new subsection: "(d) OFFICE OF TAXPAYER ADVOCATE.—

"(1) IN GENERAL.—There is established in the Internal Revenue Service an office to be known as the 'Office of the Taxpayer Advocate'. Such office, including all problem resolution officers, shall be under the supervision and direction of an official to be known as the 'Taxpayer Advocate' who shall report directly to the Commissioner of Internal Revenue. The Taxpayer Advocate shall be entitled to compensation at the same rate as the Chief Counsel for the Internal Revenue Service.

"(2) FUNCTIONS OF OFFICE.—

"(A) IN GENERAL.—It shall be the function of the Office of Taxpayer Advocate to—

"(i) assist taxpayers in resolving problems with the Internal Revenue Service,

"(ii) identify areas in which taxpayers have problems in dealings with the Internal Revenue Service,

"(iii) to the extent possible, propose changes in the administrative practices of the Internal Revenue Service to mitigate problems identified under clause (ii), and

"(iv) identify potential legislative changes which may be appropriate to mitigate such problems.

"(B) ANNUAL REPORTS.—

"(i) OBJECTIVES.—Not later than June 30 of each calendar year after 1995, the Taxpayer Advocate shall report to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate on the objectives of the Taxpayer Advocate for the fiscal year beginning in such calendar year. Any such report shall contain full and substantive analysis, in addition to statistical information.

"(ii) ACTIVITIES.—Not later than December 31 of each calendar year after 1995, the Taxpayer Advocate shall report to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate on the activities of the Taxpayer Advocate during the fiscal year ending during such calendar year. Any such report shall contain full and substantive analysis, in addition to statistical information, and shall—

"(I) identify the initiatives the Taxpayer Advocate has taken on improving taxpayer services and Internal Revenue Service responsiveness,

"(II) contain recommendations received from individuals with the authority to issue taxpayer assistance orders under section 7811,

"(III) contain a summary of at least 20 of the most serious problems encountered by taxpayers, including a description of the nature of such problems,

"(IV) contain an inventory of the items described in subclauses (I), (II), and (III) for which action has been taken and the result of such action,

"(V) contain an inventory of the items described in subclauses (I), (II), and (III) for

which action remains to be completed and the period during which each item has remained on such inventory.

“(VI) contain an inventory of the items described in subclauses (II) and (III) for which no action has been taken, the period during which each item has remained on such inventory, the reasons for the inaction, and identify any Internal Revenue Service official who is responsible for such inaction,

“(VII) identify any Taxpayer Assistance Order which was not honored by the Internal Revenue Service in a timely manner, as specified under section 7811(b),

“(VIII) contain recommendations for such administrative and legislative action as may be appropriate to resolve problems encountered by taxpayers, and

“(IX) include such other information as the Taxpayer Advocate may deem advisable.

“(iii) REPORT TO BE SUBMITTED DIRECTLY.—Each report required under this subparagraph shall be provided directly to the Committees referred to in clauses (i) and (ii) without any prior review or comment from the Commissioner of the Internal Revenue Service, the Secretary of the Treasury, any other officer or employee of the Department of the Treasury, or the Office of Management and Budget.

“(3) RESPONSIBILITIES OF COMMISSIONER OF INTERNAL REVENUE SERVICE.—The Commissioner of Internal Revenue shall establish procedures requiring a formal response to all recommendations submitted to the Commissioner by the Taxpayer Advocate.”

(b) CONFORMING AMENDMENTS.—

(1) Section 7811 (relating to taxpayer assistance orders) is amended—

(A) by striking “the Office of Ombudsman” in subsection (a) and inserting “the Office of the Taxpayer Advocate”, and

(B) by striking “Ombudsman” each place it appears (including in the headings of subsections (e) and (f)) and inserting “Taxpayer Advocate”.

(2) The heading for section 7802 is amended to read as follows:

“SEC. 7802. COMMISSIONER OF INTERNAL REVENUE; ASSISTANT COMMISSIONERS; TAXPAYER ADVOCATE.”

(3) The table of sections for subchapter A of chapter 80 of subtitle F is amended by striking the item relating to section 7802 and inserting the following new item:

“Sec. 7802. Commissioner of Internal Revenue; Assistant Commissioners; Taxpayer Advocate.”

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect on the date of the enactment of this Act.

SEC. 1012. EXPANSION OF AUTHORITY TO ISSUE TAXPAYER ASSISTANCE ORDERS.

(a) TAXPAYER'S HARDSHIP.—Section 7811(a) (relating to authority to issue) is amended by striking “significant”.

(b) TERMS OF ORDERS.—Subsection (b) of section 7811 (relating to terms of taxpayer assistance orders) is amended—

(1) by inserting “within a specified time period” after “the Secretary”, and

(2) by inserting “take any action as permitted by law,” after “cease any action.”.

(c) LIMITATION ON AUTHORITY TO MODIFY OR RESCIND.—Section 7811(c) (relating to authority to modify or rescind) is amended to read as follows:

“(c) AUTHORITY TO MODIFY OR RESCIND.—Any Taxpayer Assistance Order issued by the Taxpayer Advocate under this section may be modified or rescinded only by the Taxpayer Advocate, the Commissioner, or any superior of either.”

(d) EFFECTIVE DATE.—The amendments made by this section shall take effect on the date of the enactment of this Act.

Subtitle B—Modifications to Installment Agreement Provisions

SEC. 1021. TAXPAYER'S RIGHT TO INSTALLMENT AGREEMENT.

(a) IN GENERAL.—Subsection (a) of section 6159 (relating to agreements for payment of tax liability in installments) is amended to read as follows:

“(a) IN GENERAL.—

“(1) AUTHORIZATION OF AGREEMENTS.—The Secretary is authorized to enter into written agreements with any taxpayer under which such taxpayer is allowed to satisfy liability for payment of any tax in installment payments if the Secretary determines that such agreement will facilitate collection of such liability.

“(2) AGREEMENT AS A MATTER OF RIGHT.—In the case of any taxpayer other than a corporation, the Secretary shall enter into such an agreement if—

“(A) the taxpayer requests such an agreement,

“(B) the tax liability is attributable to the tax imposed under chapter 1 and is less than \$10,000, and

“(C) the taxpayer has paid any tax liability for the 3 preceding taxable years at the time such liability was due.

“(3) NOTICE.—The Secretary shall include in the instructions for returns of the tax imposed under chapter 1 the rights of taxpayers under this subsection and the steps necessary to exercise those rights.”

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall take effect on the date of the enactment of this Act.

SEC. 1022. RUNNING OF FAILURE TO PAY PENALTY SUSPENDED DURING PERIOD INSTALLMENT AGREEMENT IN EFFECT.

(a) GENERAL RULE.—Section 6651 (relating to penalty for failure to file tax return or to pay tax) is amended by adding at the end the following new subsection:

“(g) TREATMENT OF INSTALLMENT AGREEMENTS UNDER SECTION 6159.—If—

“(1) an agreement is entered into under section 6159 for the payment of any tax in installments, and

“(2) the taxpayer requested the Secretary to enter into the agreement on or before the due date (including extensions) for the return of the tax,

the period during which such agreement is in effect shall be disregarded in determining the amount of any addition under paragraph (2) or (3) of subsection (a) with respect to such tax.”

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to installment agreements entered into after the date of the enactment of this Act.

SEC. 1023. NOTIFICATION OF REASONS FOR TERMINATION OR DENIAL OF INSTALLMENT AGREEMENTS.

(a) TERMINATIONS.—Subsection (b) of section 6159 (relating to extent to which agreements remain in effect) is amended by adding at the end the following new paragraph:

“(5) NOTICE REQUIREMENTS.—The Secretary may not take any action under paragraph (2), (3), or (4) unless—

“(A) a notice of such action is provided to the taxpayer not later than the day 30 days before the date of such action, and

“(B) such notice includes an explanation why the Secretary intends to take such action.

The preceding sentence shall not apply in any case in which the Secretary believes that collection of any tax to which an agreement under this section relates is in jeopardy.”

(b) DENIALS.—Section 6159 (relating to agreements for payment of tax liability in installments) is amended by adding at the end the following new subsection:

“(c) NOTICE REQUIREMENTS FOR DENIALS.—The Secretary may not deny any request for an installment agreement under this section unless—

“(1) a notice of the proposed denial is provided to the taxpayer not later than the day 30 days before the date of such denial,

“(2) such notice includes an explanation why the Secretary intends to deny such request, and

“(3) such notice includes a statement of the taxpayer's right to administrative review under subsection (d).

The preceding sentence shall not apply in any case in which the Secretary believes that collection of any tax to which a request for an agreement under this section relates is in jeopardy.”

(c) CONFORMING AMENDMENT.—Paragraph (3) of section 6159(b) is amended to read as follows:

“(3) SUBSEQUENT CHANGE IN FINANCIAL CONDITIONS.—If the Secretary makes a determination that the financial condition of a taxpayer with whom the Secretary has entered into an agreement under subsection (a) has significantly changed, the Secretary may alter, modify, or terminate such agreement.”

(d) EFFECTIVE DATE.—The amendments made by this section shall take effect on the date 6 months after the date of the enactment of this Act.

SEC. 1024. ADMINISTRATIVE REVIEW OF DENIAL OF REQUEST FOR, OR TERMINATION OF, INSTALLMENT AGREEMENT.

(a) GENERAL RULE.—Section 6159 (relating to agreements for payment of tax liability in installments), as amended by section 1023(b), is amended by adding at the end the following new subsection:

“(d) ADMINISTRATIVE REVIEW.—The Secretary shall establish procedures for an independent administrative review of denials of requests for, or terminations of, installment agreements under this section.”

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall take effect on January 1, 1996.

Subtitle C—Interest

SEC. 1031. EXPANSION OF AUTHORITY TO ABATE INTEREST.

(a) GENERAL RULE.—Paragraph (1) of section 6404(e) (relating to abatement of interest in certain cases) is amended—

(1) by inserting “unreasonable” before “error” each place it appears in subparagraphs (A) and (B), and

(2) by striking “in performing a ministerial act” each place it appears.

(b) MANDATORY ABATEMENT FOR SMALL TAXPAYERS.—The first sentence of section 6404(e)(1) is amended by inserting “in the case of a taxpayer not described in section 7430(c)(4)(A)(iii) and shall abate the assessment of such interest until the date demand for payment is made in the case of a taxpayer described in section 7430(c)(4)(A)(iii)” before the period at the end.

(c) CLERICAL AMENDMENT.—The subsection heading for subsection (e) of section 6404 is amended by striking “Assessments” and inserting “Abatement”.

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to interest accruing with respect to deficiencies or payments for taxable years beginning after the date of the enactment of this Act.

SEC. 1032. EXTENSION OF INTEREST-FREE PERIOD FOR PAYMENT OF TAX AFTER NOTICE AND DEMAND.

(a) GENERAL RULE.—Paragraph (3) of section 6601(e) (relating to payments made within 10 days after notice and demand) is amended to read as follows:

“(3) PAYMENTS MADE WITHIN SPECIFIED PERIOD AFTER NOTICE AND DEMAND.—If notice

and demand is made for payment of any amount and if such amount is paid within 21 days (10 days if the amount for which such notice and demand is made equals or exceeds \$100,000) after the date of such notice and demand, interest under this section on the amount so paid shall not be imposed for the period after the date of such notice and demand."

(b) CONFORMING AMENDMENT.—Paragraph (3) of section 6651(a) (relating to addition to tax for failure to file tax return or pay tax) is amended by striking "10 days" and inserting "21 days (10 days if the amount for which such notice and demand is made equals or exceeds \$100,000)".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply in the case of any notice and demand given after December 31, 1995.

Subtitle D—Joint Returns

SEC. 1041. DISCLOSURE OF COLLECTION ACTIVITIES.

(a) GENERAL RULE.—Subsection (e) of section 6103 (relating to disclosure to persons having material interest) is amended by adding at the end the following new paragraph:

"(8) DISCLOSURE OF COLLECTION ACTIVITIES WITH RESPECT TO JOINT RETURN.—If any deficiency of tax with respect to a joint return is assessed and the individuals filing such return are no longer married or no longer reside in the same household, upon request in writing of either of such individuals, the Secretary may disclose in writing to the individual making the request whether the Secretary has attempted to collect such deficiency from such other individual, the general nature of such collection activities, and the amount collected."

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall take effect on the date of the enactment of this Act.

SEC. 1042. JOINT RETURN MAY BE MADE AFTER SEPARATE RETURNS WITHOUT FULL PAYMENT OF TAX.

(a) GENERAL RULE.—Paragraph (2) of section 6013(b) (relating to limitations on filing of joint return after filing separate returns) is amended by striking subparagraph (A) and redesignating the following subparagraphs accordingly.

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to taxable years beginning after the date of the enactment of this Act.

Subtitle E—Collection Activities

SEC. 1051. MODIFICATIONS TO LIEN AND LEVY PROVISIONS.

(a) WITHDRAWAL OF CERTAIN NOTICES.—Section 6323 (relating to validity and priority against certain persons) is amended by adding at the end the following new subsection:

"(j) WITHDRAWAL OF NOTICE IN CERTAIN CIRCUMSTANCES.—

"(1) IN GENERAL.—The Secretary may withdraw a notice of a lien filed under this section and this chapter shall be applied as if the withdrawn notice had not been filed, if the Secretary determines that—

"(A) the filing of such notice was premature or otherwise not in accordance with administrative procedures of the Secretary,

"(B) the taxpayer has entered into an agreement under section 6159 to satisfy the tax liability for which the lien was imposed by means of installment payments, unless such agreement provides otherwise,

"(C) the withdrawal of such notice will facilitate the collection of the tax liability, or

"(D) with the consent of the taxpayer or the Taxpayer Advocate, the withdrawal of such notice would be in the best interests of the taxpayer (as determined by the Taxpayer Advocate) and the United States.

Any such withdrawal shall be made by filing notice at the same office as the withdrawn

notice. A copy of such notice of withdrawal shall be provided to the taxpayer.

"(2) NOTICE TO CREDIT AGENCIES, ETC.—Upon written request by the taxpayer with respect to whom a notice of a lien was withdrawn under paragraph (1), the Secretary shall promptly make reasonable efforts to notify credit reporting agencies, and any financial institution or creditor whose name and address is specified in such request, of the withdrawal of such notice. Any such request shall be in such form as the Secretary may prescribe."

(b) RETURN OF LEVIED PROPERTY IN CERTAIN CASES.—Section 6343 (relating to authority to release levy and return property) is amended by adding at the end the following new subsection:

"(d) RETURN OF PROPERTY IN CERTAIN CASES.—If—

"(1) any property has been levied upon, and

"(2) the Secretary determines that—

"(A) the levy on such property was premature or otherwise not in accordance with administrative procedures of the Secretary,

"(B) the taxpayer has entered into an agreement under section 6159 to satisfy the tax liability for which the levy was imposed by means of installment payments, unless such agreement provides otherwise,

"(C) the return of such property will facilitate the collection of the tax liability, or

"(D) with the consent of the taxpayer or the Taxpayer Advocate, the return of such property would be in the best interests of the taxpayer (as determined by the Taxpayer Advocate) and the United States,

the provisions of subsection (b) shall apply in the same manner as if such property had been wrongly levied upon, except that no interest shall be allowed under subsection (c)."

(c) MODIFICATIONS IN CERTAIN LEVY EXEMPTION AMOUNTS.—

(1) FUEL, ETC.—Paragraph (2) of section 6334(a) (relating to fuel, provisions, furniture, and personal effects exempt from levy) is amended—

(A) by striking "If the taxpayer is the head of a family, so" and inserting "So", and

(B) by striking "\$1,650 (\$1,550 in the case of levies issued during 1989)" and inserting "\$1,750".

(2) BOOKS, ETC.—Paragraph (3) of section 6334(a) (relating to books and tools of a trade, business, or profession exempt from levy) is amended by striking "\$1,100 (\$1,050 in the case of levies issued during 1989)" and inserting "\$1,250".

(3) INDEXED FOR INFLATION.—Section 6334 (relating to property exempt from levy) is amended by adding at the end the following new subsection:

"(f) INFLATION ADJUSTMENTS.—

"(1) IN GENERAL.—In the case of any calendar year beginning after 1996, each dollar amount referred to in paragraphs (2) and (3) of subsection (a) shall be increased by an amount equal to—

"(A) such dollar amount, multiplied by

"(B) the cost-of-living adjustment determined under section 1(f)(3) for such calendar year, by substituting 'calendar year 1995' for 'calendar year 1992' in subparagraph (B) thereof.

"(2) ROUNDING.—If any dollar amount after being increased under paragraph (1) is not a multiple of \$10, such dollar amount shall be rounded to the nearest multiple of \$10 (or, if such dollar amount is a multiple of \$5, such dollar amount shall be increased to the next higher multiple of \$10)."

(d) EFFECTIVE DATES.—

(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section shall take effect on the date of the enactment of this Act.

(2) EXEMPT AMOUNTS.—The amendments made by subsection (c) shall take effect with

respect to levies issued after December 31, 1995.

SEC. 1052. OFFERS-IN-COMPROMISE.

(a) GENERAL RULE.—Subsection (a) of section 7122 (relating to compromises) is amended by adding at the end the following new sentence: "The Secretary may make such a compromise in any case where the Secretary determines that such compromise would be in the best interests of the United States."

(b) REVIEW REQUIREMENTS.—Subsection (b) of section 7122 (relating to records) is amended by striking "\$500." and inserting "\$50,000. However, such compromise shall be subject to continuing quality review by the Secretary."

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect on the date of the enactment of this Act.

SEC. 1053. NOTIFICATION OF EXAMINATION.

(a) IN GENERAL.—Section 7605 (relating to restrictions on examination of taxpayer) is amended by redesignating subsection (c) as subsection (d) and by inserting after subsection (b) the following new subsection:

"(c) NOTIFICATION REQUIREMENT.—No examination described in subsection (a) shall be made unless the Secretary notifies the taxpayer in writing by mail to an address determined under section 6212(b) that the taxpayer is under examination and provides the taxpayer with an explanation of the process as described in section 7521(b)(1). The preceding sentence shall not apply in the case of any examination if the Secretary determines that—

"(1) such examination is in connection with a criminal investigation or is with respect to a tax the collection of which is in jeopardy, or

"(2) the application of the preceding sentence would be inconsistent with national security needs or would interfere with the effective conduct of a confidential law enforcement or foreign counterintelligence activity."

(b) CONFORMING AMENDMENT.—Paragraph (1) of section 7521(b) (relating to safeguards) is amended by striking "or at".

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect on the date of the enactment of this Act.

SEC. 1054. INCREASE IN LIMIT ON RECOVERY OF CIVIL DAMAGES FOR UNAUTHORIZED COLLECTION ACTIONS.

(a) GENERAL RULE.—Subsection (b) of section 7433 (relating to damages) is amended by striking "\$100,000" and inserting "\$1,000,000".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to actions by officers or employees of the Internal Revenue Service after the date of the enactment of this Act.

SEC. 1055. SAFEGUARDS RELATING TO DESIGNATED SUMMONS.

(a) STANDARD OF REVIEW.—Subparagraph (A) of section 6503(k)(2) (defining designated summons) is amended by redesignating clauses (i) and (ii) as clauses (ii) and (iii), respectively, and by inserting before clause (ii) (as so redesignated) the following new clause:

"(i) the issuance of such summons is preceded by a review of such issuance by the regional counsel of the Office of Chief Counsel for the region in which the examination of the corporation is being conducted."

(b) NOTICE REQUIREMENTS FOR ISSUANCE.—Section 6503(k) is amended by adding at the end the following new paragraph:

"(4) NOTICE REQUIREMENTS.—With respect to any summons referred to in paragraph (1)(A) issued to any person other than the corporation, the Secretary shall promptly notify the corporation, in writing, that such summons has been issued with respect to such corporation's return of tax."

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to summons issued after the date of the enactment of this Act.

Subtitle F—Information Returns

SEC. 1061. PHONE NUMBER OF PERSON PROVIDING PAYEE STATEMENTS REQUIRED TO BE SHOWN ON SUCH STATEMENT.

(a) GENERAL RULE.—The following provisions are each amended by striking “name and address” and inserting “name, address, and phone number of the information contact”:

- (1) Section 6041(d)(1).
- (2) Section 6041A(e)(1).
- (3) Section 6042(c)(1).
- (4) Section 6044(e)(1).
- (5) Section 6045(b)(1).
- (6) Section 6049(c)(1)(A).
- (7) Section 6050B(b)(1).
- (8) Section 6050H(d)(1).
- (9) Section 6050I(e)(1).
- (10) Section 6050J(e).
- (11) Section 6050K(b)(1).
- (12) Section 6050N(b)(1).

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall apply to statements required to be furnished after December 31, 1995 (determined without regard to any extension).

SEC. 1062. CIVIL DAMAGES FOR FRAUDULENT FILING OF INFORMATION RETURNS.

