proposal but the Arab community, along with the rest of the Arab world, refused. Instead, Arab armies invaded the nascent Jewish state intent on destroying it—a de facto rendering the Partition Resolution null and void.

Nevertheless, the United States established its embassy in Tel Aviv, where it sits to this day. But Jerusalem is Israel's capital: it is the seat of its government, its parliament, its supreme court. The President and Prime Minister reside there. Our ambassador travels daily from Tel Aviv to meetings with Israeli government officials in Jerusalem. All major political parties in Israel agree, moreover, that Jerusalem will remain Israel's undivided capital.

The United States Congress also agrees. Congress overwhelmingly passed legislation in 1995 that contained an official statement of US policy on Jerusalem: that it should remain united and be recognized as Israel's capital, and that our embassy should be located there by the end of May, 1999. If the embassy were not located in Jerusalem by that date, 50 percent of the State Department's budget for buildings and maintenance abroad would be withheld unless the President issued a national security waiver. That is the waiver which the President now considers issuing. I strongly believe that he should not do so, that instead he should do what is right by recognizing that Jerusalem is Israel's capital.

There are those who timidly argue that to do what is right will damage the peace process. How can that be possible? Is it not more harmful to fuel unrealizable expectations by pretending that Jerusalem is not Israel's capital or that it might someday be redivided? Would it not be better simply to finally do what we should have done fifty years ago by recognizing the only city that could ever be. Israel's capital, the one city that has always been Israel's capital, the eternal city of Jerusalem?

President Clinton stated when he was running for office on June 30, 1992 the following: ''Whatever the outcome of the negotiations, . . . Jerusalem is still the capital of Israel, and must remain an undivided city accessible to all.'' He was right then, and he has the chance to do right now.

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. BOND:

S. 1053. A bill to amend the Clean Air Act to incorporate certain provisions of the transportation conformity regulations, as in effect on March 1, 1999; to the Committee on Environment and Public Works.

By Ms. COLLINS:

S. 1054. A bill to amend the Internal Revenue Code of 1986 to enhance various tax incentives for education; to the Committee on Finance.

By Mr. BROWNBACK (for himself and Mr. AKAKA):

S. 1055. A bill to amend title 36, United States Code, to designate the day before Thanksgiving as ''National Day of Reconciliation''; to the Committee on the Judiciary.

By Mr. CHAFEE:

S. 1056. A bill to amend the Internal Revenue Code of 1986 to improve tax equity for the Highway Trust Fund and to reduce the number of separate taxes deposited into the Highway Trust Fund, and for other purposes; to the Committee on Finance.

By Mr. MACK (for himself, Mr. GRAHAM, Mr. HATCH, Mr. CONRAD, Mr. NICKLES, Mr. KERREY, Mr. GRAMM, Mr. BRYAN, Mr. CHAFEE, Mr. BAUCUS, Mr. MURKOWSKI, Mr. BREAUX, Mr. JEFFORDS, Mr. ROBB, Mr. COVERDELL, Mr. ROCKEFELLER, Mr. HELMS, Mr. TORRICELLI, and Mrs. HUTCHISON):

S. 1057. A bill to amend the Internal Revenue Code of 1986 to simplify certain provisions applicable to real estate investment trusts; to the Committee on Finance.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. BOND:

S. 1053. A bill to amend the Clean Air Act to incorporate certain provisions of the transportation conformity regulations, as in effect on March 1, 1999; to the Committee on Environment and Public Works.

CLEAN AIR ACT AMENDMENTS

Mr. BOND. Mr. President, on March 2, 1999, the United States Court of Appeals for the District of Columbia issued its decision in the Environmental Defense Fund versus Environmental Protection Agency lawsuit whereby the EDF filed suit challenging several provisions of the EPA's air quality conformity rule. The court ruled in favor of the EDF.

