

are today introducing legislation today which will rectify these problems and facilities settlement trusts functioning in a manner more in keeping with the underlying goals of the Alaska Native Claims Settlement Act. In general, this legislation provides that:

1. Contributions to settlement trusts will not result in immediate taxation to beneficiaries. In the case of ANCSA corporations which have earnings and profits at the time of transfer, any and all distributions from the trust of either principal or interest, will be taxable as ordinary income to the beneficiaries when received up to the amount which would have been subject to taxation under present IRS rulings. This replicates the taxation presently imposed by the IRS but delays it from the establishment of the trust to the distribution to beneficiaries, which is clearly the proper point of taxation. It should be noted that currently, the distribution of principal is not taxable. This provision provides for the taxation of such distribution as part of the overall balance worked into the bill.

2. A settlement trust will be able to defer taxation of up to 45% of its current income in order to "inflation proof" and not dissipate the principal. However, when this deferred income is ultimately distributed to beneficiaries, they will be taxed at ordinary income rates rather than at more favorable capital gains rates or, in some cases at present, not taxed at all.

3. Beneficiaries of settlement trusts will be able to have up to 15% of their distributions by the trust withheld to satisfy their anticipated federal income tax obligations. This will obviously speed up and help insure IRS collections.

4. A settlement trust will be able to issue form 1009's to beneficiaries which should greatly simplify their reporting and again enhance tax collections.

Mr. Speaker, in the development of this bill, a serious effort has been made to address concerns raised during discussions with Department of Treasury officials as well as with representatives of the Joint Committee on Taxation. Substantial information has been provided already to the Joint Tax Committee to help permit the committee to make a realistic revenue estimate. In this regard, it is our belief that by providing offsetting tax measures in the bill and speeding up and otherwise enhancing the collections of tax, we believe that the legislation we introduce today should be essentially revenue neutral.

In sum, such trusts were intended to provide for the segregation of Native assets, to immunize such assets from potential dissipation through business ventures (or premature distributions) or otherwise and to provide a fund which would remain intact for a substantial period of time and hence contribute to the health, education, welfare, heritage and cultural objectives in the current settlement trust statute for years to come. Unfortunately, general tax interpretations and policy, established for far different reasons, have hampered these Congressional goals and objectives.

Therefore, I am pleased that, on a bipartisan basis, I can join with my colleague and Ranking Minority Member on the Resources Committee, Mr. Miller, and my other distinguished colleagues Mr. Hayworth to introduce this important remedial legislation.

NARRATIVE EXPLANATION FOR SETTLEMENT TRUST TAX LEGISLATION

BILL SECTION 1(A)

Identification of ANCSA Settlement Trusts As Eligible To Elect Tax Exempt Status

This provision of the draft legislation permits settlement trusts organized under the Alaska Native Claims Settlement Act, 43 U.S.C. 1601 et seq. (ANCSA), to elect tax exempt status.

BILL SECTION 1(B)

Detailing Tax Treatment For Settlement Trusts And Their Beneficiaries

This new subsection amends the Tax Code to add a new section 501(p), which is comprised of six paragraphs clarifying the tax treatment of ANCSA settlement trusts.

Paragraph (1) provides that contributions to ANCSA settlement trusts are not deemed distributions to the ANCSA corporation's shareholders—the conveyance to the trust does not trigger taxation to the beneficiaries. Paragraph (1) applies whether or not a settlement trust has made the (p)(2) election, and alters an existing IRS ruling posture which has operated as a disincentive to contributions to settlement trusts by taxing beneficiaries prior to their receipt of distributions. However, as noted below, the draft legislation further provides that if an ANCSA corporation has earnings and profits for the taxable year of a contribution, those earnings and profits (up to the amount of the contribution) must be transferred to the trust. Subsequent distributions by the trust will produce ordinary income to the beneficiaries, until these transferred earnings and profits are exhausted. This transfer of earnings and profits eliminates the possibility that settlement trusts could be used to bail out corporate earnings and profits.

Paragraph (2) provides the basic mechanism by which a settlement trust elects tax exempt status. In general under the legislation an electing settlement trust must meet two requirements to be tax exempt. First, the trust must timely file for the election as prescribed. Second, the beneficial interests in the trust must abide by alienation restrictions which prohibit transfers of trust units in the same manner that transfers of ANCSA corporate stock are prohibited; failure to do so results in revocation of the election. If an electing trust violates the alienation restrictions at any point during a taxable year, the section 501(p) election will be automatically revoked for that year and all subsequent years. Once the section 501(p) election is evoked, that trust would not be able to re-elect.