(a) GENERAL RULE.—Subchapter B of chapter 76 (relating to proceedings by taxpayers and third parties) is amended by redesignating section 7434 as section 7435 and by inserting after section 7433 the following new section:

“SEC. 7434. CIVIL DAMAGES FOR FRAUDULENT FILING OF INFORMATION RETURNS.

“(a) IN GENERAL.—If any person willfully files a false or fraudulent information return with respect to payments purported to be made to any other person, such other person may bring a civil action for damages against the person so filing such return.

“(b) DAMAGES.—In any action brought under subsection (a), upon a finding of liability on the part of the defendant, the defendant shall be liable to the plaintiff in an amount equal to the greater of \$5,000 or the sum of—

“(1) any actual damages sustained by the plaintiff as a proximate result of the filing of the false or fraudulent information return (including any costs attributable to resolving deficiencies asserted as a result of such filing), and

“(2) the costs of the action.

“(c) PERIOD FOR BRINGING ACTION.—Notwithstanding any other provision of law, an action to enforce the liability created under this section may be brought without regard to the amount in controversy and may be brought only within the later of—

“(1) 6 years after the date of the filing of the false or fraudulent information return, or

“(2) 1 year after the date such false or fraudulent information return would have been discovered by exercise of reasonable care.

“(d) COPY OF COMPLAINT FILED WITH IRS.—Any person bringing an action under subsection (a) shall provide a copy of the complaint to the Internal Revenue Service upon the filing of such complaint with the court.

“(e) FINDING OF COURT TO INCLUDE CORRECT AMOUNT OF PAYMENT.—The judgment of the court in an action brought under subsection (a) shall include a finding of the correct amount which should have been reported in the information return.

“(f) INFORMATION RETURN.—For purposes of this section, the term ‘information return’ means any statement described in section 6724(d)(1)(A).”

(b) CLERICAL AMENDMENT.—The table of sections for subchapter B of chapter 76 is amended by striking the item relating to section 7434 and inserting the following:

“Sec. 7434. Civil damages for fraudulent filing of information returns.

“Sec. 7435. Cross references.”

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to false or fraudulent information returns filed after the date of the enactment of this Act.

SEC. 1063. REQUIREMENT TO CONDUCT REASONABLE INVESTIGATIONS OF INFORMATION RETURNS.

(a) GENERAL RULE.—Section 6201 (relating to assessment authority) is amended by redesignating subsection (d) as subsection (e) and by inserting after subsection (c) the following new subsection:

“(d) REQUIRED REASONABLE INVESTIGATION OF INFORMATION RETURNS.—If a taxpayer asserts a reasonable dispute with respect to any item of income reported on an information return filed with the Secretary under chapter 61 by a third party, the Secretary, when making a determination of a deficiency based on such information return, shall have the burden of proof with respect to such determination unless the Secretary has conducted a reasonable investigation to corroborate the accuracy of such information return.”

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall take effect on the date of the enactment of this Act.

Subtitle G—Modifications to Penalty for Failure To Collect and Pay Over Tax

SEC. 1071. PRELIMINARY NOTICE REQUIREMENT.

(a) IN GENERAL.—Section 6672 (relating to failure to collect and pay over tax, or attempt to evade or defeat tax) is amended by redesignating subsection (b) as subsection (c) and by inserting after subsection (a) the following new subsection:

“(b) PRELIMINARY NOTICE REQUIREMENT.—

“(1) IN GENERAL.—No penalty shall be imposed under subsection (a) unless the Secretary notifies the taxpayer in writing by mail to an address as determined under section 6212(b) that the taxpayer shall be subject to an assessment of such penalty.

“(2) TIMING OF NOTICE.—The mailing of the notice described in paragraph (1) shall precede any notice and demand of any penalty under subsection (a) by at least 60 days.

“(3) STATUTE OF LIMITATIONS.—If a notice described in paragraph (1) with respect to any penalty is mailed before the expiration of the period provided by section 6501 for the assessment of such penalty (determined without regard to this paragraph), the period provided by such section for the assessment of such penalty shall not expire before the date 90 days after the date on which such notice was mailed.

“(4) EXCEPTION FOR JEOPARDY.—This subsection shall not apply if the Secretary finds that the collection of the penalty is in jeopardy.”

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to assessments made after December 31, 1995.

SEC. 1072. DISCLOSURE OF CERTAIN INFORMATION WHERE MORE THAN 1 PERSON SUBJECT TO PENALTY.

(a) IN GENERAL.—Subsection (e) of section 6103 (relating to disclosure to persons having material interest), as amended by section 1041(a), is amended by adding at the end the following new paragraph:

“(9) DISCLOSURE OF CERTAIN INFORMATION WHERE MORE THAN 1 PERSON SUBJECT TO PENALTY UNDER SECTION 6672.—If the Secretary determines that a person is liable for a penalty under section 6672(a) with respect to any failure, upon request in writing of such per-

son, the Secretary shall disclose in writing to such person—

“(A) the name of any other person whom the Secretary has determined to be liable for such penalty with respect to such failure, and

“(B) whether the Secretary has attempted to collect such penalty from such other person, the general nature of such collection activities, and the amount collected.”

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall take effect on the date of the enactment of this Act.

SEC. 1073. PENALTIES UNDER SECTION 6672.

(a) PUBLIC INFORMATION REQUIREMENTS.—The Secretary of the Treasury or the Secretary's delegate (hereafter in this section referred to as the “Secretary”) shall take such actions as may be appropriate to ensure that employees are aware of their responsibilities under the Federal tax depository system, the circumstances under which employees may be liable for the penalty imposed by section 6672 of the Internal Revenue Code of 1986, and the responsibility to promptly report to the Internal Revenue Service any failure referred to in subsection (a) of such section 6672. Such actions shall include—

(1) printing of a warning on deposit coupon booklets and the appropriate tax returns that certain employees may be liable for the penalty imposed by such section 6672, and

(2) the development of a special information packet.

(b) BOARD MEMBERS OF TAX-EXEMPT ORGANIZATIONS.—

(1) VOLUNTARY BOARD MEMBERS.—

(A) IN GENERAL.—The penalty under section 6672 of the Internal Revenue Code of 1986 shall not be imposed on unpaid, volunteer members of any board of trustees or directors of an organization referred to in section 501 of such Code to the extent such members are solely serving in an honorary capacity, do not participate in the day-to-day or financial operations of the organization, and do not have actual knowledge of the failure on which such penalty is imposed.

(B) APPLICATION OF PARAGRAPH.—This paragraph shall not apply if it results in no person being held liable for the penalty described in section 6672(a) of the Internal Revenue Code of 1986.

(2) DEVELOPMENT OF EXPLANATORY MATERIALS.—The Secretary shall develop materials explaining the circumstances under which board members of tax-exempt organizations (including voluntary and honorary members) may be subject to penalty under section 6672 of such Code. Such materials shall be made available to tax-exempt organizations.

(3) IRS INSTRUCTIONS.—The Secretary shall clarify the instructions to Internal Revenue Service employees on the application of the penalty under section 6672 of such Code with regard to voluntary members of boards of trustees or directors of tax-exempt organizations.

(c) PROMPT NOTIFICATION.—To the maximum extent practicable, the Secretary shall notify all persons who have failed to make timely and complete deposit of any taxes described in section 6672 of the Internal Revenue Code of 1986 of such failure within 30 days after the return was filed reflecting such failure or after the date on which the Secretary is first aware of such failure. If the person failing to make the deposit is not an individual, the Secretary shall notify the entity subject to such deposit requirement and that entity shall notify, within 15 days of the notification by the Secretary, all officers, general partners, trustees, or other managers of the failure.

Subtitle H—Awarding of Costs and Certain Fees

SEC. 1081. MOTION FOR DISCLOSURE OF INFORMATION.

Paragraph (4) of section 7430(c) (defining prevailing party) is amended by adding at the end the following new subparagraph:

“(C) MOTION FOR DISCLOSURE OF INFORMATION.—Once a taxpayer substantially prevails as described in subparagraph (A)(ii), the taxpayer may file a motion for an order requiring the disclosure (within a reasonable period of time specified by the court) of all information and copies of relevant records in the possession of the Internal Revenue Service with respect to such taxpayer's case and the substantial justification for the position taken by the Internal Revenue Service.”

SEC. 1082. INCREASED LIMIT ON ATTORNEY FEES.

Paragraph (1) of section 7430(c) (defining reasonable litigation costs) is amended—

(1) by striking “\$75” in clause (iii) of subparagraph (B) and inserting “\$110”;

(2) by striking “an increase in the cost of living or” in clause (iii) of subparagraph (B), and

(3) by adding after clause (iii) the following:

“In the case of any calendar year beginning after 1995, the dollar amount referred to in clause (iii) shall be increased by an amount equal to such dollar amount multiplied by the cost-of-living adjustment determined under section 1(f)(3) for such calendar year, by substituting ‘calendar year 1994’ for ‘calendar year 1992’ in subparagraph (B) thereof. If any dollar amount after being increased under the preceding sentence is not a multiple of \$10, such dollar amount shall be rounded to the nearest multiple of \$10 (or, if such dollar amount is a multiple of \$5, such dollar amount shall be increased to the next higher multiple of \$10).”

SEC. 1083. FAILURE TO AGREE TO EXTENSION NOT TAKEN INTO ACCOUNT.

Paragraph (1) of section 7430(b) (relating to requirement that administrative remedies be exhausted) is amended by adding at the end the following new sentence: “Any failure to agree to an extension of the time for the assessment of any tax shall not be taken into account for purposes of determining whether the prevailing party meets the requirements of the preceding sentence.”

SEC. 1084. AUTHORITY FOR COURT TO AWARD REASONABLE ADMINISTRATIVE COSTS.

Section 7430(c)(7)(B) is amended to read as follows:

“(B) the position taken in an administrative proceeding to which subsection (a) applies.”

SEC. 1085. EFFECTIVE DATE.

The amendments made by this subtitle shall apply in the case of proceedings commenced after the date of the enactment of this Act.

Subtitle I—Other Provisions

SEC. 1091. REQUIRED CONTENT OF CERTAIN NOTICES.

(a) GENERAL RULE.—Subsection (a) of section 7522 (relating to content of tax due, deficiency, and other notices) is amended by striking “shall describe the basis for, and identify” and inserting “shall set forth the adjustments which are the basis for, and shall identify”.

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to notices sent after the date 6 months after the date of the enactment of this Act.

SEC. 1092. TREATMENT OF SUBSTITUTE RETURNS UNDER SECTION 6651.

(a) GENERAL RULE.—Section 6651 (relating to failure to file tax return or to pay tax), as amended by section 1022(a), is amended by

adding at the end the following new subsection:

“(h) TREATMENT OF RETURNS PREPARED BY SECRETARY UNDER SECTION 6020(b).—In the case of any return made by the Secretary under section 6020(b)—

“(1) such return shall be disregarded for purposes of determining the amount of the addition under paragraph (1) of subsection (a), but

“(2) such return shall be treated as the return filed by the taxpayer for purposes of determining the amount of the addition under paragraphs (2) and (3) of subsection (a).”

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply in the case of any return the due date for which (determined without regard to extensions) is after the date of the enactment of this Act.

SEC. 1093. RELIEF FROM RETROACTIVE APPLICATION OF TREASURY DEPARTMENT REGULATIONS.

(a) IN GENERAL.—Subsection (b) of section 7805 (relating to rules and regulations) is amended to read as follows:

“(b) RETROACTIVITY OF REGULATIONS.—

“(1) IN GENERAL.—Except as otherwise provided in this subsection, no temporary, proposed, or final regulation relating to the internal revenue laws shall apply to any taxable period ending before the earliest of the following dates:

“(A) The date on which such regulation is filed with the Federal Register.

“(B) In the case of any final regulation, the date on which any proposed or temporary regulation to which such final regulation relates was filed with the Federal Register.

“(C) The date on which any notice substantially describing the expected contents of any temporary, proposed, or final regulation is issued to the public.

“(2) PREVENTION OF ABUSE.—The Secretary may provide that any regulation may take effect or apply retroactively to prevent abuse of a statute to which the regulation relates.

“(3) CORRECTION OF PROCEDURAL DEFECTS.—The Secretary may provide that any regulation may apply retroactively to correct a procedural defect in the issuance of any prior regulation.

“(4) INTERNAL REGULATIONS.—The limitation of paragraph (1) shall not apply to any regulation relating to internal Treasury Department policies, practices, or procedures.

“(5) CONGRESSIONAL AUTHORIZATION.—The limitation of paragraph (1) may be superseded by a legislative grant from Congress authorizing the Secretary to prescribe the effective date with respect to any regulation.

“(6) ELECTION TO APPLY RETROACTIVELY.—The Secretary may provide for any taxpayer to elect to apply any regulation before the dates specified in paragraph (1).

“(7) APPLICATION TO RULINGS.—The Secretary may prescribe the extent, if any, to which any ruling (including any judicial decision or any administrative determination other than by regulation) relating to the internal revenue laws shall be applied without retroactive effect.”

(b) EFFECTIVE DATE.—

(1) IN GENERAL.—Except as provided in paragraph (2), the amendment made by subsection (a) shall apply with respect to—

(A) any temporary or proposed regulation filed on or after January 5, 1993, and

(B) any temporary or proposed regulation filed before January 5, 1993, and filed as a final regulation after such date.

(2) SPECIAL RULE.—Section 7805(b)(2) of the Internal Revenue Code of 1986 (as added by subsection (a)) shall apply only to statutes enacted on or after the date of the enactment of this Act.

SEC. 1094. REQUIRED NOTICE OF CERTAIN PAYMENTS.

If any payment is received by the Secretary of the Treasury or the Secretary's delegate (hereafter in this section referred to as the “Secretary”) from any taxpayer and the Secretary cannot associate such payment with any outstanding tax liability of such taxpayer, the Secretary shall make reasonable efforts to notify the taxpayer of such inability within 60 days after the receipt of such payment.

SEC. 1095. UNAUTHORIZED ENTICEMENT OF INFORMATION DISCLOSURE.

(a) IN GENERAL.—Subchapter B of chapter 76 (relating to proceedings by taxpayers and third parties), as amended by section 1062(a), is amended by redesignating section 7435 as section 7436 and by inserting after section 7434 the following new section:

“SEC. 7435. CIVIL DAMAGES FOR UNAUTHORIZED ENTICEMENT OF INFORMATION DISCLOSURE.

“(a) IN GENERAL.—If any officer or employee of the United States intentionally compromises the determination or collection of any tax due from an attorney, certified public accountant, or enrolled agent representing a taxpayer in exchange for information conveyed by the taxpayer to the attorney, certified public accountant, or enrolled agent for purposes of obtaining advice concerning the taxpayer's tax liability, such taxpayer may bring a civil action for damages against the United States in a district court of the United States. Such civil action shall be the exclusive remedy for recovering damages resulting from such actions.

“(b) DAMAGES.—In any action brought under subsection (a), upon a finding of liability on the part of the defendant, the defendant shall be liable to the plaintiff in an amount equal to the lesser of \$500,000 or the sum of—

“(1) actual, direct economic damages sustained by the plaintiff as a proximate result of the information disclosure, and

“(2) the costs of the action.

Damages shall not include the taxpayer's liability for any civil or criminal penalties, or other losses attributable to incarceration or the imposition of other criminal sanctions.

“(c) PAYMENT AUTHORITY.—Claims pursuant to this section shall be payable out of funds appropriated under section 1304 of title 31, United States Code.

“(d) PERIOD FOR BRINGING ACTION.—Notwithstanding any other provision of law, an action to enforce liability created under this section may be brought without regard to the amount in controversy and may be brought only within 2 years after the date the actions creating such liability would have been discovered by exercise of reasonable care.

“(e) MANDATORY STAY.—Upon a certification by the Commissioner or the Commissioner's delegate that there is an ongoing investigation or prosecution of the taxpayer, the district court before which an action under this section is pending, shall stay all proceedings with respect to such action pending the conclusion of the investigation or prosecution.

“(f) CRIME-FRAUD EXCEPTION.—Subsection (a) shall not apply to information conveyed to an attorney, certified public accountant, or enrolled agent for the purpose of perpetrating a fraud or crime.”

(b) CLERICAL AMENDMENT.—The table of sections for subchapter B of chapter 76, as amended by section 1062(b), is amended by striking the item relating to section 7435 and by adding at the end the following new items:

“Sec. 7435. Civil damages for unauthorized enticement of information disclosure.

“Sec. 7436. Cross references.”

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to actions after the date of the enactment of this Act.

Subtitle J—Form Modifications; Studies

SEC. 1100. DEFINITIONS.

For purposes of this subtitle:

(1) SECRETARY.—The term “Secretary” means the Secretary of the Treasury or his delegate.

(2) 1986 CODE.—The term “1986 Code” means the Internal Revenue Code of 1986.

(3) TAX-WRITING COMMITTEES.—The term “tax-writing Committees” means the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate.

CHAPTER 1—FORM MODIFICATIONS

SEC. 1101. EXPLANATION OF CERTAIN PROVISIONS.

(a) GENERAL RULE.—The Secretary shall take such actions as may be appropriate to ensure that taxpayers are aware of the provisions of the 1986 Code permitting payment of tax in installments, extensions of time for payment of tax, and compromises of tax liability. Such actions shall include revising the instructions for filing income tax returns so that such instructions include an explanation of—

(1) the procedures for requesting the benefits of such provisions, and

(2) the terms and conditions under which the benefits of such provisions are available.

(b) COLLECTION NOTICES.—In any notice of an underpayment of tax or proposed underpayment of tax sent by the Secretary to any taxpayer, the Secretary shall include a notification of the availability of the provisions of sections 6159, 6161, and 7122 of the 1986 Code.

SEC. 1102. IMPROVED PROCEDURES FOR NOTIFYING SERVICE OF CHANGE OF ADDRESS OR NAME.

The Secretary shall provide improved procedures for taxpayers to notify the Secretary of changes in names and addresses. Not later than June 30, 1997, the Secretary shall institute procedures for timely updating all Internal Revenue Service records with change-of-address information provided to the Secretary by taxpayers.

SEC. 1103. RIGHTS AND RESPONSIBILITIES OF DIVORCED INDIVIDUALS.

The Secretary shall include in the Internal Revenue Service publication entitled “Your Rights As A Taxpayer” a section on the rights and responsibilities of divorced individuals.

CHAPTER 2—STUDIES

SEC. 1111. PILOT PROGRAM FOR APPEAL OF ENFORCEMENT ACTIONS.

(a) GENERAL RULE.—The Secretary shall establish a 1-year pilot program for appeals of enforcement actions (including lien, levy, and seizure actions) to the Appeals Division of the Internal Revenue Service—

(1) where the deficiency was assessed without actual knowledge of the taxpayer,

(2) where the deficiency was assessed without an opportunity for administrative appeal, and

(3) in other appropriate circumstances.

(b) REPORT.—Not later than June 30, 1997, the Secretary shall submit to the tax-writing Committees a report on the pilot program established under subsection (a), together with such recommendations as he may deem advisable.

SEC. 1112. STUDY ON TAXPAYERS WITH SPECIAL NEEDS.

(a) GENERAL RULE.—The Secretary shall conduct a study on ways to assist the elder-

ly, physically impaired, foreign-language speaking, and other taxpayers with special needs to comply with the internal revenue laws.

(b) REPORT.—Not later than June 30, 1996, the Secretary shall submit to the tax-writing Committees a report on the study conducted under subsection (a), together with such recommendations as he may deem advisable.

SEC. 1113. REPORTS ON TAXPAYER-RIGHTS EDUCATION PROGRAM.

Not later than April 1, 1996, the Secretary shall submit a report to the tax-writing Committees on the scope and content of the Internal Revenue Service’s taxpayer-rights education program for its officers and employees. Not later than June 30, 1996, the Secretary shall submit a report to the tax-writing Committees on the effectiveness of the program referred to in the preceding sentence.

SEC. 1114. BIENNIAL REPORTS ON MISCONDUCT BY INTERNAL REVENUE SERVICE EMPLOYEES.

Not later than June 30, 1996, and during June of each second calendar year thereafter, the Secretary shall report to the tax-writing Committees on all cases involving complaints about misconduct of Internal Revenue Service employees and the disposition of such complaints.

SEC. 1115. STUDY OF NOTICES OF DEFICIENCY.

(a) GENERAL RULE.—The Comptroller General shall conduct a study on—

(1) the effectiveness of current Internal Revenue Service efforts to notify taxpayers with regard to tax deficiencies under section 6212 of the 1986 Code,

(2) the number of registered or certified letters and other notices returned to the Internal Revenue Service as undeliverable,

(3) any followup action taken by the Internal Revenue Service to locate taxpayers who did not receive actual notice,

(4) the effect that failures to receive notice of such deficiencies have on taxpayers, and

(5) recommendations to improve Internal Revenue Service notification of taxpayers.

(b) REPORT.—Not later than June 30, 1996, the Comptroller General shall submit to the tax-writing Committees a report on the study conducted under subsection (a), together with such recommendations as he may deem advisable.