This decision overturned a well-established EPA rule permitting previously approved transportation projects being ''grandfathered'' into transportation air quality conformity plans. The court decision eliminates any flexibility for local authorities to proceed with projects and protect them from disruptions caused by issues often beyond their control—including changes in federal regulations and standards. In addition, the court decision impacted use of submitted budgets, non-federal project flexibility, grace periods before SIP disapprovals, and SIP safety margins.

As of April 19, the Federal Highway Administration had identified ten areas in conformity lapse where transportation projects are impacted. The areas are: Ashland, Kentucky; Memphis, Tennessee; Raleigh, North Carolina; Winston-Salem, North Carolina; Atlanta, Georgia; Monterey, California; Santa Barbara, California; Knoxville, Tennessee; Paducah, Kentucky; and South Bend, Indiana.

Many people probably thought that would be the end of the list. To give another example of why this is such an important issue—one week ago today the United States Department of Transportation determined that the Kansas City metropolitan area's conformity plan had lapsed. The Kansas and Missouri Divisions of the Federal Highway Administration halted approval of transportation projects in the region. More and more areas could be faced with this situation.

If we do not address this issue, it could potentially bring to a halt transportation improvement projects around the country—further jeopardizing the safety of the traveling public, hindering economic growth, and in my opinion, doing nothing to improve the air quality situation in any of these areas.

Mr. President, I send a bill to the desk.

Mr. President, the only thing this legislation does is amend the Clean Air Act to reinstate those EPA rules which were struck down or remanded in the Environmental Defense Fund vs. Environmental Protection Agency lawsuit. No more. No less. This legislation has zero impact on the Clean Air Act of EPA's rules.

In 1997, in the EPA's information on the final conformity rule that incorporated the 1997 changes, EPA reported the following:

> The conformity rule changes promulgated today result from the experience that EPA, the Department of Transportation, and state and local air and transportation officials have had with implementation of the rule since it was first published in November of 1993. While these changes clarify the rule and in some cases offer increased flexibility, they will not result in any negative change in health and environmental benefits.

So the EPA got together with the stakeholders, issued a rulemaking, provided the public comment period, issued a final rule, practiced for several years, and defended the position in court. I want to take this position and codify it.

Mr. President—there will be some who will argue for more or less restrictive changes to the underlying conformity provision in the Clean Air Act. Should that discussion and debate occur? Yes. I might support some of those changes. However, we have an immediate situation where transportation projects around the country are or could be impacted by the court's ruling. States and metropolitan areas across the country are needing assistance with this issue. I urge my colleagues to cosponsor and support this common sense legislation that simply takes EPA's own regulations on conformity that the court overturned and puts them into law.

Mr. President, we must address the immediate situation and then continue the debate on conformity to address further needs.

By Ms. COLLINS:

S. 1054. A bill to amend the Internal Revenue Code of 1986 to enhance various tax incentives for education; to the Committee on Finance.

SAVINGS FOR SCHOLARS ACT

Ms. COLLINS. Mr. President, I rise today to introduce legislation, the Savings for Scholars Act, to help families save for college expenses. This bill would make education IRAs and State tuition plans more effective vehicles for families to use in saving for post-secondary education. I want to thank Senator ROTH and his staff on the Finance Committee for working with me and my staff in drafting this legislation. In the 3 years that he has chaired the Finance Committee, Senator ROTH has been a true champion for all of us who place a tremendous value on educating our nation's children and young adults.

When Congress created the education IRA 2 years ago, we took an important first step in the direction of encouraging families to save for their children's education. But, the law contains a very significant limitation—families cannot contribute more than $500 a year to these accounts. This restriction makes it difficult for a family to accumulate savings sufficient to pay the cost of a college degree. Even if parents start saving from the time their child is born, an investment in an education IRA of $500 a year, assuming an average annual return of 8 percent, will only yield about $19,000 when that child begins higher education. Today, the average cost of 4 years of higher education is about $30,000 at a public institution and about $75,000 at a private school. In short, the current limits are not nearly high enough to finance even today's college costs, much less the cost 18 years from now.