Paragraph (3) provides the distribution requirements for an electing trust in the amount of 55% of adjustable taxable income. If an electing trust fails to meet this requirement, it is taxable at the maximum individual tax rates (presently 39.6%) on whatever amount it would have had to distribute to meet the 55% requirement. As an example, if an electing trust distributed only 50% of its taxable income for a given year, then 5% (55% requirement less 50% actually distributed) would be subject to tax.

Paragraph (4) describes the taxation of the beneficiaries of settlement trusts. Subparagraph (4)(A) applies to electing settlement trusts and imposes a rule that distributions by such trusts are automatically taxable as ordinary income regardless of the source of those distributions. This would include amounts retained without tax incidence at the trust level which are subsequently distributed to beneficiaries. Subparagraph (4)(B) applies to trusts which have not made the new subsection 501(p)(2) election. If the ANCSA corporation does not have earnings and profits for tax purposes when a contribu-

tion is made to a settlement trust, subsequent distributions by that trust are taxable to the beneficiaries under the existing rules of Subchapter J of the Code. In general, under existing law the character of income earned by the trust would flow out to the beneficiaries and distributions of capital and accumulated income are tax free.

On the other hand, if the ANCSA corporation has earnings and profits when a contribution is made to a settlement trust, further rules apply. The contribution is deemed to transfer the corporation's earnings and profits up to the amount of the contribution to the settlement trust. Subsequent distributions by the trust to its beneficiaries will be deemed to come from these transferred earnings and profits and produce ordinary income to the beneficiaries, the same as would occur if the ANCSA corporation had distributed those earnings and profits directly. This treatment continues until the trust has fully distributed the amount of the transferred earnings and profits. Only thereafter is taxation of the beneficiaries controlled by Subchapter J.

Paragraph (5) permits beneficiaries to elect to have up to 15% of their distributions by the trust withheld from their ongoing trust distributions to satisfy their anticipated federal income tax obligations. This paragraph applies whether or not a settlement trust has made the 501(p)(2) election.

Paragraph (6) defines a settlement trust with reference to ANCSA.

BILL SECTION 1(C)

Information Reporting

Section 1(c) provides a mechanism to permit beneficiary reporting under form 1099. Annual information reporting on form 1099 reporting is advantageous for all settlement trusts, even where taxability for beneficiaries is determined under Subchapter J (i.e. as to non electing trusts which have no transferred earnings and profits). In the case of a non electing settlement trust, the 1099 would differentiate among the different types and character of income being distributed. Also, 1099 reporting would be in lieu of the existing requirement that a non electing settlement trust attach a copy of beneficiary K-1s to its own tax return.

BILL SECTION 1(D)

Effective Date

The provisions of the bill are applicable to taxable years beginning and contributions made after December 31, 1996.

IN SUPPORT OF RIGHT-TO-WORK LEGISLATION

**HON. HOWARD COBLE**

OF NORTH CAROLINA

IN THE HOUSE OF REPRESENTATIVES

*Thursday, June 25, 1998*

Mr. COBLE. Mr. Speaker, there is an issue that affects my constituents in North Carolina's Sixth District as well as all hard working citizens across America.

It is important to remember that small businesses keep America strong. This Congress must be cognizant of the significant impact small business has on our economy. Congress should take the necessary steps to ensure that our economic system is not endangered by legislation that tightens compulsory unionism. I have always been a strong supporter of North Carolina's right-to-work laws. H.R. 59, which I cosponsored, would protect employees and employers throughout our nation from the economically-crippling effects of

compulsory unionism. Furthermore, this legislation would protect consumers and taxpayers from industry closures as well as increases in government operating costs.

Freedom of choice is the heart of H.R. 59. The right to work means that a worker cannot be fired for not paying fees or dues to labor

bosses. This issue relates directly to the First Amendment, which guarantees our freedom of association. If you do not wish to join an organization, the federal government should not force you to do so, at the risk of losing your job.

Forcing workers to pay union dues as a condition of employment is morally wrong and economically wasteful. We must take steps to relieve employees and employers from the mandated union fees. H.R. 59 will aid America's small businesses