SEC. 1116. NOTICE AND FORM ACCURACY STUDY.

(a) GENERAL RULE.—The Comptroller General shall conduct annual studies of the accuracy of 25 of the most commonly used Internal Revenue Service forms, notices, and publications. In conducting any such study, the Comptroller General shall examine the suitability and usefulness of Internal Revenue Service telephone numbers on Internal Revenue Service notices and shall solicit and consider the comments of organizations representing taxpayers, employers, and tax professionals.

(b) REPORTS.—The Comptroller General shall submit to the tax-writing Committees a report on each study conducted under subsection (a), together with such recommendations as he may deem advisable. The first such report shall be submitted not later than June 30, 1996.

TITLE II—INCREASE OF DEDUCTION FOR HEALTH INSURANCE COSTS OF SELF-EMPLOYED INDIVIDUALS

SEC. 2001. INCREASE OF DEDUCTION FOR HEALTH INSURANCE COSTS OF SELF-EMPLOYED INDIVIDUALS.

(a) INCREASE IN DEDUCTION.—Section 162(1) is amended—

(1) by striking “30 percent” in paragraph (1) and inserting “the applicable percentage”, and

(2) by adding at the end the following new paragraph:

“(6) APPLICABLE PERCENTAGE.—For purposes of paragraph (1), the applicable percentage shall be determined as follows:

“For taxable years beginning in:	The applicable percentage is:
1996	75
1997 and thereafter ...	100.”

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 1995.

TITLE III—S CORPORATION REFORM ACT OF 1995

SEC. 3001. SHORT TITLE.

This title may be cited as the “S Corporation Reform Act of 1995”.

Subtitle A—Eligible Shareholders of S Corporation

CHAPTER 1—NUMBER OF SHAREHOLDERS

SEC. 3101. S CORPORATIONS PERMITTED TO HAVE 50 SHAREHOLDERS.

Subparagraph (A) of section 1361(b)(1) (defining small business corporation) is amended by striking “35 shareholders” and inserting “50 shareholders”.

SEC. 3102. MEMBERS OF FAMILY TREATED AS 1 SHAREHOLDER.

Paragraph (1) of section 1361(c) (relating to special rules for applying subsection (b)) is amended to read as follows:

“(1) MEMBERS OF FAMILY TREATED AS 1 SHAREHOLDER.—

“(A) IN GENERAL.—For purposes of subsection (b)(1)(A)—

“(i) except as provided in clause (ii), a husband and wife (and their estates) shall be treated as 1 shareholder, and

“(ii) in the case of a family with respect to which an election is in effect under subparagraph (E), all members of the family shall be treated as 1 shareholder.

“(B) MEMBERS OF THE FAMILY.—For purposes of subparagraph (A)(ii), the term ‘members of the family’ means the lineal descendants of the common ancestor and the spouses (or former spouses) of such lineal descendants or common ancestor.

“(C) COMMON ANCESTOR.—For purposes of this paragraph, an individual shall not be considered a common ancestor if, as of the later of the effective date of this paragraph or the time the election under section 1362(a) is made, the individual is more than 6 generations removed from the youngest generation of shareholders.

“(D) EFFECT OF ADOPTION, ETC.—In determining whether any relationship specified in subparagraph (B) or (C) exists, the rules of section 152(b)(2) shall apply.

“(E) ELECTION.—An election under subparagraph (A)(ii)—

“(i) must be made with the consent of all shareholders,

“(ii) shall remain in effect until terminated, and

“(iii) shall apply only with respect to 1 family in any corporation.”

CHAPTER 2—PERSONS ALLOWED AS SHAREHOLDERS

SEC. 3111. CERTAIN EXEMPT ORGANIZATIONS.

(a) CERTAIN EXEMPT ORGANIZATIONS ALLOWED TO BE SHAREHOLDERS.—

(1) IN GENERAL.—Subparagraph (B) of section 1361(b)(1) (defining small business corporation) is amended to read as follows:

“(B) have as a shareholder a person (other than an estate, a trust described in subsection (c)(2), or an organization described in subsection (c)(7) who is not an individual.”.

(2) ELIGIBLE EXEMPT ORGANIZATIONS.—Section 1361(c) (relating to special rules for applying subsection (b)) is amended by adding at the end the following new paragraph:

“(7) CERTAIN EXEMPT ORGANIZATIONS PERMITTED AS SHAREHOLDERS.—For purposes of subsection (b)(1)(B), an organization described in section 401(a) or 501(c)(3) may be a shareholder in an S corporation.”

(b) CONTRIBUTIONS OF S CORPORATION STOCK.—Section 170(e)(1) (relating to certain contributions of ordinary income and capital gain property) is amended by adding at the end the following sentence: “For purposes of applying this paragraph in the case of a charitable contribution of stock in an S corporation, rules similar to the rules of section 751 shall apply in determining whether gain on such stock would have been long-term capital gain if such stock were sold by the taxpayer.”

(c) SPECIAL RULES APPLICABLE TO PARTNERSHIPS AND S CORPORATIONS.—

(1) IN GENERAL.—Subsection (c) of section 512 (relating to unrelated business tax income) is amended—

(A) by inserting “or S corporation” after “partnership” each place it appears in paragraphs (1) and (3),

(B) by inserting “or shareholder” after “member” in paragraph (1), and

(C) by inserting “AND S CORPORATIONS” after “PARTNERSHIPS” in the heading.

(2) REPORTING REQUIREMENT.—Section 6037 (relating to return of S corporation) is amended by adding at the end the following new subsection:

“(c) SEPARATE STATEMENT OF ITEMS OF UNRELATED BUSINESS TAXABLE INCOME.—In the case of any S corporation regularly carrying on a trade or business (within the meaning of section 512(c)(1)), the information required under subsection (b) to be furnished to any shareholder described in section 1361(c)(7) shall include such information as is necessary to enable the shareholder to compute its pro rata share of the corporation’s income or loss from the trade or business in accordance with section 512(a)(1), but without regard to the modifications described in paragraphs (8) through (15) of section 512(b).”

SEC. 3112. FINANCIAL INSTITUTIONS.

Subparagraph (B) of section 1361(b)(2) (defining ineligible corporation) is amended to read as follows:

“(B) a financial institution which uses the reserve method of accounting for bad debts described in section 585 or 593.”

SEC. 3113. NONRESIDENT ALIENS.

(a) NONRESIDENT ALIENS ALLOWED TO BE SHAREHOLDERS.—

(1) IN GENERAL.—Paragraph (1) of section 1361(b) (defining small business corporation) is amended—

(A) by adding “and” at the end of subparagraph (B),

(B) by striking subparagraph (C), and

(C) by redesignating subparagraph (D) as subparagraph (C).

(2) CONFORMING AMENDMENTS.—Paragraphs (4) and (5)(A) of section 1361(c) (relating to special rules for applying subsection (b)) are each amended by striking “subsection (b)(1)(D)” and inserting “subsection (b)(1)(C)”.

(b) NONRESIDENT ALIEN SHAREHOLDER TREATED AS ENGAGED IN TRADE OR BUSINESS WITHIN UNITED STATES.—

(1) IN GENERAL.—Section 875 is amended—

(A) by striking “and” at the end of paragraph (1),

(B) by striking the period at the end of paragraph (2) and inserting “, and”, and

(C) by adding at the end the following new paragraph:

“(3) a nonresident alien individual shall be considered as being engaged in a trade or business within the United States if the S corporation of which such individual is a shareholder is so engaged.”

(2) APPLICATION OF WITHHOLDING TAX ON NONRESIDENT ALIEN SHAREHOLDERS.—Section 1446 (relating to withholding tax on foreign partners’ share of effectively connected income) is amended by redesignating subsection (f) as subsection (g) and by inserting

after subsection (e) the following new subsection:

“(f) S CORPORATION TREATED AS PARTNERSHIP, ETC.—For purposes of this section—

“(1) an S corporation shall be treated as a partnership,

“(2) the shareholders of such corporation shall be treated as partners of such partnership, and

“(3) any reference to section 704 shall be treated as a reference to section 1366.”

(3) CONFORMING AMENDMENTS.—

(A) The heading of section 875 is amended to read as follows:

“SEC. 875. PARTNERSHIPS; BENEFICIARIES OF ESTATES AND TRUSTS; S CORPORATIONS.”

(B) The heading of section 1446 is amended to read as follows:

“SEC. 1446. WITHHOLDING TAX ON FOREIGN PARTNERS’ AND S CORPORATE SHAREHOLDERS’ SHARE OF EFFECTIVELY CONNECTED INCOME.”

(4) CLERICAL AMENDMENTS.—

(A) The item relating to section 875 in the table of sections for subpart A of part II of subchapter N of chapter 1 is amended to read as follows:

“Sec. 875. Partnerships; beneficiaries of estates and trusts; S corporations.”

(B) The item relating to section 1446 in the table of sections for subchapter A of chapter 3 is amended to read as follows:

“Sec. 1446. Withholding tax on foreign partners’ and S corporate shareholders’ share of effectively connected income.”

(c) PERMANENT ESTABLISHMENT OF PARTNERS AND S CORPORATION SHAREHOLDERS.—Section 894 (relating to income affected by treaty) is amended by adding at the end the following new subsection:

“(c) PERMANENT ESTABLISHMENT OF PARTNERS AND S CORPORATION SHAREHOLDERS.—If a partnership or S corporation has a permanent establishment in the United States (within the meaning of a treaty to which the United States is a party) at any time during a taxable year of such entity, a nonresident alien individual or foreign corporation which is a partner in such partnership, or a nonresident alien individual who is a shareholder in such S corporation, shall be treated as having a permanent establishment in the United States for purposes of such treaty.”

SEC. 3114. ELECTING SMALL BUSINESS TRUSTS.

(a) GENERAL RULE.—Subparagraph (A) of section 1361(c)(2) (relating to certain trusts permitted as shareholders) is amended by inserting after clause (iv) the following new clause:

“(v) An electing small business trust.”

(b) CURRENT BENEFICIARIES TREATED AS SHAREHOLDERS.—Subparagraph (B) of section 1361(c)(2) is amended by adding at the end the following new clause:

“(v) In the case of a trust described in clause (v) of subparagraph (A), each potential current beneficiary of such trust shall be treated as a shareholder; except that, if for any period there is no potential current beneficiary of such trust, such trust shall be treated as the shareholder during such period.”

(c) ELECTING SMALL BUSINESS TRUST DEFINED.—Section 1361 (defining S corporation) is amended by adding at the end the following new subsection:

“(e) ELECTING SMALL BUSINESS TRUST DEFINED.—

“(1) ELECTING SMALL BUSINESS TRUST.—For purposes of this section—

“(A) IN GENERAL.—Except as provided in subparagraph (B), the term ‘electing small business trust’ means any trust if—

“(i) such trust does not have as a beneficiary any person other than an individual,

an estate, or an organization described in section 401(a) or 501(c)(3),

“(ii) no interest in such trust was acquired by purchase, and

“(iii) an election under this subsection applies to such trust.

“(B) CERTAIN TRUSTS NOT ELIGIBLE.—The term ‘electing small business trust’ shall not include—

“(i) any qualified subchapter S trust (as defined in subsection (d)(3)) if an election under subsection (d)(2) applies to any corporation the stock of which is held by such trust, and

“(ii) any trust exempt from tax under this subtitle.

“(C) PURCHASE.—For purposes of subparagraph (A), the term ‘purchase’ means any acquisition if the basis of the property acquired is determined under section 1012.

(2) POTENTIAL CURRENT BENEFICIARY.—For purposes of this section, the term ‘potential current beneficiary’ means, with respect to any period, any person who at any time during such period is entitled to, or at the discretion of any person may receive, a distribution from the principal or income of the trust. If a trust disposes of all of the stock which it holds in an S corporation, then, with respect to such corporation, the term ‘potential current beneficiary’ does not include any person who first met the requirements of the preceding sentence during the 60-day period ending on the date of such disposition.

(3) ELECTION.—An election under this subsection shall be made by the trustee in such manner and form, and at such time, as the Secretary may prescribe. Any such election shall apply to the taxable year of the trust for which made and all subsequent taxable years of such trust unless revoked with the consent of the Secretary.

“(4) CROSS REFERENCE.—

“For special treatment of electing small business trusts, see section 641(d).”

(d) TAXATION OF ELECTING SMALL BUSINESS TRUSTS.—Section 641 (relating to imposition of tax on trusts) is amended by adding at the end the following new subsection:

“(d) SPECIAL RULES FOR TAXATION OF ELECTING SMALL BUSINESS TRUSTS.—

“(1) IN GENERAL.—For purposes of this chapter—

“(A) the portion of any electing small business trust which consists of stock in 1 or more S corporations shall be treated as a separate trust, and

“(B) the amount of the tax imposed by this chapter on such separate trust shall be determined with the modifications of paragraph (2).

“(2) MODIFICATIONS.—For purposes of paragraph (1), the modifications of this paragraph are the following:

“(A) Except as provided in section 1(h), the amount of the tax imposed by section 1(e) shall be determined by using the highest rate of tax set forth in section 1(e).

“(B) The exemption amount under section 55(d) shall be zero.

“(C) The only items of income, loss, deduction, or credit to be taken into account are the following:

“(i) The items required to be taken into account under section 1366.

“(ii) Any gain or loss from the disposition of stock in an S corporation.

“(iii) To the extent provided in regulations, State or local income taxes or administrative expenses to the extent allocable to items described in clauses (i) and (ii).

No deduction or credit shall be allowed for any amount not described in this paragraph, and no item described in this paragraph shall be apportioned to any beneficiary.

“(D) No amount shall be allowed under paragraph (1) or (2) of section 1211(b).

“(3) TREATMENT OF REMAINDER OF TRUST AND DISTRIBUTIONS.—For purposes of determining—

“(A) the amount of the tax imposed by this chapter on the portion of any electing small business trust not treated as a separate trust under paragraph (1), and

“(B) the distributable net income of the entire trust,

the items referred to in paragraph (2)(C) shall be excluded. Except as provided in the preceding sentence, this subsection shall not affect the taxation of any distribution from the trust.

“(4) TREATMENT OF UNUSED DEDUCTIONS WHERE TERMINATION OF SEPARATE TRUST.—If a portion of an electing small business trust ceases to be treated as a separate trust under paragraph (1), any carryover or excess deduction of the separate trust which is referred to in section 642(h) shall be taken into account by the entire trust.

“(5) ELECTING SMALL BUSINESS TRUST.—For purposes of this subsection, the term ‘electing small business trust’ has the meaning given such term by section 1361(e)(1).”

CHAPTER 3—OTHER PROVISIONS

SEC. 3121. EXPANSION OF POST-DEATH QUALIFICATION FOR CERTAIN TRUSTS.

Subparagraph (A) of section 1361(c)(2) (relating to certain trusts permitted as shareholders) is amended—

(1) by striking “60-day period” each place it appears in clauses (i) and (iii) and inserting “2-year period”, and

(2) by striking the last sentence in clause (ii).

Subtitle B—Qualification and Eligibility Requirements for S Corporations

CHAPTER 1—ONE CLASS OF STOCK

SEC. 3201. ISSUANCE OF PREFERRED STOCK PERMITTED.

(a) IN GENERAL.—Section 1361(c), as amended by section 3111(a)(2), is amended by adding at the end the following new paragraph:

“(8) TREATMENT OF QUALIFIED PREFERRED STOCK.—

“(A) IN GENERAL.—Notwithstanding subsection (b)(1)(D), an S corporation may issue qualified preferred stock.

“(B) QUALIFIED PREFERRED STOCK DEFINED.—For purposes of this paragraph, the term ‘qualified preferred stock’ means stock described in section 1504(a)(4) which is issued to a person eligible to hold common stock of an S corporation.

“(C) DISTRIBUTIONS.—A distribution (not in part or full payment in exchange for stock) made by the corporation with respect to qualified preferred stock shall be includible as interest income of the holder and deductible to the corporation as interest expense in computing taxable income under section 1363(b) in the year such distribution is received.”

(b) CONFORMING AMENDMENTS.—

(1) Subparagraph (C) of section 1361(b)(1), as redesignated by section 3113(a)(1)(C), is amended by inserting “except as provided in paragraph (8),” before “have”.

(2) Subsection (a) of section 1366 is amended by adding at the end the following new paragraph:

“(3) ALLOCATION WITH RESPECT TO QUALIFIED PREFERRED STOCK.—The holders of qualified preferred stock shall not, with respect to such stock, be allocated any of the items described in paragraph (1).”

SEC. 3202. FINANCIAL INSTITUTIONS PERMITTED TO HOLD SAFE HARBOR DEBT.

Subparagraph (B) of section 1361(c)(5) (defining straight debt) is amended by adding “and” at the end of clause (i) and by striking clauses (ii) and (iii) and inserting the following:

“(ii) in any case in which the terms of such promise include a provision under which the obligation to pay may be converted (directly or indirectly) into stock of the corporation, such terms, taken as a whole, are substantially the same as the terms which could have been obtained on the effective date of the promise from a person which is not a related person (within the meaning of section 465(b)(3)(C)) to the S corporation or its shareholders, and

“(iii) the creditor is—

“(I) an individual,

“(II) an estate,

“(III) a trust described in paragraph (2), or

“(IV) a person which is actively and regularly engaged in the business of lending money.”

CHAPTER 2—ELECTIONS AND TERMINATIONS

SEC. 3211. RULES RELATING TO INADVERTENT TERMINATIONS AND INVALID ELECTIONS.

(a) GENERAL RULE.—Subsection (f) of section 1362 (relating to inadvertent terminations) is amended to read as follows:

“(f) INADVERTENT INVALID ELECTIONS OR TERMINATIONS.—If—

“(1) an election under subsection (a) by any corporation—

“(A) was not effective for the taxable year for which made (determined without regard to subsection (b)(2)) by reason of a failure to meet the requirements of section 1361(b) or to obtain shareholder consents, or

“(B) was terminated under paragraph (2) of subsection (d),

“(2) the Secretary determines that the circumstances resulting in such ineffectiveness or termination were inadvertent,

“(3) no later than a reasonable period of time after discovery of the circumstances resulting in such ineffectiveness or termination, steps were taken—

“(A) so that the corporation is a small business corporation, or

“(B) to acquire the required shareholder consents, and

“(4) the corporation, and each person who was a shareholder in the corporation at any time during the period specified pursuant to this subsection, agrees to make such adjustments (consistent with the treatment of the corporation as an S corporation) as may be required by the Secretary with respect to such period,

then, notwithstanding the circumstances resulting in such ineffectiveness or termination, such corporation shall be treated as an S corporation during the period specified by the Secretary.”

(b) LATE ELECTIONS.—Subsection (b) of section 1362 is amended by adding at the end the following new paragraph:

“(5) AUTHORITY TO TREAT LATE ELECTIONS AS TIMELY.—If—

“(A) an election under subsection (a) is made for any taxable year (determined without regard to paragraph (3)) after the date prescribed by this subsection for making such election for such taxable year, and

“(B) the Secretary determines that there was reasonable cause for the failure to timely make such election,

the Secretary may treat such election as timely made for such taxable year (and paragraph (3) shall not apply).”

(c) AUTOMATIC WAIVERS.—The Secretary of the Treasury shall provide for an automatic waiver procedure under section 1362(f) of the Internal Revenue Code of 1986 in cases in which the Secretary determines appropriate.

(d) EFFECTIVE DATE.—The amendments made by subsection (a) and (b) shall apply with respect to elections for taxable years beginning after December 31, 1982.

SEC. 3212. AGREEMENT TO TERMINATE YEAR.

Paragraph (2) of section 1377(a) (relating to pro rata share) is amended to read as follows:

“(2) ELECTION TO TERMINATE YEAR.—

“(A) IN GENERAL.—Under regulations prescribed by the Secretary, if any shareholder terminates the shareholder’s interest in the corporation during the taxable year and all affected shareholders agree to the application of this paragraph, paragraph (1) shall be applied to the affected shareholders as if the taxable year consisted of 2 taxable years the first of which ends on the date of the termination.

“(B) AFFECTED SHAREHOLDERS.—For purposes of subparagraph (A), the term ‘affected shareholders’ means the shareholder whose interest is terminated and all shareholders to whom such shareholder has transferred shares during the taxable year. If such shareholder has transferred shares to the corporation, the term ‘affected shareholders’ shall include all persons who are shareholders during the taxable year.”

SEC. 3213. EXPANSION OF POST-TERMINATION TRANSITION PERIOD.

(a) IN GENERAL.—Paragraph (1) of section 1377(b) (relating to post-termination transition period) is amended by striking “and” at the end of subparagraph (A), by redesignating subparagraph (B) as subparagraph (C), and by inserting after subparagraph (A) the following new subparagraph:

“(B) the 120-day period beginning on the date of any determination pursuant to an audit of the taxpayer which follows the termination of the corporation’s election and which adjusts a subchapter S item of income, loss, or deduction of the corporation arising during the S period (as defined in section 1368(e)(2)), and”.