Raising the maximum contribution to $2,000 will allow a family to accumulate at least as much as the current average cost of attending a private school. This is money that many middle-class families and their children otherwise would need to borrow; it is tens of thousands of dollars in student loans that would burden graduates with a mountain of debt. Most important, raising the education IRA contribution limit would make a 4-year college education more accessible and less of a financial challenge for middle-income families.

In addition to increasing the education IRA contribution limit, this bill would make a technical change to remove a confusing inconsistently between the education IRA and the traditional IRA. The last date on which a contribution to an education IRA can be made is December 31 of any year. Traditional IRAs may receive contributions until April 15 of the year following the tax year. This bill changes the deadline for contributions to education IRAs to coincide with that of the traditional IRA. This modest change would eliminate a source of confusion that might cause a family planning to contribute to a child's IRA to inadvertently miss the deadline.

The second part of my bill deals with qualified State tuition plans. These are tax-deferred plans, administered by the individual states, that allow families to prepay college tuition or to accumulate tax-deferred savings for postsecondary education expenses. My bill makes two changes in the requirements of these plans that should make them more flexible and useful to families. The first is to require that all qualified State tuition plans allow at least three rollovers without any change in beneficiary. This change would guarantee that participants in one state's plan can transfer their assets to another state's plan. The need for this could be the result of a family moving from one state to another or of a change in a child's education plans. My bill will give greater flexibility in the choice of postsecondary education institutions to the beneficiaries of these plans.

The bill also proposes one additional change to the qualified tuition programs—a change that will make the plans more attractive to families. Under current law, the assets of a plan can be rolled over to specified members of a beneficiary's family. This allows the plan's assets to be used by a sibling if the original beneficiary cannot or does not use the plan. However, the definition of a family member does not include first cousins. Thus, a parent of a single child could not transfer the benefits to a niece or nephew if his or her child did not use the plan. Perhaps more significantly, this change would make the qualified state tuition plan more desirable for grandparents. They could be assured that a plan established for the benefit of one grandchild could be transferred to any of their grandchildren.

The final part of this bill corrects an unfair consequence of the interaction between the HOPE tax credits and the education IRA. Currently, a taxpayer is prohibited from claiming the HOPE tax credit in any year in which a withdrawal from an education IRA is made—regardless of the total amount the taxpayer spends on education. This bill allows the HOPE tax credit to be claimed to the extent that the cost of education exceeds the amount withdrawn from the IRA. It does not allow a double benefit, but it does prevent one benefit—the IRA withdrawal—from canceling another benefit. It also eliminates a potential trap for the unwary taxpayer who may accidentally claim both benefits and, as a result, incur a penalty.

Mr. President, investing in education is the surest way for us to build our country's assets for the future. We need to ensure that postsecondary education is affordable and that graduates do not accumulate crippling debts while attending school. Adopting this bill will help us to accomplish both of these goals. I urge my colleagues to support these efforts.

By Mr. BROWNBACK (for himself and Mr. AKAKA):

S. 1055. A bill to amend title 36, United States Code, to designate the day before Thanksgiving as "National Day of Reconciliation"; to the Committee on the Judiciary.

NATIONAL DAY OF RECONCILIATION LEGISLATION

Mr. BROWNBACK. Mr. President, today, I, along with Senator AKAKA, introduce the National Day of Reconciliation Bill. In this bill, the President will issue a yearly proclamation designating the day before Thanksgiving as a "National Day of Reconciliation." On this day, it is our hope that every person in the U.S. should seek out those individuals who have been alienated and pursue forgiveness and reconciliation from them. Historically, Thanksgiving is a time when we put all of our differences aside and give thanks for all that we have achieved and shared. I cannot think of a better day in which to reconcile than the day before Thanksgiving.

When considering the need for this piece of legislation, I was reminded of times when our nation was at war with itself, and the very fabric of our Constitution was held together by a few threads. The Civil War placed our democracy and national sovereignty in great jeopardy. However, Abraham Lincoln, one of our nation's greatest leaders, knew the importance of "binding" our nation together after civil war had ravaged our nation. It was through his wisdom and ability to forgive that he helped heal our nation's wounds. Once again, there is the absence of peace in America.