(b) DETERMINATION DEFINED.—Paragraph (2) of section 1377(b) is amended by striking subparagraphs (A) and (B), by redesignating subparagraph (C) as subparagraph (B), and by inserting before subparagraph (B) (as so redesignated) the following new subparagraph:

“(A) a determination as defined in section 1313(a), or”.

(c) REPEAL OF SPECIAL AUDIT PROVISIONS FOR SUBCHAPTER S ITEMS.—

(1) GENERAL RULE.—Subchapter D of chapter 63 (relating to tax treatment of subchapter S items) is hereby repealed.

(2) CONSISTENT TREATMENT REQUIRED.—Section 6037 (relating to return of S corporation), as amended by section 3111(c)(2), is amended by adding at the end the following new subsection:

“(d) SHAREHOLDER’S RETURN MUST BE CONSISTENT WITH CORPORATE RETURN OR SECRETARY NOTIFIED OF INCONSISTENCY.—

“(1) IN GENERAL.—A shareholder of an S corporation shall, on such shareholder’s return, treat a subchapter S item in a manner which is consistent with the treatment of such item on the corporate return.

“(2) NOTIFICATION OF INCONSISTENT TREATMENT.—

“(A) IN GENERAL.—In the case of any subchapter S item, if—

“(i)(I) the corporation has filed a return but the shareholder’s treatment on his return is (or may be) inconsistent with the treatment of the item on the corporate return, or

“(ii) the corporation has not filed a return, and

“(ii) the shareholder files with the Secretary a statement identifying the inconsistency,

paragraph (1) shall not apply to such item.

“(B) SHAREHOLDER RECEIVING INCORRECT INFORMATION.—A shareholder shall be treated as having complied with clause (ii) of subparagraph (A) with respect to a subchapter S item if the shareholder—

“(i) demonstrates to the satisfaction of the Secretary that the treatment of the subchapter S item on the shareholder’s return is consistent with the treatment of the item on the schedule furnished to the shareholder by the corporation, and

“(ii) elects to have this paragraph apply with respect to that item.

“(3) EFFECT OF FAILURE TO NOTIFY.—In any case—

“(A) described in subparagraph (A)(i)(I) of paragraph (2), and

“(B) in which the shareholder does not comply with subparagraph (A)(ii) of paragraph (2),

any adjustment required to make the treatment of the items by such shareholder consistent with the treatment of the items on the corporate return shall be treated as arising out of mathematical or clerical errors and assessed according to section 6213(b)(1). Paragraph (2) of section 6213(b) shall not apply to any assessment referred to in the preceding sentence.

“(4) SUBCHAPTER S ITEM.—For purposes of this subsection, the term ‘subchapter S item’ means any item of an S corporation to the extent that regulations prescribed by the Secretary provide that, for purposes of this subtitle, such item is more appropriately determined at the corporation level than at the shareholder level.

“(5) ADDITION TO TAX FOR FAILURE TO COMPLY WITH SECTION.—

“For addition to tax in the case of a shareholder’s negligence in connection with, or disregard of, the requirements of this section, see part II of subchapter A of chapter 68.”

(3) CONFORMING AMENDMENTS.—

(A) Section 1366 is amended by striking subsection (g).

(B) Subsection (b) of section 6233 is amended to read as follows:

“(b) SIMILAR RULES IN CERTAIN CASES.—If a partnership return is filed for any taxable year but it is determined that there is no entity for such taxable year, to the extent provided in regulations, rules similar to the rules of subsection (a) shall apply.”

(C) The table of subchapters for chapter 63 is amended by striking the item relating to subchapter D.

SEC. 3214. REPEAL OF EXCESSIVE PASSIVE INVESTMENT INCOME AS A TERMINATION EVENT.

(a) IN GENERAL.—Section 1362(d) (relating to termination) is amended by striking paragraph (3).

(b) MODIFICATION OF TAX IMPOSED ON EXCESSIVE PASSIVE INVESTMENT INCOME.—

(1) INCREASE IN THRESHOLD.—Subsections (a)(2) and (b)(1)(A)(i) of section 1375 (relating to tax imposed when passive investment income of a corporation having subchapter C earnings and profits exceeds 25 percent of gross receipts) are each amended by striking “25 percent” and inserting “50 percent”.

(2) TAX RATE INCREASE AFTER THIRD CONSECUTIVE YEAR.—Section 1375 is amended by redesignating subsections (c) and (d) as subsections (d) and (e), respectively, and by inserting after subsection (b) the following new subsection:

“(c) TAX RATE INCREASE AFTER THIRD CONSECUTIVE YEAR.—

“(1) IN GENERAL.—If an S corporation is described in subsection (a) for more than 3 consecutive taxable years, then the rate of tax imposed under subsection (a) with respect to each succeeding consecutive taxable year (if any) shall be determined under the following table:

“In the case of the—	The rate of tax imposed under subsection (a) shall be equal to such rate of tax for the 3rd taxable year, plus the following percentage points:
4th taxable year	10
5th taxable year	20
6th taxable year	30
7th taxable year	40
8th taxable year and thereafter	50.

“(2) YEARS TAKEN INTO ACCOUNT.—No tax shall be increased under paragraph (1) for any taxable year beginning before January 1, 1996.”

(c) CONFORMING AMENDMENTS.—

(1) Section 1362(f)(1) is amended by striking “or (3)”.

(2) Subsection (b) of section 1375 is amended by striking paragraphs (3) and (4) and inserting the following new paragraphs:

“(3) SUBCHAPTER C EARNINGS AND PROFITS.—The term ‘subchapter C earnings and profits’ means earnings and profits of any corporation for any taxable year with respect to which an election under section 1362(a) (or under section 1372 of prior law) was not in effect.

“(4) GROSS RECEIPTS FROM SALES OF CAPITAL ASSETS (OTHER THAN STOCK AND SECURITIES).—In the case of dispositions of capital assets (other than stock and securities), gross receipts from such dispositions shall be taken into account only to the extent of the capital gain net income therefrom.

“(5) PASSIVE INVESTMENT INCOME DEFINED.—

“(A) IN GENERAL.—Except as otherwise provided in this paragraph, the term ‘passive investment income’ means gross receipts derived from royalties, rents, dividends, interest, and annuities.

“(B) EXCEPTION FOR INTEREST ON NOTES FROM SALES OF INVENTORY.—The term ‘passive investment income’ shall not include interest on any obligation acquired in the ordinary course of the corporation’s trade or business from its sale of property described in section 1221(1).

“(C) TREATMENT OF CERTAIN LENDING OR FINANCE COMPANIES.—If the S corporation meets the requirements of section 542(c)(6) for the taxable year, the term ‘passive investment income’ shall not include gross receipts for the taxable year which are derived directly from the active and regular conduct of a lending or finance business (as defined in section 542(d)(1)).

“(D) SPECIAL RULE FOR OPTIONS AND COMMODITY DEALINGS.—

“(1) IN GENERAL.—In the case of any options dealer or commodities dealer, passive investment income shall be determined by not taking into account any gain or loss (in the normal course of the taxpayer’s activity of dealing in or trading section 1256 contracts) from any section 1256 contract or property related to such a contract.

“(ii) DEFINITIONS.—For purposes of this subparagraph—

“(I) OPTIONS DEALER.—The term ‘options dealer’ has the meaning given such term by section 1256(g)(8).

“(II) COMMODITIES DEALER.—The term ‘commodities dealer’ means a person who is actively engaged in trading section 1256 contracts and is registered with a domestic board of trade which is designated as a contract market by the Commodities Futures Trading Commission.

“(III) SECTION 1256 CONTRACT.—The term ‘section 1256 contract’ has the meaning given to such term by section 1256(b).

“(E) COORDINATION WITH SECTION 1374.—The amount of passive investment income shall be determined by not taking into account any recognized built-in gain or loss of the S

corporation for any taxable year in the recognition period. Terms used in the preceding sentence shall have the same respective meaning as when used in section 1374.”

(3) The heading for section 1375 is amended by striking “25” and inserting “50”.

(4) The table of sections for part III of subchapter S of chapter 1 is amended by striking “25” in the item relating to section 1375 and inserting “50”.

(5) Clause (i) of section 1042(c)(4)(A) is amended by striking “section 1362(d)(3)(D)” and inserting “section 1375(b)(5)”.

CHAPTER 3—OTHER PROVISIONS

SEC. 3221. S CORPORATIONS PERMITTED TO HOLD SUBSIDIARIES.

(a) IN GENERAL.—Paragraph (2) of section 1361(b) (defining ineligible corporation), as amended by section 3112, is amended by striking subparagraph (A) and by redesignating subparagraphs (B), (C), (D), and (E) as subparagraphs (A), (B), (C), and (D), respectively.

(b) TREATMENT OF CERTAIN WHOLLY OWNED S CORPORATION SUBSIDIARIES.—Section 1361(b) (defining small business corporation) is amended by adding at the end the following new subsection:

“(3) TREATMENT OF CERTAIN WHOLLY OWNED SUBSIDIARIES.—

“(A) IN GENERAL.—For purposes of this title—

“(i) a corporation which is a qualified subchapter S subsidiary shall not be treated as a separate corporation, and

“(ii) all assets, liabilities, and items of income, deduction, and credit of a qualified subchapter S subsidiary shall be treated as assets, liabilities, and such items (as the case may be) of the S corporation.

“(B) QUALIFIED SUBCHAPTER S SUBSIDIARY.—For purposes of this subsection, the term ‘qualified subchapter S subsidiary’ means any corporation 100 percent of the stock of which is held by an S corporation as of the later of the effective date of the S election of the S corporation or the acquisition of the subsidiary, and at all times thereafter.

“(C) TREATMENT OF TERMINATIONS OF QUALIFIED SUBCHAPTER S SUBSIDIARY STATUS.—For purposes of this subtitle, if any corporation which was a qualified subchapter S subsidiary ceases to meet the requirements of subparagraph (B), such corporation shall be treated as a new corporation acquiring all of its assets (and assuming all of its liabilities) immediately before such cessation from the S corporation in exchange for its stock.”

(c) CERTAIN DIVIDENDS NOT TREATED AS PASSIVE INVESTMENT INCOME.—Section 1375(b)(5) (defining passive investment income), as added by section 3214(c)(2), is amended by adding at the end the following new subparagraph:

“(F) TREATMENT OF CERTAIN DIVIDENDS.—If an S corporation holds stock in a C corporation meeting the requirements of section 1504(a)(2), the term ‘passive investment income’ shall not include dividends from such C corporation to the extent such dividends are attributable to the earnings and profits of such C corporation derived from the active conduct of a trade or business.”

(d) CONFORMING AMENDMENTS.—

(1) Subsection (c) of section 1361, as amended by sections 3111(a)(2) and 3201(a), is amended by striking paragraph (6) and redesignating paragraphs (7) and (8) as paragraphs (6) and (7), respectively.

(2) Subsection (b) of section 1504 (defining includible corporation) is amended by adding at the end the following new paragraph:

“(8) An S corporation.”

SEC. 3222. TREATMENT OF DISTRIBUTIONS DURING LOSS YEARS.

(a) ADJUSTMENTS FOR DISTRIBUTIONS TAKEN INTO ACCOUNT BEFORE LOSSES.—

(1) Subparagraph (A) of section 1366(d)(1) (relating to losses and deductions cannot exceed shareholder's basis in stock and debt) is amended by striking "paragraph (1)" and inserting "paragraphs (1) and (2)(A)".

(2) Subsection (d) of section 1368 (relating to certain adjustments taken into account) is amended by adding at the end the following new sentence:

"In the case of any distribution made during any taxable year, the adjusted basis of the stock shall be determined with regard to the adjustments provided in paragraph (1) of section 1367(a) for the taxable year."

(b) ACCUMULATED ADJUSTMENTS ACCOUNT.—Paragraph (1) of section 1368(e) (relating to accumulated adjustments account) is amended by adding at the end the following new subparagraph:

"(C) NET LOSS FOR YEAR DISREGARDED.—

"(i) IN GENERAL.—In applying this section to distributions made during any taxable year, the amount in the accumulated adjustments account as of the close of such taxable year shall be determined without regard to any net negative adjustment for such taxable year.

"(ii) NET NEGATIVE ADJUSTMENT.—For purposes of clause (i), the term 'net negative adjustment' means, with respect to any taxable year, the excess (if any) of—

"(I) the reductions in the account for the taxable year (other than for distributions), over

"(II) the increases in such account for such taxable year."

(c) CONFORMING AMENDMENTS.—Subparagraph (A) of section 1368(e)(1) is amended—

(1) by striking "as provided in subparagraph (B)" and inserting "as otherwise provided in this paragraph"; and

(2) by striking "section 1367(b)(2)(A)" and inserting "section 1367(a)(2)".

SEC. 3223. CONSENT DIVIDEND FOR AAA BYPASS ELECTION.

Section 1368(e)(3) (relating to election to distribute earnings first) is amended by adding at the end the following new subparagraph:

"(C) CONSENT DIVIDEND.—Under regulations prescribed by the Secretary, an S corporation may, subject to the election under this paragraph, consent to treat as a distribution the amount specified in such consent, to the extent such amount does not exceed the accumulated earnings and profits of such corporation. The amount so specified shall be considered—

"(i) as distributed in money by the corporation to its shareholders on the last day of the taxable year of the corporation and as contributed to the capital of the corporation by the shareholders on such day, and

"(ii) if any such shareholder is an organization described in section 511(a)(2), as unrelated business taxable income (as defined in section 512) to such shareholder."

SEC. 3224. TREATMENT OF S CORPORATIONS UNDER SUBCHAPTER C.

Subsection (a) of section 1371 (relating to application of subchapter C rules) is amended to read as follows:

"(a) APPLICATION OF SUBCHAPTER C RULES.—Except as otherwise provided in this title, and except to the extent inconsistent with this subchapter, subchapter C shall apply to an S corporation and its shareholders."

SEC. 3225. ELIMINATION OF PRE-1983 EARNINGS AND PROFITS.

(a) IN GENERAL.—If—

(1) a corporation was an electing small business corporation under subchapter S of chapter 1 of the Internal Revenue Code of 1986 for any taxable year beginning before January 1, 1983, and

(2) such corporation is an S corporation under subchapter S of chapter 1 of such Code

for its first taxable year beginning after December 31, 1995,

the amount of such corporation's accumulated earnings and profits (as of the beginning of such first taxable year) shall be reduced by an amount equal to the portion (if any) of such accumulated earnings and profits which were accumulated in any taxable year beginning before January 1, 1983, for which such corporation was an electing small business corporation under such subchapter S.

(b) CONFORMING AMENDMENTS.—

(1)(A) Subsection (a) of section 1375 is amended by striking "subchapter C" in paragraph (1) and inserting "accumulated".

(B) Subsection (b) of section 1375, as amended by section 3214(c)(2), is amended by striking paragraph (3) and by redesignating paragraphs (4) and (5) as paragraphs (3) and (4), respectively.

(C) The section heading for section 1375 is amended by striking "subchapter c" and inserting "accumulated".

(D) The table of sections for part III of subchapter S of chapter 1 is amended by striking "subchapter C" in the item relating to section 1375 and inserting "accumulated".

(2) Clause (i) of section 1042(c)(4)(A), as amended by section 3214(c)(5), is amended by striking "section 1375(b)(5)" and inserting "section 1375(b)(4)".

SEC. 3226. ALLOWANCE OF CHARITABLE CONTRIBUTIONS OF INVENTORY AND SCIENTIFIC PROPERTY.

(a) IN GENERAL.—Section 170(e) (relating to certain contributions of ordinary income and capital gain property) is amended—

(1) by striking "(other than a corporation which is an S corporation)" in paragraph (3)(A), and

(2) by striking clause (i) of paragraph (4)(D) and by redesignating clauses (ii) and (iii) of such paragraph as clauses (i) and (ii), respectively.

(b) STOCK BASIS ADJUSTMENT.—Paragraph (1) of section 1367(a) (relating to adjustments to basis of stock of shareholders, etc.) is amended by striking "and" at the end of subparagraph (B), by striking the period at the end of subparagraph (C) and inserting "and", and by adding at the end the following new subparagraph:

"(D) the excess of the deductions for charitable contributions over the basis of the property contributed."

SEC. 3227. C CORPORATION RULES TO APPLY FOR FRINGE BENEFIT PURPOSES.

(a) IN GENERAL.—Section 1372 (relating to partnership rules to apply for fringe benefit purposes) is repealed.

(b) PARTNERSHIP RULES TO APPLY FOR HEALTH INSURANCE COSTS OF CERTAIN S CORPORATION SHAREHOLDERS.—Paragraph (5) of section 162(f) is amended to read as follows:

"(5) TREATMENT OF CERTAIN S CORPORATION SHAREHOLDERS.—

"(A) IN GENERAL.—This subsection shall apply in the case of any 2-percent shareholder of an S corporation, except that—

"(i) for purposes of this subsection, such shareholder's wages (as defined in section 3121) from the S corporation shall be treated as such shareholder's earned income (within the meaning of section 401(c)(1)), and

"(ii) there shall be such adjustments in the application of this subsection as the Secretary may by regulations prescribe.

"(B) 2-PERCENT SHAREHOLDER DEFINED.—For purposes of this paragraph, the term '2-percent shareholder' means any person who owns (or is considered as owning within the meaning of section 318) on any day during the taxable year of the S corporation more than 2 percent of the outstanding stock of such corporation or stock possessing more than 2 percent of the total combined voting power of all stock of such corporation."

(b) CONFORMING AMENDMENT.—The table of sections for part III of subchapter S of chapter 1 is amended by striking the item relating to section 1372.

Subtitle C—Taxation of S Corporation Shareholders

SEC. 3301. UNIFORM TREATMENT OF OWNER-EMPLOYEES UNDER PROHIBITED TRANSACTION RULES.

The last sentence of section 4975(d) (relating to exemptions from prohibited transactions) is amended by striking "a shareholder-employee (as defined in section 1379, as in effect on the day before the date of the enactment of the Subchapter S Revision Act of 1982)".

SEC. 3302. TREATMENT OF LOSSES TO SHAREHOLDERS.

(a) TREATMENT OF LOSSES IN LIQUIDATIONS.—Section 331 (relating to gain or loss to shareholders in corporate liquidations) is amended by redesignating subsection (c) as subsection (d) and by inserting after subsection (b) the following new subsection:

"(c) LOSSES ON LIQUIDATIONS OF S CORPORATION.—

"(1) IN GENERAL.—The portion of any loss recognized by a shareholder of an S corporation (as defined in section 1361(a)(1)) on amounts received by such shareholder in a distribution in complete liquidation of such S corporation which does not exceed the ordinary income basis of stock of such S corporation in the hands of such shareholder shall not be treated as a loss from the sale or exchange of a capital asset but shall be treated as an ordinary loss.

"(2) ORDINARY INCOME BASIS.—For purposes of this subsection, the ordinary income basis of stock of an S corporation in the hands of a shareholder of such S corporation shall be an amount equal to the portion of such shareholder's basis in such stock which is equal to the aggregate increases in such basis under section 1367(a)(1) resulting from such shareholder's pro rata share of ordinary income of such S corporation attributable to the complete liquidation."

(b) CARRYOVER OF DISALLOWED LOSSES AND DEDUCTIONS UNDER AT-RISK RULES ALLOWED.—Paragraph (3) of section 1366(d) (relating to carryover of disallowed losses and deductions to post-termination transition period) is amended by adding at the end the following new subparagraph:

"(D) AT-RISK LIMITATIONS.—To the extent that any increase in adjusted basis described in subparagraph (B) would have increased the shareholder's amount at risk under section 465 if such increase had occurred on the day preceding the commencement of the post-termination transition period, rules similar to the rules described in subparagraphs (A) through (C) shall apply to any losses disallowed by reason of section 465(a)."

Subtitle D—Effective Date

SEC. 3401. EFFECTIVE DATE.

(a) IN GENERAL.—Except as otherwise provided in this title, the amendments made by this title shall apply to taxable years beginning after December 31, 1995.

(b) TREATMENT OF CERTAIN ELECTIONS UNDER PRIOR LAW.—For purposes of section 1362(g) of the Internal Revenue Code of 1986 (relating to election after termination), any termination under section 1362(d) of such Code (as in effect on the day before the date of the enactment of this Act) shall not be taken into account.

TITLE IV—PENSION SIMPLIFICATION

Subtitle A—Simplification of Nondiscrimination Provisions

SEC. 4000. SHORT TITLE.

This title may be cited as the "Pension Simplification Act of 1995".

SEC. 4001. DEFINITION OF HIGHLY COMPENSATED EMPLOYEES; REPEAL OF FAMILY AGGREGATION.

(a) IN GENERAL.—Paragraph (1) of section 414(q) (defining highly compensated employee) is amended to read as follows:

“(1) IN GENERAL.—The term ‘highly compensated employee’ means any employee who—

“(A) was a 5-percent owner at any time during the year or the preceding year,

“(B) had compensation for the preceding year from the employer in excess of \$80,000, or

“(C) was the most highly compensated officer of the employer for the preceding year.

The Secretary shall adjust the \$80,000 amount under subparagraph (B) at the same time and in the same manner as under section 415(d), except that the base period shall be the calendar quarter beginning October 1, 1995.”

(b) SPECIAL RULE WHERE NO EMPLOYEE HAS COMPENSATION OVER SPECIFIED AMOUNT.—Paragraph (2) of section 414(q) is amended to read as follows:

“(2) SPECIAL RULE IF NO EMPLOYEE HAS COMPENSATION OVER SPECIFIED AMOUNT.—

“(A) IN GENERAL.—Except as provided in subparagraph (B), if a defined benefit plan or a defined contribution plan meets the requirements of sections 401(a)(4) and 410(b) with respect to the availability of contributions, benefits, and other plan features, then for all other purposes, subparagraphs (A) and (C) of paragraph (1) shall not apply to such plan.

“(B) EXCEPTION.—Subparagraph (A) shall not apply to a plan to the extent provided in regulations that are prescribed by the Secretary to prevent the evasion of the purposes of this paragraph.”

(c) REPEAL OF FAMILY AGGREGATION RULES.—

(1) IN GENERAL.—Paragraph (6) of section 414(q) is hereby repealed.

(2) COMPENSATION LIMIT.—Paragraph (17)(A) of section 401(a) is amended by striking the last sentence.

(3) DEDUCTION.—Subsection (1) of section 404 is amended by striking the last sentence.

(d) CONFORMING AMENDMENTS.—

(1) Paragraphs (4), (5), (8), and (12) of section 414(q) are hereby repealed.

(2)(A) Section 414(r) is amended by adding at the end the following new paragraph:

“(9) EXCLUDED EMPLOYEES.—For purposes of this subsection, the following employees shall be excluded:

“(A) Employees who have not completed 6 months of service.

“(B) Employees who normally work less than 17½ hours per week.

“(C) Employees who normally work not more than 6 months during any year.

“(D) Employees who have not attained the age of 21.

“(E) Except to the extent provided in regulations, employees who are included in a unit of employees covered by an agreement which the Secretary of Labor finds to be a collective bargaining agreement between employee representatives and the employer.

Except as provided by the Secretary, the employer may elect to apply subparagraph (A), (B), (C), or (D) by substituting a shorter period of service, smaller number of hours or months, or lower age for the period of service, number of hours or months, or age (as the case may be) specified in such subparagraph.”

(B) Subparagraph (A) of section 414(r)(2) is amended by striking “subsection (q)(8)” and inserting “paragraph (9)”.

(3) Section 1114(c)(4) of the Tax Reform Act of 1986 is amended by adding at the end the following new sentence: “Any reference in

this paragraph to section 414(q) shall be treated as a reference to such section as in effect before the Pension Simplification Act of 1995.”

(e) EFFECTIVE DATE.—The amendments made by this section shall apply to years beginning after December 31, 1995, except that in determining whether an employee is a highly compensated employee for years beginning in 1996, such amendments shall be treated as having been in effect for years beginning in 1995.

Subtitle B—Targeted Access to Pension Plans for Small Employers

SEC. 4011. CREDIT FOR PENSION PLAN START-UP COSTS OF SMALL EMPLOYERS.

(a) ALLOWANCE OF CREDIT.—Section 38(b) (defining current year business credit) is amended by striking “plus” at the end of paragraph (10), by striking the period at the end of paragraph (11) and inserting “, plus”, and by adding at the end the following new paragraph:

“(12) the small employer pension plan start-up cost credit.”

(b) SMALL EMPLOYER PENSION PLAN START-UP COST CREDIT.—Subpart D of part IV of subchapter A of chapter 1 (relating to business related credits) is amended by adding at the end the following new section:

“SEC. 45C. SMALL EMPLOYER PENSION PLAN START-UP COST CREDIT.

“(a) AMOUNT OF CREDIT.—For purposes of section 38—

“(1) IN GENERAL.—The small employer pension plan start-up cost credit for any taxable year is an amount equal to the qualified start-up costs of an eligible employer in establishing a qualified pension plan.

“(2) AGGREGATE LIMITATION.—The amount of the credit under paragraph (1) for any taxable year shall not exceed \$1,000, reduced by the aggregate amount determined under this section for all preceding taxable years of the taxpayer.

“(b) QUALIFIED START-UP COSTS; QUALIFIED PENSION PLAN.—For purposes of this section—

“(1) QUALIFIED START-UP COSTS.—The term ‘qualified start-up costs’ means any ordinary and necessary expenses of an eligible employer which—

“(A) are paid or incurred in connection with the establishment of a qualified pension plan, and

“(B) are of a nonrecurring nature.

“(2) QUALIFIED PENSION PLAN.—The term ‘qualified pension plan’ means—

“(A) a plan described in section 401(a) which includes a trust exempt from tax under section 501(a), or

“(B) a simplified employee pension (as defined in section 408(k)).

“(c) ELIGIBLE EMPLOYER.—For purposes of this section—

“(1) IN GENERAL.—The term ‘eligible employer’ means an employer which—

“(A) had an average daily number of employees during the preceding taxable year not in excess of 50, and

“(B) did not make any contributions on behalf of any employee to a qualified pension plan during the 2 taxable years immediately preceding the taxable year.

“(2) PROFESSIONAL SERVICE EMPLOYERS EXCLUDED.—Such term shall not include an employer substantially all of the activities of which involve the performance of services in the fields of health, law, engineering, architecture, accounting, actuarial science, performing arts, or consulting.

“(d) SPECIAL RULES.—For purposes of this section—

“(1) AGGREGATION RULES.—All persons treated as a single employer under subsection (a) or (b) of section 52 or subsection (n) or (o) of section 414 shall be treated as one person.

“(2) DISALLOWANCE OF DEDUCTION.—No deduction shall be allowable under this chapter for any qualified start-up costs for which a credit is allowable under subsection (a).”

(c) CONFORMING AMENDMENTS.—

(1) Section 39(d) is amended by adding at the end the following new paragraph:

“(7) NO CARRYBACK OF PENSION CREDIT.—No portion of the unused business credit for any taxable year which is attributable to the small employer pension plan start-up cost credit determined under section 45C may be carried back to a taxable year ending before the date of the enactment of section 45C.”

(2) The table of sections for subpart D of part IV of subchapter A of chapter 1 is amended by adding at the end the following new item:

“Sec. 45C. Small employer pension plan start-up cost credit.”

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to costs incurred after the date of the enactment of this Act in taxable years ending after such date.

SEC. 4012. MODIFICATIONS OF SIMPLIFIED EMPLOYEE PENSIONS.

(a) INCREASE IN NUMBER OF ALLOWABLE PARTICIPANTS FOR SALARY REDUCTION ARRANGEMENTS.—Section 408(k)(6)(B) is amended by striking “25” each place it appears in the text and heading thereof and inserting “100”.

(b) REPEAL OF PARTICIPATION REQUIREMENT.—

(1) IN GENERAL.—Section 408(k)(6)(A) is amended by striking clause (ii) and by redesignating clauses (iii) and (iv) as clauses (ii) and (iii), respectively.

(2) CONFORMING AMENDMENTS.—Clause (ii) of section 408(k)(6)(C) and clause (ii) of section 408(k)(6)(F) are each amended by striking “subparagraph (A)(iii)” and inserting “subparagraph (A)(ii)”.

(c) ALTERNATIVE TEST.—Clause (ii) of section 408(k)(6)(A), as redesignated by subsection (b)(1), is amended by adding at the end the following new flush sentence:

“The requirements of the preceding sentence are met if the employer makes contributions to the simplified employee pension meeting the requirements of sections 401(k)(11) (B) or (C), 401(k)(11)(D), and 401(m)(10)(B).”

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to years beginning after December 31, 1995.

SEC. 4013. EXEMPTION FROM TOP-HEAVY PLAN REQUIREMENTS.

(a) EXEMPTION FROM TOP-HEAVY PLAN REQUIREMENTS.—Section 416(g) (defining top-heavy plans) is amended by adding at the end the following new paragraph:

“(3) EXEMPTION FOR CERTAIN PLANS.—A plan shall not be treated as a top-heavy plan if, for such plan year, the employer has no highly compensated employees (as defined in section 414(q)) by reason of section 414(q)(2).”

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to years beginning after December 31, 1995.

SEC. 4014. REGULATORY TREATMENT OF SMALL EMPLOYERS.

(a) IN GENERAL.—Section 7805(f) (relating to review of impact of regulations on small business) is amended by adding at the end the following new subparagraph:

“(4) SPECIAL RULE FOR PENSION REGULATIONS.—

“(A) IN GENERAL.—Any regulation proposed to be issued by the Secretary which relates to qualified pension plans shall not take effect unless the Secretary includes provisions to address any special needs of the small employers.

“(B) QUALIFIED PENSION PLAN.—For purposes of this paragraph, the term ‘qualified pension plan’ means—

“(i) any plan which includes a trust described in section 401(a) which is exempt from tax under section 501(a), or

“(ii) any simplified employee pension (as defined in section 408(k)).”

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to regulations issued after the date of the enactment of this Act.

TITLE V—ESTATE TAX EXCLUSION FOR FAMILY-OWNED BUSINESS

SEC. 5001. SHORT TITLE.

This title may be cited as the “American Family-Owned Business Act”.

SEC. 5002. FAMILY-OWNED BUSINESS EXCLUSION.

(a) IN GENERAL.—Part III of subchapter A of chapter 11 (relating to gross estate) is amended by inserting after section 2033 the following new section:

“SEC. 2033A. FAMILY-OWNED BUSINESS EXCLUSION.

“(a) IN GENERAL.—In the case of an estate of a decedent to which this section applies, the value of the gross estate shall not include the lesser of—

“(1) the adjusted value of the qualified family-owned business interests of the decedent otherwise includible in the estate, or

“(2) the sum of—

“(A) \$1,500,000, plus

“(B) 50 percent of the excess (if any) of the adjusted value of such interests over \$1,500,000.

“(b) ESTATES TO WHICH SECTION APPLIES.—This section shall apply to an estate if—

“(1) the decedent was (at the date of the decedent's death) a citizen or resident of the United States,

“(2) the excess of—

“(A) the sum of—

“(I) the adjusted value of the qualified family-owned business interests which—

“(I) are included in determining the value of the gross estate (without regard to this section), and

“(II) are acquired by a qualified heir from, or passed to a qualified heir from, the decedent (within the meaning of section 2032A(e)(9)), plus

“(ii) the amount of the adjusted taxable gifts of such interests from the decedent to members of the decedent's family taken into account under subsection 2001(b)(1)(B), to the extent such interests are continuously held by such members between the date of the gift and the date of the decedent's death, over

“(B) the amount included in the gross estate under section 2035,

exceeds 50 percent of the adjusted gross estate, and

“(3) during the 8-year period ending on the date of the decedent's death there have been periods aggregating 5 years or more during which—

“(A) such interests were owned by the decedent or a member of the decedent's family, and

“(B) there was material participation (within the meaning of section 2032A(e)(6)) by the decedent or a member of the decedent's family in the operation of the business to which such interests relate.

“(c) ADJUSTED GROSS ESTATE.—For purposes of this section, the term ‘adjusted gross estate’ means the value of the gross estate (determined without regard to this section)—

“(1) reduced by any amount deductible under section 2053(a)(4), and

“(2) increased by the excess of—

“(A) the sum of—

“(i) the amount taken into account under subsection (b)(2)(B)), plus

“(ii) the amount of other gifts from the decedent to the decedent's spouse (at the time

of the gift) within 10 years of the date of the decedent's death, plus

“(iii) the amount of other gifts (not included under clause (i) or (ii)) from the decedent within 3 years of such date, over

“(B) the amount included in the gross estate under section 2035.

“(d) ADJUSTED VALUE OF THE QUALIFIED FAMILY-OWNED BUSINESS INTERESTS.—For purposes of this section, the adjusted value of any qualified family-owned business interest is the value of such interest for purposes of this chapter (determined without regard to this section), reduced by the excess of—

“(1) any amount deductible under section 2053(a)(4), over

“(2) the sum of—

“(A) any indebtedness on any qualified residence of the decedent the interest on which is deductible under section 163(h)(3), plus

“(B) any indebtedness to the extent the taxpayer establishes that the proceeds of such indebtedness were used for the payment of educational and medical expenses of the decedent, the decedent's spouse, or the decedent's dependents (within the meaning of section 152), plus

“(C) any indebtedness not described in subparagraph (A) or (B), to the extent such indebtedness does not exceed \$10,000.

“(e) QUALIFIED FAMILY-OWNED BUSINESS INTEREST.—

“(1) IN GENERAL.—For purposes of this section, the term ‘qualified family-owned business interest’ means—

“(A) an interest as a proprietor in a trade or business carried on as a proprietorship, or

“(B) an interest as a partner in a partnership, or stock in a corporation, carrying on a trade or business, if—

“(i) at least—

“(I) 50 percent of such partnership or corporation is owned (directly or indirectly) by the decedent or members of the decedent's family,

“(II) 70 percent of such partnership or corporation is so owned by 2 families (including the decedent's family), or

“(III) 90 percent of such partnership or corporation is so owned by 3 families (including the decedent's family), and

“(ii) at least 30 percent of such partnership or corporation is so owned by each family described in subclause (II) or (III) of clause (i).

“(2) LIMITATION.—Such term shall not include—

“(A) any interest in a trade or business the principal place of business of which is not located in the United States,

“(B) any interest in—

“(i) an entity which had, or

“(ii) an entity which is a member of a controlled group (as defined in section 267(f)(1)) which had,

readily tradable stock or debt on an established securities market or secondary market (as defined by the Secretary) within 3 years of the date of the decedent's death,

“(C) any interest in a trade or business not described in section 542(c)(2), if more than 35 percent of the adjusted ordinary gross income of such trade or business for the taxable year which includes the date of the decedent's death would qualify as personal holding company income (as defined in section 543(a)), and

“(D) that portion of an interest in a trade or business that is attributable to cash or marketable securities, or both, in excess of the reasonably expected day-to-day working capital needs of such trade or business.

“(3) OWNERSHIP RULES.—

“(A) INDIRECT OWNERSHIP.—For purposes of determining indirect ownership under paragraph (1), rules similar to the rules of paragraphs (2) and (3) of section 447(e) shall apply.

“(B) TIERED ENTITIES.—For purposes of this section, if—

“(i) a qualified family-owned business holds an interest in another trade or business, and

“(ii) such interest would be a qualified family-owned business interest if held directly by the family (or families) holding interests in the qualified family-owned business meeting the requirements of paragraph (1)(B),

then the value of the qualified family-owned business shall include the portion attributable to the interest in the other trade or business.

“(f) TAX TREATMENT OF FAILURE TO MATERIALLY PARTICIPATE IN BUSINESS OR DISPOSITIONS OF INTERESTS.—

“(1) IN GENERAL.—There is imposed an additional estate tax if, within 10 years after the date of the decedent's death and before the date of the qualified heir's death—

“(A) the qualified heir ceases to use for the qualified use (within the meaning of section 2032A(c)(6)(B)) the qualified family-owned business interest which was acquired (or passed) from the decedent, or

“(B) the qualified heir disposes of any portion of a qualified family-owned business interest (other than by a disposition to a member of the qualified heir's family or through a qualified conservation contribution under section 170(h)).

“(2) ADDITIONAL ESTATE TAX.—The amount of the additional estate tax imposed by paragraph (1) shall be equal to—

“(A) the adjusted tax difference attributable to the qualified family-owned business interest (as determined under rules similar to the rules of section 2032A(c)(2)(B)), plus

“(B) interest on the amount determined under subparagraph (A) at the annual rate of 4 percent for the period beginning on the date the estate tax liability was due under this chapter and ending on the date such additional estate tax is due.

“(g) OTHER DEFINITIONS AND APPLICABLE RULES.—For purposes of this section—

“(1) QUALIFIED HEIR.—The term ‘qualified heir’—

“(A) has the meaning given to such term by section 2032A(e)(1), and

“(B) includes any active employee of the trade or business to which the qualified family-owned business interest relates if such employee has been employed by such trade or business for a period of at least 10 years before the date of the decedent's death.

“(2) MEMBER OF THE FAMILY.—The term ‘member of the family’ has the meaning given to such term by section 2032A(e)(2).

“(3) APPLICABLE RULES.—Rules similar to the following rules shall apply:

“(A) Section 2032A(b)(4) (relating to decedents who are retired or disabled).

“(B) Section 2032A(b)(5) (relating to special rules for surviving spouses).

“(C) Section 2032A(c)(2)(D) (relating to partial dispositions).

“(D) Section 2032A(c)(3) (relating to only 1 additional tax imposed with respect to any 1 portion).

“(E) Section 2032A(c)(4) (relating to due date).

“(F) Section 2032A(c)(5) (relating to liability for tax; furnishing of bond).

“(G) Section 2032A(c)(7) (relating to no tax if use begins within 2 years; active management by eligible qualified heir treatment as material participation).

“(H) Section 2032A(e)(10) (relating to community property).

“(I) Section 2032A(e)(14) (relating to treatment of replacement property acquired in section 1031 or 1033 transactions).

“(J) Section 2032A(f) (relating to statute of limitations).

“(K) Section 6166(b)(3) (relating to farmhouses and certain other structures taken into account).

“(L) Subparagraphs (B), (C), and (D) of section 6166(g)(1) (relating to acceleration of payment).”

(b) CLERICAL AMENDMENT.—The table of sections for part III of subchapter A of chapter 11 is amended by inserting after the item relating to section 2033 the following new item:

“Sec. 2033A. Family-owned business exclusion.”

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to estates of decedents dying after December 31, 1995.

TITLE VI—SPENDING REDUCTIONS

SEC. 6001. SHORT TITLE.

This title may be cited as the “Spending Reductions Act of 1995”.

SEC. 6002. SERVICE CONTRACTS.

Notwithstanding any other provision of law, of the funds available for fiscal year 1996, the total amount available for service contracts shall not exceed \$105,000,000,000.

SEC. 6003. FEDERALLY FUNDED RESEARCH AND DEVELOPMENT CENTERS.

Notwithstanding any other provision of law, of the funds available for the Department of Defense for fiscal year 1996, the total amount available for procurement of work from federally funded research and development centers shall not exceed \$1,000,000,000.

SEC. 6004. FOREIGN MILITARY FINANCING.

Notwithstanding any other provision of law, of the funds available for fiscal year 1996, the total amount available for the Foreign Military Financing Program under section 23 of the Arms Export Control Act shall not exceed \$3,500,000,000.

BOOST—FIVE-POINT PLAN

1. Taxpayer Bill of Rights 2 (T2). Laws ensuring the IRS treats taxpayers with respect are the key to making our tax system work. The original Taxpayer Bill of Rights, enacted in 1988, took the first step in the battle to achieve this goal. T2 is the next natural step toward requiring the IRS to meet new standards of timeliness, accuracy, and accountability.

2. 100% Health Care Deduction for Self-Employed. Today, large corporations may deduct 100% of the cost of their employees' health care premiums while the self-employed may deduct only 30% of their health insurance costs. There is no reason for treating self-employed workers differently than large corporations. BOOST provides a 75% deduction in 1996 and a permanent 100% deduction for 1997 and thereafter for the self-employed.

3. S Corporation Reform Act. In 1958, S Corporations were first created in the tax law to help small U.S. companies. The S corp rules have been extremely helpful to small businesses. Today, close to \$2 million U.S. companies are S Corps. However, as written in 1958, S corps are very limited and operating as an S corp contains many pitfalls. The S Corporation Reform Act overhauls these outdated rules so small business can better compete in today's financial environment.

4. Small Businesses Pensions. In businesses with less than 25 employees, only 19.6% of the employees have any employer provided pension available, and only 15% of these employees participated in the plan. A major contributing factor to this dismal statistic is the sky-high cost of establishing and maintaining a pension plan for a small business. BOOST provides a maximum \$1000 tax credit for the start-up costs of providing a new plan for employers with 50 or fewer employees,

and it slashes annual nondiscrimination testing requirements for firms where no employee is highly compensated. Thus, BOOST alleviates high cost barriers for small businesses wishing to provide employees a pension.

5. American Family-Owned Business Act. The impact of the estate tax on a family-owned business is devastating because of one simple fact—the rates are too high. On top of this, the tax bill oftentimes comes due abruptly and at a time when the business has lost one of its key assets. The tremendous financial strain causes many family-owned businesses to close. The effect is that jobs are lost, and the community loses the goods and/or services provided by the business. The American Family-Owned Business Act carefully targets estate tax relief to estates whose major asset is its business and whose family members will materially participate in the business in the coming years.

By Mr. BREAUX:

S. 1300. A bill to amend the Internal Revenue Code of 1986 to simplify the method of payment of taxes on distilled spirits; to the Committee on Finance.

THE DISTILLED SPIRITS TAX PAYMENT SIMPLIFICATION ACT OF 1995

• Mr. BREAUX. Mr. President, I introduce the Distilled Spirits Tax Payment Simplification Act of 1995, a bill more readily known as all-in-bond. The bill would streamline the way in which the Government collects the Federal excise tax on distilled spirits by extending the current system of collection now applicable only to imported products to domestic products as well.