We live in a society where there is too much alienation, from one another and from God. We, in too many cases, have allowed our focus to shift from one another to ourselves. Lincoln recognized the need to reconcile with one another. He also knew that reconciliation efforts would never be successful without looking first to the divine authority.

In his second Inaugural speech, Lincoln said, "with malice toward none, with charity for all, with firmness in the right as God gives us to see the right, let us strive on to finish the work we are in, to bind up the nation's wounds * * * to do all which may achieve and cherish a just and lasting peace among ourselves and with all nations."

The Rev. Dr. Martin Luther King, Jr. was yet another one of our nation's great leaders who knew the importance of focusing on a higher moral power to achieve peaceful reconciliation. Dr. King, through wisdom and sacrificial love, reconciled an entire nation with individuals who, through discrimination, were alienated from sections of our society. Dr. King said, "It is time for all people of conscience to call upon America to return to her true home of brotherhood and peaceful pursuits. * * * We must work unceasingly to lift this nation that we love to a higher destiny, to a new plateau of compassion, to a more noble expression of humaneness." Mr. President, we need to restore peace in our nation, we need to restore charity for one another, and we need to return our focus to a higher moral authority.

As we look at our culture today, we see images that influence not only our actions but the actions of young people as well. Our culture glorifies conflict, greed, and violence. It is no wonder that we see atrocities that seem impossible to imagine. It is time for our country to reconcile, and the ''National Day of Reconciliation'' will remind us of this solemn obligation.

If Americans hope to ''bind up [our] nation's wounds,'' as Lincoln suggested, we must first make the commitment in the Congress. This bill makes that commitment by calling for a ''National Day of Recognition''—a day that recognizes the need to move from alienation to reconciliation. In a ''Letter From A Birmingham Jail,'' Dr. King expressed his hope for national reconciliation. I too hope ''that the dark clouds of [misconceptions] will soon pass away and the deep fog of misunderstanding will be lifted from our fear-drenched communities and in some not too distant tomorrow the radiant stars of love and brotherhood will shine over our great nation with all their scintillating beauty.'' I urge all of my colleagues to support this much needed measure and begin to foster reconciliation throughout our country in order for us to once again be ''one nation under God.''

By Mr. CHAFEE:

S. 1056. A bill to amend the Internal Revenue Code of 1986 to improve tax equity for the Highway Trust Fund and to reduce the number of separate taxes deposited into the Highway Trust fund, and for other purposes; to the Committee on Finance.

HIGHWAY TAX EQUITY AND SIMPLIFICATION ACT OF 1999

Mr. CHAFEE. Mr. President, I am introducing today, the Highway Tax Equity and Simplification Act of 1999. This bill improves the equity among taxpayers paying into the Highway Trust Fund. Under current law, some users pay too much into the trust fund relative to the costs they impose on the nation's highway system, while other pay too little. This proposal more fairly apportions the tax burden to those who impose the greatest costs to our highway infrastructure.

In my statement today, I plan to briefly describe:

(1) Who pays too much and too little?

(2) Why the current tax structure fails?

(3) Why the current tax structure can't be just tinkered with and therefore needs radical change?

(4) A description of the plan I am introducing today.

Who pays too much and who pays too little?

If we look at the U.S. Department of Transportation's (DOT) latest cost allocation study of the highway system, it is clear that the current system does not fairly apportion the relative burden of taxes paid compared to costs imposed. At this time, I will submit for the RECORD a table which summarizes the relative burden among users based on analysis provided by the U.S. Department of Transportation.

As this table shows, some users are paying 150 percent of their share while some of the heaviest trucks are paying as low as 40 percent of their share. This is simply unfair and needs to be changed.