Today wholesalers purchase foreign bottled distilled spirits in bond—tax-free—paying the Federal excise tax directly after sale to a retailer. In contrast, when the wholesaler buys domestically bottled spirits—nearly 86 percent of total inventory—the price includes the Federal excise tax, prepaid by the distiller. This means that hundreds of U.S. family owned wholesale businesses increase their inventory carrying costs by 40 percent when buying U.S. products, which must be financed through borrowing.

Under my bill, wholesalers would be allowed to purchase domestically bottled distilled spirits in-bond from distillers just as they are now permitted to purchase foreign produced spirits. Products would become subject to tax on removal from the wholesale premises. Additionally, the Federal tax collection process would be simplified by providing that only one Federal agency collect the tax.

All-in-bond is an equitable and sound way in which to remove the burden of prepayment of the Federal excise tax on domestically bottled spirits while streamlining our tax collection system. I hope my colleagues will join me in cosponsoring this important legislation. •

By Mr. SPECTER:

S. 1301. A bill to amend the Goals 2000: Educate America Act to eliminate the National Education Standards and Improvement Council and requirements concerning opportunity-to-learn

standards, to limit the authority of the Secretary of Education to review and approve State plans, to permit certain local educational agencies to receive funding directly from the Secretary of Education, and for other purposes; to the Committee on Labor and Human Resources.

GOALS 2000 LEGISLATION

Mr. SPECTER. Mr. President, back in 1983, when President Reagan's Education Secretary, Terrell Bell, issued that now-famous report on the problems of education in this country he called that report “A Nation at Risk.” Not a school district at risk. Not a State at risk. But a nation at risk.

Recognizing the need to improve educational achievement of this Nation's children, Governors of both parties launched a program to raise the achievement standards in American schools and a national education goals effort was embraced at the 1989 education summit in Charlottesville.

That effort culminated early last year, when a bipartisan majority in Congress voted to approve Goals 2000 legislation. That legislation supports development of model national academic standards in 13 subjects, standards that any school district may use as guides.

The Goals 2000 legislation also authorizes grants to States to help reform their schools so they can achieve their education goals. Participating States must develop challenging State content and performance standards and assessments aligned with those standards.

Since the passage of Goals 2000, 48 States have applied for and received funding. Two States, Virginia and New Hampshire, have refused the funds and have taken issue with the intent of Goals 2000, citing fears of Federal intrusion. A third State, Montana, has declined to receive 2d year funding; and a fourth State, Alabama, announced last week that it was ending its participation. In addition, a number of organizations have leveled a wide assortment of charges against Goals 2000.

Some say the legislation usurps State and local control over education. Others say it does no such thing and represents unprecedented flexibility in Federal legislation.

All of the concerns expressed, however, ultimately focus on what is the most appropriate and effective Federal role in elementary and secondary education.

By way of background and to help put this in context, let me review a few facts.

States now contribute about 36 percent of the cost of running our schools; local agencies contribute 26 percent, and private institutions account for 30 percent. The Federal Government's financial stake amounts to less than 10 percent.

If one agrees with the old adage that money is power, then it appears that the principal responsibility for running our schools continues to rest with the States and with local communities.

Where the Federal Government has traditionally played an important role in helping to build partnerships among States, communities, and private institutions; and in helping to disseminate information on what works in one part of the country to others which may be struggling with the same problem. In that regard, I have always believed that the Federal Government can play an important part in helping to ensure a degree of fairness and equity for all our children.

The Labor, Health, and Human Services and Education Subcommittee which I chair recently held a hearing on the Goals 2000 issue. To help us better understand the controversy surrounding goals, the subcommittee heard from two witnesses.

Our first witness was Education Secretary Richard Riley, who testified in support of the Goals 2000 legislation and the administration's request of \$750 million for fiscal year 1996.

Our second witness was Mr. Ovide Lamontagne, who chairs the New Hampshire State Board of Education. Specifically, Mr. Lamontagne raised concerns about the Secretary of Education's ability to review and approve a State's plan for its entire educational system, which he considered unprecedented. After much discussion with Mr. Lamontagne and Secretary Riley, the Secretary seemed to think he could live without that provision. Mr. Lamontagne also stated that eliminating secretarial review and approval would go a long way toward improving the legislation.

We also addressed the issue of school districts receiving funds directly from the Secretary, if their States chose not to participate in Goals 2000. In addition, discussions were held concerning the National Education Standards and Improvement Council [NESIC] and both the Secretary and Mr. Lamontagne agreed that eliminating the Council would be desirable.

The legislation which I am introducing today addresses the concerns of States that have chosen not to participate in Goals 2000. Specifically, the legislation:

Permits school districts, in States that elect not to participate in the Goals 2000 Program, to apply directly to the Secretary of Education for Goals 2000 funding.

Eliminates the requirement that States submit their plans to the Secretary of Education.

Removes the authority of the Secretary of Education to review and approve State plans.

Deletes the requirements for the composition of State and local panels that develop State and local improvement plans.

Eliminates the National Education Standards and Improvement Council [NESIC], which was to certify national and State standards, and which some viewed as a national school board.

Removes the requirement for States to develop opportunity-to-learn stand-

ards. These standards would specify the educational resources—such as funding, facilities, and materials—deemed necessary for local schools to achieve State or national content and performance standards.

It is my hope that this legislation will improve Goals 2000 so that all States will feel they are able to participate in this important program because it strikes the proper balance between State and local responsibility for education and Federal leadership.

By Ms. MIKULSKI:

S. 1302. A bill to restore competitiveness to the sugar industry by reforming the Federal Sugar Program and thereby ensuring that consumers have an uninterrupted supply of sugar at reasonable prices, and for other purposes; to the Committee on Agriculture, Nutrition, and Forestry.

THE SUGAR COMPETITIVENESS ACT OF 1995

• Ms. MIKULSKI. Mr. President, today I am introducing legislation to dramatically reform the sugar program run by the Department of Agriculture. My bill, the Sugar Competitiveness Act, is designed to restore competitiveness to the sugar industry by reducing Government intervention in the marketplace.

Since the present sugar policy was enacted in 1981 we have seen 10 of the sugar refining industry's 22 refineries close. Another refinery is scheduled to close permanently in the near future. The industry has lost over 40 percent of its capacity, not to mention the thousands of blue-collar jobs that go with it.

My own hometown of Baltimore is home to a sugar refining plant. Generations of workers have walked through the gates of Domino sugar every morning to give an honest day's work for an honest day's pay. My bill is designed to save those jobs and preserve the future of the sugar refining industry.

Today, refiners are being forced to operate under an absurd situation in which the Department of Agriculture is forcing up the price of their raw material—raw cane sugar—to a level higher than the price of refined beet sugar. The USDA creates this artificial shortage by tightly restricting imports.

As a result of this Government-inflicted shortage of raw sugar, it has become impossible for refiners to compete. All refiners have been losing money for months.

Recently, refiners have been forced to pay 24 to 25 cents per pound for raw sugar, while their competitors, the beet sugar processors, have been selling refined sugar at those levels. It is impossible for refiners to cover these increased raw sugar costs in the refined sugar market.

But, there is more at stake here than the survival of the refining industry and its labor. Refiners provide over 50 percent of the sugar marketed in the United States. They play an important and unique role in ensuring that food processors and consumers have an un-

interrupted supply of sugar under all circumstances.

When there is a domestic crop shortage, caused by a freeze or drought, as there often is, food processors depend upon the refiners to fill the void by importing more sugar. Any further loss of refining capacity will seriously endanger the Nation's sugar supply, to the detriment of consumers and food processors throughout the country.

The first thing my bill would do is eliminate USDA marketing allotments. These allotments limit the amount of sugar that domestic sugarcane and sugar beet processors can sell.

The second thing the bill does is to reduce the raw sugar cane loan rate from 18 cents to 12 cents per pound in stages, 2 cents per year for 3 years. Currently the USDA offers loans at a floor of 18 cents per pound for raw cane sugar, which is nearly double the world price of sugar. These loans set minimum prices that sugar processors must pay to producers, which drive up the cost of sugar for consumers.

Third, my bill regulates sugar imports to ensure that the market for raw cane sugar does not exceed the loan rate or the world market price, whichever is higher. Because the sugar program is designed as a no-net-cost subsidy, and the loans are non-recourse, the USDA keeps the market price for sugar processors much higher than necessary.

The fourth effect this legislation would have is to provide for 3-month CCC loans, and convert those loans from a non-recourse to a recourse basis. Under the current loan structure, sugar processors must put up sugar as collateral for loans. At the end of the present 9-month loan, the processor must decide to do one of two things, pay back the loan with interest or forfeit the sugar they put up as collateral. Processors can choose to simply hold on to the Government's money and forfeit the sugar collateral if it is more profitable.

If the processor forfeits, the disposition of the collateral sugar would fall to USDA. In order to avoid that possibility USDA maintains the market price much higher than the loan rate. Why should the taxpayer subsidize non-recourse loans to corporations? My bill would correct the situation to the benefit of consumers by changing the loan structure to a recourse loan, which requires that processors repay the loan instead of simply forfeiting the sugar to USDA.

Finally, the proposed legislation increases the sugar marketing assessment, and extends it to imported sugar. The sugar marketing assessment is a fee paid by domestic processors to the CCC. Currently foreign processors who are allowed to sell limited amounts of sugar in the United States do not have to pay this. This bill levels the playing field between foreign and domestic processors.

Mr. President, America is at the crossroads. Over the past decade we

have seen manufacturing jobs disappear in city after city. We have seen good paying jobs move out of our urban areas if not out of the country. Cities are being decimated by the flight of the middle class. Plants are closing and the jobs that honest, hard-working Americans rely on to feed their kids and put food on the table are disappearing.

I've decided that I'm not just going to stand by and watch. This Congress owes it to working men and women to do all we can to preserve those jobs, to level the playing field and to allow those that have made America a world economic leader to continue that job. When we talk about the current sugar program we're talking about a bad Federal policy that tears at the backbone of American manufacturing.

I think this bill moves the sugar program toward a more competitive base and will have dramatic impacts on lowering the price of sugar to consumers by letting market conditions dictate sugar prices instead of the U.S. Government.●

By Mr. McCAIN (for himself, Mr. BAUCUS, Mr. BINGAMAN, Mr. CAMPBELL, Mr. INOUE, Mr. KYL, Mr. STEVENS, and Mr. THOMAS):

S. 1303. A bill to amend the Internal Revenue Code of 1986 to provide tax credits for Indian investment and employment, and for other purposes; to the Committee on Finance.

By Mr. McCAIN (for himself, Mr. BAUCUS, Mr. BINGAMAN, Mr. DOMENICI, Mr. FEINGOLD, Mr. INOUE, Mr. KOHL, Mr. KYL, Mr. STEVENS, and Mr. THOMAS):

S. 1304. A bill to provide for the treatment of Indian tribal governments under section 403(b) of the Internal Revenue Code of 1986; to the Committee on Finance.

By Mr. McCAIN (for himself, Mr. BAUCUS, Mr. CAMPBELL, Mr. DOMENICI, Mr. INOUE, Mr. KYL, Mr. STEVENS, and Mr. THOMAS):

S. 1305. A bill to amend the Internal Revenue Code of 1986 to treat for unemployment compensation purposes Indian tribal governments the same as State or local units of government or nonprofit organizations; to the Committee on Finance.

By Mr. McCAIN (for himself, Mr. BAUCUS, Mr. CAMPBELL, Mr. DOMENICI, Mr. INOUE, and Mr. KYL):

S. 1306. A bill to amend the Internal Revenue Code of 1986 to provide for the issuance of tax-exempt bonds by Indian tribal governments, and for other purposes; to the Committee on Finance.

By Mr. McCAIN (for himself, Mr. BAUCUS, Mr. DOMENICI, and Mr. INOUE):

S. 1307. A bill to amend the Internal Revenue Code of 1986 to exempt from income taxation income derived by a

member of an Indian tribe directly or through a qualified Indian entity derived from natural resource activities; to the Committee on Finance.

INDIAN TRIBAL RESERVATION TAX RELIEF
LEGISLATION

● Mr. McCAIN. Mr. President, I introduce a series of tax relief bills designed to encourage investment and economic development and growth on Indian Reservations and other native American communities throughout the United States.

Let me put it in plain and simple terms, native Americans as a group have experienced a grinding poverty of epidemic proportions since the days when they were first uprooted from their homelands or overrun by settlers. The treaties that the United States made with tribes in exchange for their land and peace have been honored, for most part, only in the breach.

The economic conditions on Indian reservations have not been improved by the occasional periods of economic growth that have swept much of the rest of our Nation. Instead, Indians have long suffered the indignity of promises broken, treaties discarded, and a hopelessness that reaches tragic, personal dimensions. Many Indian reservations are, relatively speaking, islands of poverty in the ocean of wealth that is the rest of America.

On repeated occasions in the last several sessions of the Congress, I have offered amendments to the Federal Tax Code that would create incentives for private sector investment on Indian reservations and that would remove inequities in the Federal Tax Code so that tribal governments can enjoy the same tax benefits accorded other non-taxable government entities. I have offered these provisions, not to authorize any particular advantage to Indians, but merely to give them the same kind of tax incentives and benefits the Congress has given other economically depressed areas and other units of government. Given the extremely underdeveloped nature of the economies in native American communities, I believe the tax relief we have promised the American people must include reasonable measures to stimulate economic growth and productivity for Indians.

Today I am introducing a series of measures that are designed to amend the Tax Code to give Indian tribes some tools with which to join with the private sector in improving their economies.

RESERVATION INVESTMENT TAX CREDIT

I rise today on behalf of myself, Senator BAUCUS, Senator BINGAMAN, Senator CAMPBELL, Senator INOUE, Senator KYL, Senator STEVENS, and Senator THOMAS, to introduce the Indian Reservation Jobs and Investment Act of 1995. This bill is identical to provisions that passed the Congress in 1992 and were sent to the White House where they were vetoed because they were part of a larger bill containing other provisions opposed by the Bush

administration. The measure I am reintroducing today would provide tax credits to otherwise taxable business enterprises if they locate certain kinds of income-producing property on Indian reservations. Credits would be extended to businesses placing new personal property, new construction property, and infrastructure investment property on Indian reservations.

The bill does not provide any tax credit for reservation property used in connection with gaming activities. The credits are available for expenditures related to personal property used in a business or trade on an Indian reservation, related to new construction of property to be used in a business or trade on an Indian reservation, or related to investment in reservation infrastructure that is available for use by the general public and is placed in serve in connection with a reservation business or trade.

The bill limits these credits to those reservations where there is economic need. The full credit is available to those reservations whose Indian unemployment rate exceeds the Nation's average unemployment by 300 percent. One-half of the credit is available on reservations where the unemployment rate is 150 to 300 percent of the national average. No investment tax credit is provided taxpayers on reservations where the Indian unemployment rate is less than 150 percent of the national average.

Mr. President, I am very concerned by how little private enterprise is present on Indian reservations. Typically the only economic activity is the generated by Federal or tribal government employment. I understand why this is the case, but I don't like the fact that it is the main way jobs and wealth are created in Indian country. By their very nature, governments, including tribal governments, simply are not good at running businesses. I know this is acknowledged by many tribes, who, consistent with their cultural traditions, have created tribal corporations or cooperative ventures that mix private sector business with tribal principles. But we must begin to see private investment being attracted to Indian reservations if we are to see any significant improvement in the economies of Indian tribes. The reservation tax credit provisions I am introducing today are designed to act as an incentive to encourage the private business sector to plow through many of the known obstacles to reservation economic development.

SECTION 403(b) PENSION RELIEF

On a second measure, I rise today on behalf of myself, Senator BAUCUS, Senator BINGAMAN, Senator DOMENICI, Senator FEINGOLD, Senator INOUE, Senator KOHL, Senator KYL, Senator STEVENS, and Senator THOMAS, to introduce the Indian Tribal Government Pension Tax Relief Amendments of 1995. This bill would help address some very serious ambiguities currently found in the Tax Code relating to the

availability of pension plans for Indian tribal governments and their employees. Under current law, there are no salary deferred pension plans expressly made available to Indian tribal governments and their employees.

Employees of Indian tribal governments are perhaps the only group of workers in America for whom current Federal tax law does not provide express authority for a tax-deferred pension plan. Commercial for-profit corporations and partnerships can offer section 401(k) retirement benefits to their employees. Public school systems and tax-exempt charitable and educational organizations can offer section 403(b) pension plans to their employees. State government employees have access to similar pension benefits under section 457. But people who work for tribal governments are not expressly authorized to have favorable Federal income tax treatment on their pension plans.

The bill also addresses an additional problem that has arisen from the fact that several tribes have participated in plans provided for under Section 403(b) of the Code and promoted by insurance underwriters, only later to find that such plans were not expressly intended for their use as governmental employees involved in activities other than education. Those retirement funds, affecting several tribes and the retirement savings of thousands of tribal employees, are now in jeopardy.

The pension relief measure I am introducing would enable tribal governments to compete, on the same terms, with other private and public sectors employers in attracting qualified employees. Let me be clear—this measure would give tribal workers no more tax relief than is already offered every other group of workers in our country. Mr. President, as we all know, many individuals choose who they will work for based on what employment benefits are offered, including retirement and pension plans. Many tribes have been trying to raise their salary and health benefits to competitive levels. But the Federal Tax Code has been increasingly interpreted by the Internal Revenue Service to prohibit tribes from offering their employees any form of the typical salary reduction pension plans, one of the most sought after benefits offered to prospective employees. Other units of government and tax exempt organizations are permitted to offer such plans. The fact that tribal governments are precluded from doing so is simply unfair. This injustice would be corrected by enactment of the Indian Tribal Government Pension Tax Relief Amendments of 1995.

The bill would expressly qualify, as tax-sheltered annuities under section 403(b) of the Internal Revenue Code, those annuity contracts purchased by employees of tribal governments. The Joint Committee on Tax has estimated that proposals largely identical to this one would have a negligible revenue effect on Federal fiscal year budget re-

ceipts. I am pleased to introduce this measure and urge my colleagues to support it and include it in the pending tax relief legislation under consideration.

TRIBAL UNEMPLOYMENT TAX EQUITY AND
RELIEF

Mr. President, on a third measure, I rise today on behalf of myself, Senator BAUCUS, Senator CAMPBELL, Senator DOMENICI, Senator INOUE, Senator KYL, Senator STEVENS, and Senator THOMAS, to introduce the Indian Tribal Government Unemployment Compensation Act Tax Relief Amendments of 1995. This bill would correct a serious oversight in the way the Internal Revenue Code treats Indian tribal governments for unemployment tax purposes under the unique, State-Federal unemployment program authorized by the Federal Unemployment Tax Act [FUTA]. It would clarify existing tax statutes so that tribal governments are treated just as State and local units of governments are treated for unemployment tax purposes.

It is well-settled that tribal governments are not taxable entities under the Federal Tax Code because of their governmental status. But in recent years, the Internal Revenue Service has begun to advance an interpretation of FUTA that is particularly burdensome to Indian tribal governments. While FUTA expressly exempts all tax-exempt charitable organizations and all State and local units of government from paying the Federal portion of the FUTA tax, it does not expressly mention tribal governments.

FUTA involves a joint Federal-State taxation system that levies two taxes on most employers: An 0.8 percent unemployment tax and a State unemployment tax ranging up to more than 9 percent of a portion of an employer's payroll. Since its enactment in the 1930s, FUTA has treated foreign, Federal, State, and local government employers differently from private commercial business employers. It exempts all foreign, Federal, State, and local government employers from the 0.8 percent Federal FUTA tax. It exempts foreign and Federal Government employers from State unemployment programs and allows State and local government employers to pay lower State unemployment taxes. FUTA also treats income tax-exempt charitable organizations the same as State and local governments. All other private sector employers pay both the Federal and State FUTA tax rates. The FUTA statute does not expressly include tribal government employers within the definition of government employers.

The IRS has chosen in recent years to pursue some tribal governments for unpaid FUTA taxes who has proceeded on the good faith assumption that they, as units of government, were immune from the Federal portion of the tax. Some tribal governments also chose not to participate in the State unemployment programs. In such cases, former employees of the tribal

governments, who were otherwise eligible for unemployment benefits, were denied benefits by many State unemployment programs because they had worked for what the States deemed an exempt employer—a tribal government. While this caused hardship on the former employees of tribal governments, it meant that the State unemployment funds were held harmless.