Another way to look at the unfairness of the current situation is to look at the per vehicle subsidies for heavy trucks that the U.S. DOT provided in their latest report to the Congress. In determining these subsidies, DOT simply subtracted what these vehicles should have paid in taxes, based on the costs they impose, from the amount of taxes they do pay. These subsidies are thousands of dollars per vehicle annually, with several above $5,000 per vehicle. At the end of my statement, I would like to enter into the RECORD a table showing a few examples of the subsidies summarized in the DOT report.

One of the reasons that the current tax structure fails so miserably at properly allocated costs is because neither the Congress nor the U.S. DOT has looked seriously at this issue for a very long time. The last significant cost allocation study was completed in 1982, more than 17 years ago. Without up-to-date analysis, it has been virtually impossible for the Congress to address this significant problem. I want to commend Secretary Slater for taking the initiative to have his Department provide an up-to-date analysis to the Congress. It is my understanding that DOT plans on keeping its analytical capability current regarding cost allocation so that the Congress doesn't have to wait every 17 years to address this issue.

Lack of good information is one of the reasons we have this unfair situation. The other reason deals more directly with basic engineering concepts. Highway pavement wear and tear imposed by a vehicle is related to two primary factors: how much you drive on the road and the weight of the vehicle.

Now, why is the weight of a vehicle so important?

It is important because pavement damage increases dramatically (actually exponentially) with weight. At this time, I will submit for the record information which shows the relationship between weight and pavement damage.

This chart shows that on a rural Interstate Highway, a single 100,000 pound standard tractor-trailer wears the equivalent of more than 1,700 automobiles. But, that truck certainly does not pay 1,700 times the amount of taxes.

On a rural arterial road, not built to Interstate standards, this dynamic is even worse, wearing the equivalent of 3,500 cars.

The problem with the current tax system is that it does not attempt to recover from trucks the dramatic pavement damage costs that are incurred as the weight of these vehicles increases. Until we address this fundamental principle, we will not have an equitable tax system.

Now, let's briefly look at each of the current taxes and how well they contribute to tax equity.

Excise Tax—Under current law, we impose a 12 percent excise tax on the purchase of new trucks. This tax raises more than $2 billion annually. However, it has no relationship to either road usage or pavement damage and therefore does not contribute to tax equity.

Tire Tax—the exist tax imposed on tires is moderately helpful for improving tax equity because it varies by miles driven and, to some extend by weight. However, it raises a relatively small amount of money (about $400 million per year or less than 5 percent of truck taxes) and therefore has a small effect on cost allocation.

Diesel Tax—currently, diesel fuel is taxed at 24 cents per gallon. Although diesel taxes paid do vary by mileage, diesel taxes do a poor job of recovering pavement damage related to the weight of the vehicle. When the weight of a truck is increased, fuel use increases only marginally. However, the pavement damage imposed by that same vehicle goes up exponentially. Increasing diesel tax rates does not resolve this fundamental problem and actually exacerbates the unfairness of the current system. I would submit for the RECORD information which illustrates the problem.

Heavy Vehicle Use Tax—this tax sounds like it might be the right place to address concerns related to weight, but it also falls well short of the mark. Even the name is deceiving. First, this tax does not vary by use. A truck that travels 10,000 miles annually and another that travels 100,000 miles pay the same tax. Secondly, although the name implies it applies to Heavy Vehicles, this tax is capped at 75,000 pounds, the point at which pavement damage goes up dramatically. I will also submit information which compares pavement damage and the Heavy Vehicle Use tax.

In summary, our review of the current taxes led me to conclude that they do a poor job of aligning taxes paid with road damage. In other words, they just can't get the job done. We need a new mechanism.

The bill I introduce today eliminates 3 of the separate taxes and replaces them with a straightforward tax that more fairly distributes the tax burden among highway users.

Specifically, the bill eliminates the tire tax, the 12 percent excise tax on new trucks, and the Heavy Vehicle Use Tax. It also eliminates the so-called ''diesel differential,'' the additional 6 cents per gallon imposed on diesel fuel compared to gasoline, which is taxed at 18.33 cents per gallon.