The IRS interpretation has caused another problem in recent years, as tribal governments have been subject to differing interpretations over whether and how they are covered under FUTA. The interpretations of FUTA made by State governments, the U.S. Internal Revenue Service, and the U.S. Department of Labor have varied from region to region and State to State, resulting in differing treatment of Indian tribal governments in different periods of time. This has led to considerable confusion among tribal governments about the amount they are supposed to pay. Some tribes have paid the Federal FUTA tax and then successfully obtained tax refunds because they were deemed exempt. Some tribes have not paid, assuming they were exempt, and then have been investigated by the IRS for nonpayment of hundreds of thousands of dollars in unemployment taxes, plus penalties and interest. Some tribes have paid taxes; other tribes have not had to pay. In each case, the tribes are identically situated but are treated differently simply because they are located within differing IRS regions or have been scrutinized by different IRS agents. This inconsistency of interpretation has also resulted in many former tribal government employees being denied eligibility to receive unemployment benefits.

Now the IRS has begun to pursue these tribes to collect unpaid assessments in the form of a penal tax under FUTA's unique enforcement mechanisms. Under FUTA, none of the funds assessed and collected would be paid as unemployment benefits to former employees of a tribal government that had not participated under FUTA. Nor would these dollars return to the State funds in which the tribes did not participate. Instead, the Federal IRS would collect the highest possible State and Federal unemployment taxes and place all of these funds directly into the U.S. Treasury without credit or benefit to any workers, Indian or otherwise. No one can reasonably argue that it is fair to impose this kind of taxation without benefit on the meager funds of an Indian tribal government simply because it has followed an interpretation of FUTA that some regional offices of the IRS and the States previously followed but now have abandoned.

The bill would also expressly authorize tribal governments, like State and local units of government, and like charitable organizations, to contribute to a State fund on a reimbursable basis for unemployment benefits actually paid out. Private sector employers

typically must pay an unemployment tax in advance. The rationale for reimbursed status is that governmental employers, like tribes and States, have a far more stable employment environment than that of the private sector, and that governmental revenue should not be committed to such purposes in advance of when the obligation to pay arises. Let me be clear, this bill would ensure that tribes participate in the unemployment compensation system. Many now do not do so. Their participation would be on the same terms that other governments participate.

The bill I am introducing today would permanently resolve this matter across the Nation for every Indian tribal government. For unemployment tax purposes, it would require that federally recognized Indian tribal government employers be treated the same way Federal, State, local government, and other tax-exempt organizations are treated. It would also remove an unemployment tax liability of tribal governments who did not pay unemployment compensation taxes in the past in the belief that they were exempt, provided that no benefits were paid to their former employer. I have requested a revenue estimate from the Joint Committee on Taxation. I believe, however, that the bill would have only a negligible effect on revenues.

Unless this problem is resolved, many former tribal government employees will continue to be denied benefits by State unemployment funds. I believe Indian and non-Indian workers who are separated from tribal governmental employment should be included within our Nation's comprehensive unemployment benefit system, and this bill will go a long way toward ensuring mandatory participation by tribal governments on a fair and equitable basis in the Federal-State unemployment fund system. I can think of nothing more fair than the approach clarified in this bill. I urge my colleagues to support it and include it in the pending tax relief legislation under consideration.

TRIBAL TAX-EXEMPT BOND AUTHORITY

Mr. President, on a fourth measure, I rise today on behalf of myself, Senator BAUCUS, Senator CAMPBELL, Senator DOMENICI, Senator INOUE, and Senator KYL, to introduce the Tribal Government Tax-Exempt Bond Authority Amendments Act of 1995. This bill would bring new investment dollars to Indian reservations where capital formation is so desperately needed. The bill would replace the current restrictions on the issuance of tax-exempt bonds by tribes and tribal subdivisions with a provision that such bonds are to be issued under slightly more restrictive conditions than those that now apply to States and their political subdivisions. In 1982, the Congress adopted the Indian Tribal Governmental Tax Status Act of 1982—Public Law 97-473—which, among other things, authorized tribes and tribal subdivisions to issue tax-exempt bonds for certain purposes.

In 1987, the Congress amended that act in Public Law 100-203, limiting the purposes for which tribes and tribal subdivisions could issue tax-exempt bonds to two: First, essential governmental functions, defined as functions customarily performed by State and local governments with general taxing powers, and second, certain tribally owned manufacturing facilities. The 1987 amendments were adopted to address perceived abuses in the issuance of tax-exempt bonds by tribes for purposes not related to their reservations and for the earning of arbitrage by issuing tax-exempt bonds at low rates for the purpose of investing the proceeds in higher-yielding, taxable obligations. The fact of the matter is that these abuses were effectively curtailed by the amendment to section 103 of the Internal Revenue Code enacted in 1986 and subsequently implemented and enforced. Tribes have informed the Committee on Indian Affairs that the 1987 restrictions on tribal government bonds are unfairly restrictive, in that the interpretation of what is an "essential governmental function" has been unduly limiting, given the type of activities that are customarily carried out by tribal governments for the benefit of their members and their reservations. Mr. President, there are serious deficiencies in the basic infrastructure on Indian reservations, primarily because increasingly tight fiscal restraints have limited the ability of the United States, through direct annual appropriations, to fund construction and other activities. Reservations lag far behind the rest of the United States in terms of sanitation, housing, roads, basic utilities, and public service facilities necessary to support a civilized society and a competitive economy. I believe that providing additional tax-exempt bond authority to tribal governments will go a long way toward attracting new sources of capital to Indian reservations. I urge my colleagues to support this bill and to include it in the pending tax relief legislation under consideration.

TRIBAL NATURAL RESOURCE TAX RELIEF

Mr. President, on a fifth measure, I rise today on behalf of myself, Senator BAUCUS, Senator DOMENICI, and Senator INOUE to introduce the Treatment of Indian Tribal Natural Resource Income Act of 1995. This bill would extend an exemption to income derived by individual Indians from the harvest of natural resources from tribal trust land that is now extended to income derived by individual Indians from treaty-protected Indian fishing activity. In 1988 Congress amended the Internal Revenue Code to provide the treaty fishing exemption under section 7873, which serves as a model for this bill.

With most Indian reservations, tribes signing treaties with the United States assumed that the natural resources of the reservation, including timber and minerals, would be available for the use of the tribe and its members with-

out taxation or other burden imposed by the United States. Accordingly, due to their status as nontaxable sovereign nations, tribal governments are not subject to Federal income tax under current law and practice on revenues generated when the tribal government carries out natural resource activities on the tribal trust land. However, in those cases where a tribe issues a subsistence permit or license to individual tribal members to harvest or process natural resources held in trust for the tribe by the United States, the Internal Revenue Service has been imposing a tax on that individual Indian's income. Such a tax is unfair and arbitrary, since in a 1956 case, *Squire versus Capoeman*, the U.S. Supreme Court ruled that natural resource income earned by individual Indians from their own individual allotments held in trust for them by the United States is exempt. That case did not deal with individual income derived from lands held in trust for an entire tribe. Recently the IRS has begun to take enforcement action to collect income taxes from Indian individuals harvesting the fruits of tribal trust lands. The effect of this IRS interpretation has been to impose a tax on income from Indian tribal trust lands which were never broken up and allotted, but not from allotted trust lands held for an individual Indian.

The bill I am introducing today would apply only to tribal members and only with regard to natural resources, underlying title to which is owned by the United States in trust for a tribe. It would remove the existing anomaly which allows a tribe as a whole to harvest or process such resources free of tax, but imposes an income tax on an individual tribal member of that tribe carrying out activity permitted by the tribe. I urge my colleagues to support this bill and to include it in the pending tax relief legislation under consideration.

Mr. President, I ask unanimous consent that a copy of each of the five bills I am introducing today, as well as a section-by-section description of each bill's provisions, be inserted in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

S. 1303

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Indian Reservation Jobs and Investment Act of 1995".

SEC. 2. INVESTMENT TAX CREDIT FOR PROPERTY ON INDIAN RESERVATIONS.

(a) ALLOWANCE OF INDIAN RESERVATION CREDIT.—Section 46 of the Internal Revenue Code of 1986 (relating to investment credits) is amended by striking "and" at the end of paragraph (2), by striking the period at the end of paragraph (3) and inserting ", and", and by adding after paragraph (3) the following new paragraph:

"(4) the Indian reservation credit."

(b) AMOUNT OF INDIAN RESERVATION CREDIT.—

(1) IN GENERAL.—Section 48 of such Code (relating to the energy credit and the reforestation credit) is amended by adding after subsection (b) the following new subsection:“(c) INDIAN RESERVATION CREDIT.—

“(1) IN GENERAL.—For purposes of section 46, the Indian reservation credit for any taxable year is the Indian reservation percentage of the qualified investment in qualified Indian reservation property placed in service during such taxable year, determined in accordance with the following table:

The Indian reservation percentage is—	Indian reservation property which is—
.....	Reservation personal property
10
15	New reservation construction property.
15	Reservation infrastructure investment.

“(2) QUALIFIED INVESTMENT IN QUALIFIED INDIAN RESERVATION PROPERTY DEFINED.—For purposes of this subpart—

“(A) IN GENERAL.—The term ‘qualified Indian reservation property’ means property—

- “(i) which is—
- “(I) reservation personal property;
- “(II) new reservation construction property; or
- “(III) reservation infrastructure investment; and

“(ii) not acquired (directly or indirectly) by the taxpayer from a person who is related to the taxpayer (within the meaning of section 465(b)(3)(C)).

The term ‘qualified Indian reservation property’ does not include any property (or any portion thereof) placed in service for purposes of conducting or housing class I, II, or III gaming (as defined in section 4 of the Indian Gaming Regulatory Act (25 U.S.C. 2703)).

“(B) QUALIFIED INVESTMENT.—The term ‘qualified investment’ means—

“(i) in the case of reservation infrastructure investment, the amount expended by the taxpayer for the acquisition or construction of the reservation infrastructure investment; and

“(ii) in the case of all other qualified Indian reservation property, the taxpayer’s basis for such property.

“(C) RESERVATION PERSONAL PROPERTY.—The term ‘reservation personal property’ means qualified personal property which is used by the taxpayer predominantly in the active conduct of a trade or business within an Indian reservation.

Property shall not be treated as ‘reservation personal property’ if it is used or located outside the Indian reservation on a regular basis.

“(D) QUALIFIED PERSONAL PROPERTY.—The term ‘qualified personal property’ means property—

- “(i) for which depreciation is allowable under section 168;
- “(ii) which is not—
- “(I) nonresidential real property;
- “(II) residential rental property; or
- “(III) real property which is not described in (I) or (II) and which has a class life of more than 12.5 years.

For purposes of this subparagraph, the terms ‘nonresidential real property’, ‘residential rental property’, and ‘class life’ have the respective meanings given such terms by section 168.

“(E) NEW RESERVATION CONSTRUCTION PROPERTY.—The term ‘new reservation construction property’ means qualified real property—

- “(i) which is located in an Indian reservation;
- “(ii) which is used by the taxpayer predominantly in the active conduct of a trade or business within an Indian reservation; and

“(iii) which is originally placed in service by the taxpayer.

“(F) QUALIFIED REAL PROPERTY.—The term ‘qualified real property’ means property for which depreciation is allowable under section 168 and which is described in clause (I), (II), or (III) of subparagraph (D)(ii).

“(G) RESERVATION INFRASTRUCTURE INVESTMENT.—

“(i) IN GENERAL.—The term ‘reservation infrastructure investment’ means qualified personal property or qualified real property which—

- “(I) benefits the tribal infrastructure;
- “(II) is available to the general public; and
- “(III) is placed in service in connection with the taxpayer’s active conduct of a trade or business within an Indian reservation.

“(ii) PROPERTY MAY BE LOCATED OUTSIDE THE RESERVATION.—Qualified personal property and qualified real property used or located outside an Indian reservation shall be reservation infrastructure investment only if its purpose is to connect to existing tribal infrastructure in the reservation, and shall include, but not be limited to, roads, power lines, water systems, railroad spurs, and communications facilities.

“(H) COORDINATION WITH OTHER CREDITS.—The term ‘qualified Indian reservation property’ shall not include any property with respect to which the energy credit or the rehabilitation credit is allowed.

“(3) REAL ESTATE RENTALS.—For purposes of this section, the rental to others of real property located within an Indian reservation shall be treated as the active conduct of a trade or business in an Indian reservation.

“(4) INDIAN RESERVATION DEFINED.—For purposes of this subpart, the term ‘Indian reservation’ means a reservation, as defined in—

- “(A) section 3(d) of the Indian Financing Act of 1974 (25 U.S.C. 1452(d)); or
- “(B) section 4(10) of the Indian Child Welfare Act of 1978 (25 U.S.C. 1903(10)).

“(5) LIMITATION BASED ON UNEMPLOYMENT.—

“(A) GENERAL RULE.—The Indian reservation credit allowed under section 46 for any taxable year shall equal—

“(i) if the Indian unemployment rate on the applicable Indian reservation for which the credit is sought exceeds 300 percent of the national average unemployment rate at any time during the calendar year in which the property is placed in service or during the immediately preceding 2 calendar years, 100 percent of such credit;

“(ii) if such Indian unemployment rate exceeds 150 percent but not 300 percent, 50 percent of such credit; and

“(iii) if such Indian unemployment rate does not exceed 150 percent, 0 percent of such credit.

“(B) SPECIAL RULE FOR LARGE PROJECTS.—In the case of a qualified Indian reservation property which has (or is a component of a project which has) a projected construction period of more than 2 years or a cost of more than \$1,000,000, subparagraph (A) shall be applied by substituting ‘during the earlier of the calendar year in which the taxpayer enters into a binding agreement to make a qualified investment or the first calendar year in which the taxpayer has expended at least 10 percent of the taxpayer’s qualified investment, or the preceding calendar year’ for ‘during the calendar year in which the property is placed in service or during the immediately preceding 2 calendar years’.

“(C) DETERMINATION OF INDIAN UNEMPLOYMENT.—For purposes of this paragraph, with respect to any Indian reservation, the Indian unemployment rate shall be based upon Indians unemployed and able to work, and shall be certified by the Secretary of the Interior.

“(6) COORDINATION WITH NONREVENUE LAWS.—Any reference in this subsection to a

provision not contained in this title shall be treated for purposes of this subsection as a reference to such provision as in effect on the date of the enactment of this paragraph.”.

(2) LODGING TO QUALIFY.—Paragraph (2) of section 50(b) of such Code (relating to property used for lodging) is amended—

(A) by striking ‘and’ at the end of subparagraph (C);

(B) by striking the period at the end of subparagraph (D) and inserting “; and” and

(C) by adding at the end the following subparagraph:

“(E) new reservation construction property.”.

(c) RECAPTURE.—Subsection (a) of section 50 of such Code (relating to recapture in case of dispositions, etc.), is amended by adding at the end the following new paragraph:

“(6) SPECIAL RULES FOR INDIAN RESERVATION PROPERTY.—

“(A) IN GENERAL.—If, during any taxable year, property with respect to which the taxpayer claimed an Indian reservation credit—

- “(i) is disposed of; or
- “(ii) in the case of reservation personal property—

“(I) otherwise ceases to be investment credit property with respect to the taxpayer; or

“(II) is removed from the Indian reservation, converted, or otherwise ceases to be Indian reservation property, the tax under this chapter for such taxable year shall be increased by the amount described in subparagraph (B).

“(B) AMOUNT OF INCREASE.—The increase in tax under subparagraph (A) shall equal the aggregate decrease in the credits allowed under section 38 by reason of section 48(c) for all prior taxable years which would have resulted had the qualified investment taken into account with respect to the property been limited to an amount which bears the same ratio to the qualified investment with respect to such property as the period such property was held by the taxpayer bears to the applicable recovery period under section 168(g).

“(C) COORDINATION WITH OTHER RECAPTURE PROVISIONS.—In the case of property to which this paragraph applies, paragraph (1) shall not apply and the rules of paragraphs (3), (4), and (5) shall apply.”.

(d) BASIS ADJUSTMENT TO REFLECT INVESTMENT CREDIT.—Paragraph (3) of section 50(c) of such Code (relating to basis adjustment to investment credit property) is amended by striking ‘energy credit or reforestation credit’ and inserting ‘energy credit, reforestation credit, or Indian reservation credit other than with respect to any expenditure for new reservation construction property’.

(e) CERTAIN GOVERNMENTAL USE PROPERTY TO QUALIFY.—Paragraph (4) of section 50(b) of such Code (relating to property used by governmental units or foreign persons or entities) is amended by redesignating subparagraphs (D) and (E) as subparagraphs (E) and (F), respectively, and inserting after subparagraph (C) the following new subparagraph:

“(D) EXCEPTION FOR RESERVATION INFRASTRUCTURE INVESTMENT.—This paragraph shall not apply for purposes of determining the Indian reservation credit with respect to reservation infrastructure investment.”.

(f) APPLICATION OF AT-RISK RULES.—Subparagraph (C) of section 49(a)(1) of such Code is amended by striking ‘and’ at the end of clause (ii), by striking the period at the end of clause (iii) and inserting “, and”, and by adding at the end the following new clause:“(iv) the qualified investment in qualified Indian reservation property.”.

(g) CLERICAL AMENDMENTS.—

(1) Section 48 of such Code is amended by striking the heading and inserting the following:

"SEC. 48. ENERGY CREDIT; REFORESTATION CREDIT; INDIAN RESERVATION CREDIT."

(2) The table of sections for subpart E of part IV of subchapter A of chapter 1 is amended by striking the item relating to section 48 and inserting the following:

"Sec. 48. Energy credit; reforestation credit; Indian reservation credit."

(h) EFFECTIVE DATE.—The amendments made by this section shall apply to property placed in service after December 31, 1995.

SECTION-BY-SECTION ANALYSIS—INDIAN RESERVATION JOBS AND INVESTMENT ACT OF 1995

Section 1 sets forth the short title of the Act.

Section 2(a) amends Section 46 of the Internal Revenue Code of 1986 (relating to investment credits) by adding new authority for an Indian reservation tax credit. This tax credit is designed to attract private industry and capital, expand existing industry, and make the private sector a permanent source of economic development on Indian reservations.

Section 2(b) establishes a 10% tax credit for personal property on reservations, and a 15% credit is provided for new construction property and infrastructure investment on reservations. The tax credit is not available for property acquired by the taxpayer from a person who is related to the taxpayer, nor for the development or operation of tribal gaming establishments authorized under the Indian Gaming Regulatory Act of 1988. The tax credit is allowed for investments used to acquire or construct reservation infrastructure, and for expenditures on personal property and new construction real property used predominately in the active conduct of a trade or business within an Indian reservation. The credits would extend to all 32 States in which the 555 federally-recognized tribes are located, using the definition of Indian reservation codified in section 3 (d) of the Indian Financing Act of 1974 (25 U.S.C. 1452(d)) and section 4 (10) of the Indian Child Welfare Act of 1978 (25 U.S.C. 1903 (10)). The full tax credit is available only on an Indian reservation in which the Indian unemployment rate exceeds 300 percent of the national average unemployment rate at any time during the year in which the property is placed in service or during the immediately preceding two calendar years. A one-half tax credit (50%) is available to those reservations where the Indian unemployment rate exceeds 150 percent but not 300 percent of the national rate during the same period. No tax credit is extended under the bill to any property on reservations where the Indian unemployment rate does not exceed 150 percent of the national rate during that period. The subsection provides a special timing rule for large construction projects. All Indian unemployment rates must be certified by the Secretary of the Interior.

Section 2(c) amends section 50 of the Internal Revenue Code (relating to recapture in case of dispositions) by providing authority for the recapture of tax credits through increased taxes if the property is disposed of, ceases to be investment credit property of the taxpayer, or is removed from the Indian reservation, converted, or otherwise ceases to be Indian reservation property.

Section 2(d) amends Section 50(c) of the Internal Revenue Code (relating to basis adjustment to investment credit property) to add Indian reservation credits to the types of property subject to basis adjustment.

Section 2(e) amends Section 50(b) of the Internal Revenue Code (relating to property

used by governmental units or foreign persons or entities) to add a conforming exception for Indian reservation infrastructure investment.

Section 2(f) amends Section 49(a) (1) of the Internal Revenue Code of the Internal Revenue Code (relating to the application of at-risk rules) to make a conforming addition for qualified investment in qualified Indian reservation property.

Section 2(g) amends Section 48 of the Internal Revenue Code to make several conforming clerical changes.

Section 2(h) provides an effective date of this measure, so that it applies only to property placed in service after December 31, 1995.

S. 1304

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Indian Tribal Government Pension Tax Relief Amendments of 1995".

SEC. 2. TREATMENT OF INDIAN TRIBAL GOVERNMENTS UNDER SECTION 403(b).

In the case of any contract purchased in a plan year beginning before January 1, 1996, section 403(b) of the Internal Revenue Code of 1986 shall be applied as if any reference to an employer described in section 501(c)(3) of the Internal Revenue Code of 1986 which is exempt from tax under section 501 of such Code included a reference to an employer which is an Indian tribal government (as defined by section 7701(a)(40) of such Code), a subdivision of an Indian tribal government (determined in accordance with section 7871(d) of such Code), an agency or instrumentality of an Indian tribal government or subdivision thereof, or a corporation chartered under Federal, State, or tribal law which is owned in whole or in part by any of the foregoing.

SECTION-BY-SECTION ANALYSIS—INDIAN TRIBAL GOVERNMENT PENSION TAX RELIEF AMENDMENTS OF 1995

Section 1 sets forth the short title of the Act.

Section 2 would expressly qualify, as tax-sheltered annuities under section 403(b) of the Internal Revenue Code, those annuity contracts purchased by employees of a federally-recognized Indian tribal government (as defined by section 7701(a)(4) of such Code), a subdivision of such tribal government (as defined by section 7871(d) of such Code), an agency or instrumentality of such tribal government or subdivision, or a corporation chartered under Federal, State, or tribal law which is owned in whole or in part by such tribal government or subdivision.

S. 1305

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Indian Tribal Government Unemployment Compensation Act Tax Relief Amendments of 1995".

SEC. 2. TREATMENT OF INDIAN TRIBAL GOVERNMENTS UNDER FEDERAL UNEMPLOYMENT TAX ACT.

(a) IN GENERAL.—Section 3306(c)(7) of the Internal Revenue Code of 1986 (defining employment) is amended—

(1) by inserting "or in the employ of an Indian tribe," after "service performed in the employ of a State, or any political subdivision thereof,"; and

(2) by inserting "or Indian tribes" after "wholly owned by one or more States or political subdivisions".

(b) PAYMENTS IN LIEU OF CONTRIBUTIONS.—Section 3309 of the Internal Revenue Code of 1986 (relating to State law coverage of services performed for nonprofit organizations or governmental entities) is amended—

(1) in subsection (a)(2) by inserting "including an Indian tribe," after "the State law shall provide that a governmental entity";

(2) in subsection (b)(3)(B) by inserting "or of an Indian tribe" after "of a State or political subdivision thereof";

(3) in subsection (b)(3)(E) by inserting "or the tribe's" after "the State"; and

(4) in subsection (b)(5) by inserting "or of an Indian tribe" after "an agency of a State or political subdivision thereof".

(c) STATE LAW COVERAGE.—Section 3309 of the Internal Revenue Code of 1986 (relating to State law coverage of services performed for nonprofit organizations or governmental entities) is amended by adding at the end the following new subsection:

"(d) ELECTION BY INDIAN TRIBE.—The State law shall provide that an Indian tribe may elect to make contributions for employment as if the employment is within the meaning of section 3306 of the Internal Revenue Code of 1986 or to make payments in lieu of contributions under this section, and shall provide that an Indian tribe may make separate elections for itself and each subdivision, subsidiary, or business enterprise chartered and wholly owned by such Indian tribe. State law may require an electing tribe to post a payment bond or take other reasonable measures to assure the making of payments in lieu of contributions under this section."

(d) DEFINITIONS.—Section 3306 of the Internal Revenue Code of 1986 (relating to definitions) is amended by adding at the end the following new subsection:

"(t) INDIAN TRIBE.—For purposes of this chapter, the term "Indian tribe" has the meaning given to such term by section 4(e) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b(e)), and includes any subdivision, subsidiary, or business enterprise chartered and wholly owned by such an Indian tribe."

(e) TRANSITION RULE.—For purposes of the Federal Unemployment Tax Act, service performed in the employ of an Indian tribe (as defined in section 3306(t) of the Internal Revenue Code of 1986 (as added by this Act)) shall not be treated as employment (within the meaning of section 3306 of such Code) if—

(1) it is service which is performed before the date of enactment of this Act and with respect to which the tax imposed under the Federal Unemployment Tax Act has not been paid; and

(2) such Indian tribe reimburses a State unemployment fund for unemployment benefits paid for service attributable to such tribe for such period.

SECTION-BY-SECTION ANALYSIS—INDIAN TRIBAL GOVERNMENT UNEMPLOYMENT COMPENSATION ACT TAX RELIEF AMENDMENTS OF 1995

Section 1 sets forth the short title of the Act.

Section 2. Treatment of Indian Tribal Governments Under Federal Unemployment Tax Act.

Subsection 2(a) In General.—This subsection (a) amends section 3306(c)(7) of the Internal Revenue Code. Section 3306(c)(7) provides an exemption from the 0.8% federal unemployment tax for employment for a state, any of its political subdivisions, or any of its wholly-owned instrumentalities. This subsection of the bill would make employment for a tribal government or any political subdivision or wholly tribally owned subsidiary thereof likewise exempt from the 0.8% federal unemployment tax.

Subsection 2(b). Payments in Lieu of Contributions.—This subsection amends several

provisions of section 3309 of the Internal Revenue Code. Section 3309(a)(2) of the Internal Revenue Code now requires a state unemployment fund to offer coverage and benefits to employees of a state government, its political subdivisions and wholly-owned instrumentalities, and to employees of a religious, charitable, educational or other income tax exempt organization described in Section 501(c)(3) of the Internal Revenue Code. These employers may then elect to either pay a flat tax rate as do private, for-profit commercial businesses, or to make contributions, on a reimbursable basis, for all benefits paid out to their former employees.

Subsection 2(b)(1) of the bill would provide the same options to a tribal government or any political subdivision or wholly tribally owned subsidiary thereof. Section 3309(b)(3)(B) of the Internal Revenue Code now exempts from all unemployment taxes service performed by members of a State or political subdivision legislative body or judiciary.

Subsection 2(b)(2) of the bill would provide the same exemption to a tribal government's legislative body or judiciary. Section 3309(b)(3)(E) of the Internal Revenue Code now exempts from all unemployment taxes service designated by State law to be a major nontenured policymaking or advisory position or a policymaking or advisory position that ordinarily does not require more than 8 hours per week.

Subsection 2(b)(3) of the bill would provide the same exemption to the same service so designated by tribal law. Section 3309(b)(5) of the Internal Revenue Code now exempts from all unemployment taxes service that is part of an unemployment work-relief or work-training program assisted or financed in whole or in part by any Federal or state agency.

Subsection 2(b)(4) of the bill would provide the same exemption to the same service assisted or financed in whole or in part by a tribal government.

Subsection 2(c). State Law Coverage.—This subsection adds a new subsection to section 3309 of the Internal Revenue Code. Section 3309 contains provisions relating to State law coverage of services performed for non-profit organizations or governmental entities. Subsection (e) of the bill extends to tribal governments and their subsidiaries certain flexibilities now extended to other governments and to charitable organizations. The new subsection provides that a state must permit a tribe to choose to pay the comparable tax rate paid by commercial businesses under the Act, or to choose to reimburse, like other governments and charitable organizations, the State fund in lieu of such contributions with amounts equal to the compensation attributable under State law to such service. The new subsection also provides that a tribe may make separate elections for itself and one or more of its enterprises, subsidiaries, or subdivisions.

Subsection 2(d). Definitions.—This subsection amends section 3306 of the Internal Revenue Code. Section 3306 contains definitions relating to the Federal Unemployment Tax Act provisions. Subsection (c) of the bill would add a definition of an "Indian tribe" to mean for these purposes a federally recognized Indian tribal government, adopting the same definition of a tribe as that used in 25 U.S.C. 450b(e), the Indian Self-Determination Act. The bill clarifies that, just as the subdivisions of a state government are included within the definition of a state, and consistent with federal Indian law provisions recognizing the unique nature of tribal government, included within the bill's definition of a tribe are its subdivisions, subsidiaries and enterprises wholly owned by the tribal government.

Subsection 2(e). TRANSITION RULE.—This subsection of the bill provides tax relief to those tribal governments who in good faith did not pay federal or state unemployment taxes deemed due by the U.S. Internal Revenue Service under the Federal Unemployment Tax Act. It ceases all federal assessment and collection actions aimed at extracting non-federal funds from tribal governments who have not paid unemployment taxes provided they reimburse a state fund for all benefits paid to otherwise eligible former tribal employees during this period of non-payment. This relief is available only for periods prior to the date of enactment of this bill. The bill does not authorize refund actions for taxes already paid nor relief from a tribe's obligation to reimburse a state unemployment fund for benefits paid to former tribal employees.

S. 1306

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Tribal Government Tax-Exempt Bond Authority Amendments Act of 1995".

SEC. 2. MODIFICATIONS OF AUTHORITY OF INDIAN TRIBAL GOVERNMENTS TO ISSUE TAX-EXEMPT BONDS.

(a) GENERAL PROVISION.—Subsection (c) of section 7871 of the Internal Revenue Code of 1986 (relating to Indian tribal governments treated as States for certain purposes) is amended to read as follows:

"(c) ADDITIONAL REQUIREMENTS FOR TAX-EXEMPT BONDS.—

"(1) IN GENERAL.—Subsection (a) of section 103 shall apply to any obligation issued by an Indian tribal government (or subdivision thereof) only if such obligation is part of an issue 95 percent or more of the net proceeds of which are to be used to finance facilities located on land within or in close proximity to the exterior boundaries of an Indian reservation.

"(2) PRIVATE ACTIVITY BONDS.—Any private activity bond (as defined in section 141(a)) issued by an Indian tribal government (or subdivision thereof) shall be treated as a qualified bond for purposes of section 103(b)(1) to which section 146 does not apply if—

"(A) GENERAL RESTRICTIONS.—The requirements of section 144(a)(8)(B) and section 147 are met with respect to the issue.

"(B) SPECIFIC RESTRICTIONS.—

"(i) OWNERSHIP.—In the case of an issue the net proceeds of which exceed \$500,000, 50 percent or more of the profits or capital interests in the facilities to be financed thereby (or in the entity owning the facilities) are owned either by an Indian tribe, a subdivision thereof, a corporation chartered under section 17 of the Indian Reorganization Act of 1934 (25 U.S.C. 477) or section 3 of the Oklahoma Welfare Act (25 U.S.C. 503), individual enrolled members of an Indian tribe, an entity wholly-owned by any of the foregoing, or any combination thereof.

"(ii) EMPLOYMENT TEST.—It is reasonably expected (at the time of issuance of the obligations) that for each \$100,000 of net proceeds of the issue at least 1 employee rendering services at the financed facilities is an enrolled member of an Indian tribe or the spouse of an enrolled member of an Indian tribe.

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

"(A) INDIAN TRIBE.—The term 'Indian tribe' means any Indian tribe, band, nation, pueblo, or other organized group or community, including any Alaska Native village, or regional or village corporation, as defined in, or established pursuant to, the Alaska Na-

tive Claims Settlement Act (43 U.S.C. 1601 et seq.) which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

"(B) INDIAN RESERVATION.—The term 'Indian reservation' means a reservation, as defined in—

"(i) section 3(d) of the Indian Financing Act of 1974 (25 U.S.C. 1452(d)); or

"(ii) section 4(10) of the Indian Child Welfare Act of 1978 (25 U.S.C. 1903(10)).

"(C) IN CLOSE PROXIMITY TO.—The term 'in close proximity to' means—

"(i) in the case of an Indian reservation, or portion thereof, located within a metropolitan statistical area (within the meaning of section 143(k)(2)(B)), within 1 mile of the boundaries of such reservation, or portion thereof; and

"(ii) in the case of an Indian reservation, or portion thereof, located within a non-metropolitan area (as defined in section 42(d)(5)(C)(iv)(IV)), within 15 miles of the boundaries of such reservation, or portion thereof.

"(D) NET PROCEEDS.—The term 'net proceeds' has the meaning given such term by section 150(a)(3)."

(b) CONFORMING AMENDMENT.—Paragraph (3) of section 149(b) of the Internal Revenue Code of 1986 (relating to federally guaranteed bond is not exempt) is amended by redesignating subparagraph (D) as subparagraph (E) and by inserting after subparagraph (C) the following new subparagraph:

"(D) EXCEPTION FOR BONDS ISSUED BY INDIAN TRIBAL GOVERNMENTS.—Paragraph (1) shall not apply to any bond issued by an Indian tribal government (or subdivision thereof) unless it is federally guaranteed within the meaning of paragraph (2)(B)(ii)."

SEC. 3. EXEMPTION FROM REGISTRATION REQUIREMENTS.

The first sentence of section 3(a)(2) of the Securities Act of 1933 (15 U.S.C. 77c(a)(2)) is amended by inserting "or by any Indian tribal government or subdivision thereof (within the meaning of section 7871 of the Internal Revenue Code of 1986)," after "or territories,".

SEC. 4. EFFECTIVE DATE.

The amendments made by this Act shall apply to obligations issued after the date of the enactment of this Act.

SECTION-BY-SECTION ANALYSIS—TRIBAL GOVERNMENT TAX-EXEMPT BOND AUTHORITY AMENDMENTS ACT OF 1995

Section 1 sets forth the short title of the Act.

Section 2 amends Section 7871 of the Internal Revenue Code (relating to Indian tribal governments treated as States for certain purposes) by applying existing tax-exempt bond authority in Section 103(a) to those obligations issued by an Indian tribal government, or its subdivision, that are part of an issue 95 percent or more of the net proceeds of which are to be used to finance facilities located on land within or in close proximity to an Indian reservation. It would replace the current restrictions on the issuance of tax-exempt bonds by tribes and tribal subdivisions with a provision that such bonds are to be issued under slightly more restrictive conditions than those that now apply to States and their political subdivisions.

Section 3 amends section 3(a)(2) of the Securities Act of 1933 to exempt from the general registration requirements, as are other governmental bonds, those bonds issued under authority of these amendments.

Section 4 provides that these amendments shall apply to obligations issued after the date of enactment of this bill.

S. 1307

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Treatment of Indian Tribal Natural Resource Income Act of 1995".

SEC. 2. FEDERAL TAX TREATMENT OF INCOME DERIVED BY INDIANS FROM NATURAL RESOURCES ACTIVITIES.

(a) IN GENERAL.—Subchapter C of chapter 80 of the Internal Revenue Code of 1986 (relating to provisions affecting more than one subtitle) is amended by adding at the end the following new section:

"SEC. 7874. FEDERAL TAX TREATMENT OF INCOME DERIVED BY INDIANS FROM THE HARVEST OF TRIBALLY OWNED NATURAL RESOURCES.

"(a) IN GENERAL.—

"(1) INCOME AND SELF-EMPLOYMENT TAXES.—No tax shall be imposed by subtitle A on income derived from a natural resources-related activity conducted—

"(A) by a member of an Indian tribe directly or through a qualified Indian entity; or

"(B) by a qualified Indian entity.

"(2) EMPLOYMENT TAXES.—No tax shall be imposed by subtitle C on remuneration paid for services performed in natural resources-related activity by one member of a tribe for another member of such tribe or for a qualified Indian entity.

"(b) DEFINITIONS.—For purpose of this section.

"(1) NATURAL RESOURCES-RELATED ACTIVITY.—The term 'natural resources-related activity' means, with respect to an Indian tribe, any activity directly related to cultivating, harvesting, processing, extracting, or transporting natural resources held in trust by the United States for the benefit of such tribe or directly related to selling such natural resources but only if substantially all of the selling activity is performed by members of such tribe.

"(2) QUALIFIED INDIAN ENTITY.—

"(A) IN GENERAL.—The term 'qualified Indian entity' means an entity—

"(i) engaged in a natural resources-related activity of one or more Indian tribes;

"(ii) all of whose equity interests are owned by such tribes or members of such tribes; and

"(iii) substantially all of the management functions of the entity are performed by members of such tribes.

"(B) ENTITIES ENGAGED IN PROCESSING OR TRANSPORTATION.—Except as provided in regulations similar to regulations in effect under section 7873(b)(3)(A)(iii) on the date of the enactment of this section, if an entity is engaged to any extent in any processing or transporting of natural resources, the term 'qualified Indian entity' shall also include an entity whose annual gross receipts are 90 percent or more derived from natural resources-related activities of one or more Indian tribes each of which owns at least 10 percent of the equity interests in the entity. For purposes of this subparagraph, equity interests owned by a member of such a tribe shall be treated as owned by the tribe.

"(c) SPECIAL RULES.—

"(1) DISTRIBUTIONS FROM QUALIFIED INDIAN ENTITY.—For purposes of this section, any distribution with respect to an equity interest in a qualified Indian entity of one or more Indian tribes to a member of one of such tribes shall be treated as derived by such member from a natural resources-related activity to the extent such distribution is attributable to income derived by such entity from a natural resources-related activity.

"(2) DE MINIMIS UNRELATED AMOUNTS MAY BE EXCLUDED.—If, but for this paragraph, all but a de minimis amount derived by a qualified Indian tribal entity or by a tribal member through such entity, or paid to an individual for services, would be entitled to the benefits of subsection (a), then the entire amount shall be so entitled.

"(d) NO INFERENCE CREATED.—Nothing in this title shall create any inference as to the existence or non-existence or scope of any exemption from tax for income derived from tribal rights secured as of January 1, 1995, by any treaty, law, or Executive Order."

(b) CONFORMING AMENDMENT.—The table of sections for subchapter C of chapter 80 of such Code is amended by adding at the end the following new item:

"Sec. 7874. Federal tax treatment of income derived by Indians from the harvest of tribally owned natural resources."

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to periods before, on, or after the date of the enactment of this Act.

SECTION-BY-SECTION ANALYSIS—TREATMENT OF INDIAN TRIBAL NATURAL RESOURCE INCOME ACT OF 1995

Section 1 sets forth the short title of the Act.

Section 2 amends subchapter C of chapter 80 of the Internal Revenue Code to add a new section 7874 which would provide individual members of Federally-recognized tribal governments with an exemption from Federal income and employment taxes on income derived from certain economic activities related to natural resources held in trust for a tribe by the United States. These activities include those directly related to cultivating, harvesting, processing, extracting, or transporting such trust resources, and the selling of such resources if substantially all of the selling activity is performed by tribal members. The exemption covers both self-employment income and income paid to an individual by a qualified Indian entity, which by definition is limited to an entity engaged in such activity that is owned and controlled by a tribe or members of a tribe. Unless regulations in effect upon the date of enactment provide otherwise, income from entities engaged in processing or transportation is also exempt if the entity's gross receipts are 90 percent or more derived from the trust resources of one or more tribes each of which owns at least 10 percent of the equity interests in the entity. To the extent that it is derived from such a natural resources activity, individual income from a distribution made by a tribe to its members from an equity interest in a qualified Indian entity is treated as exempt.

Section 2(b) sets forth a conforming amendment to the table of sections in the Internal Revenue Code.

Section 2(c) provides that these amendments shall apply to periods before, on, or after the date of enactment of the Act.●

ADDITIONAL COSPONSORS

S. 327

At the request of Mr. HATCH, the name of the Senator from Louisiana [Mr. BREAU] was added as a cosponsor of S. 327, a bill to amend the Internal Revenue Code of 1986 to provide clarification for the deductibility of expenses incurred by a taxpayer in connection with the business use of the home.

S. 434

At the request of Mr. KOHL, the name of the Senator from Michigan [Mr.

LEVIN] was added as a cosponsor of S. 434, a bill to amend the Internal Revenue Code of 1986 to increase the deductibility of business meal expenses for individuals who are subject to Federal limitations on hours of service.

S. 483

At the request of Mr. HATCH, the name of the Senator from Alabama [Mr. HEFLIN] was added as a cosponsor of S. 483, a bill to amend the provisions of title 17, United States Code, with respect to the duration of copyright, and for the other purposes.

S. 551

At the request of Mr. CRAIG, the name of the Senator from Idaho [Mr. KEMPTHORNE] was added as a cosponsor of S. 551, a bill to revise the boundaries of the Hagerman Fossil Beds National Monument and the Craters of the Moon National Monument, and for other purposes.

S. 678

At the request of Mr. AKAKA, the name of the Senator from Missouri [Mr. BOND] was added as a cosponsor of S. 678, a bill to provide for the coordination and implementation of a national aquaculture policy for the private sector by the Secretary of Agriculture, to establish an aquaculture development and research program, and for other purposes.

S. 690

At the request of Mr. AKAKA, the name of the Senator from Missouri [Mr. BOND] was added as a cosponsor of S. 690, a bill to amend the Federal Noxious Weed Act of 1974 and the Terminal Inspection Act to improve the exclusion, eradication, and control of noxious weeds and plants, plant products, plant pests, animals, and other organisms within and into the United States, and for other purposes.

S. 881

At the request of Mr. PRYOR, the names of the Senator from Kentucky [Mr. FORD], the Senator from Alabama [Mr. HEFLIN], the Senator from Connecticut [Mr. DODD], the Senator from Oregon [Mr. HATFIELD], the Senator from South Carolina [Mr. HOLLINGS], the Senator from Louisiana [Mr. BREAU], the Senator from Kansas [Mr. DOLE], the Senator from Montana [Mr. BAUCUS], the Senator from Louisiana [Mr. JOHNSTON], and the Senator from Connecticut [Mr. LIEBERMAN] were added as cosponsors of S. 881, a bill to amend the Internal Revenue Code of 1986 to clarify provisions relating to church pension benefit plans, to modify certain provisions relating to participants in such plans, to reduce the complexity of and to bring workable consistency to the applicable rules, to promote retirement savings and benefits, and for other purposes.

S. 968

At the request of Mr. MCCONNELL, the names of the Senator from Oklahoma [Mr. INHOFE], and the Senator