To replace the lost revenue from these repeals and tax reductions, and to improve the equity of the truck taxes paid, the bill establishes a new user fee, an axle-weight distance tax. This new tax varies based on the truck's axle-weight loads and the distance traveled, the exact same concepts that affect pavement damage.

The bill collects the same amount of tax revenue from trucks overall as current law, about $11 billion annually.

Overall, there are more winners than losers under this bill. The vast majority of trucks—more than 5.9 million—will see a tax reduction. This compares to roughly 1.5 million who will see an increase.

The bill also reduces double taxation on toll roads by allowing a credit against the axle-weight distance tax for travel on a toll facility such as the Oklahoma or Florida Turnpikes.

This new axle-weight tax has long been recognized in the transportation community as the best way to tax trucks. As an example, the American Association of State Highway Transportation Officials, the association representing State Transportation Departments, policy resolution on this matter finds:

> . . . truck taxes based upon a combination of the weight of vehicles and the distance they travel more equitably distribute financing responsibility proportional to costs imposed on the system than other tax alternatives.

In fact, AASHTO policy calls for substituting a weight-distance tax for the heavy vehicle use tax and all other federal user fees on trucks except for a federal fuel tax—a perfect description of the proposal we are introducing today.

Now, I would like to briefly touch upon a few areas where I expect opponents of this effort may focus.

Some may argue that this is an anti-truck proposal and will impose new costs on consumers. My response to this assertion is that overall truck taxes are held constant and most of the trucking industry benefits from this proposal. Unfortunately, this benefit is at the expense of the portion of the industry that is doing damage to our nation's roadways without paying for it, and they will probably fight hard to keep their undeserved subsidies. The trick for the rest of the industry and for all roadway users is to recognize that virtually all of these arguments are attempts to distract us from the real issue—should heavy trucks pay their fair share?

Heavy truck operators will try to argue about all sorts of ancillary items to distracts us from this fundamental issue. They will argue about tax evasion, administrative burden, additional record keeping and the like. Anything but the core issue of whether these trucks should pay their fair share.

As the Congress considers, this issue, I hope we can remain focused on this fundamental question and not be distracted by arguments that are not intended to squash efforts to address the unfair system we have today.

I urge my colleagues to support this effort.

Mr. President, I ask unanimous consent that the text of the bill, a summary of the legislation, and the materials previously cited be printed in the RECORD.

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

S. 1056

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 ''Highway Tax Equity and Simplification Act of 1999''.

SEC. 2. FINDINGS AND PURPOSES.

(a) FINDINGS.—Congress finds that—

(1) Congress should enact legislation to correct the distribution of the tax burden among the various classes of persons using the Federal-aid highways, or otherwise deriving benefits from such highways;

(2) the most recent highway cost allocation study by the Department of Transportation found that owners of heavy trucks significantly underpay Federal highway user fees relative to the costs such vehicles impose on such highways, while owners of lighter trucks and cars overpay such fees;

(3) pavement wear and tear is directly correlated with axle-weight loads and distance traveled, and to the maximum extent possible, Federal highway user fees should be structured based on this fundamental fact of use and resulting cost;

(4) the current Federal highway user fee structure is not based on this fundamental fact of use and resulting cost; to the contrary—

(A) the 12-percent excise tax applied to the sales of new trucks has no significant relationship to pavement damage or road use and does the poorest job of improving tax equity,

(B) the heavy vehicle use tax does not equitably apply to heavy trucks (such tax is capped with respect to trucks weighing over 75,000 pounds) and does not vary by annual mileage, thus 2 heavy trucks traveling 10,000 miles and 100,000 miles, respectively, pay the same heavy vehicle use tax, and

(C) diesel fuel taxes do a poor job recovering pavement costs because such taxes only increase marginally with weight increases while pavement damage increases exponentially with weight, and increasing the rates for diesel fuel will not resolve this fundamental flaw;

(5) truck taxes based on a combination of the weight of vehicles and the distance such trucks travel provide greater equity than a tax based on either of these 2 factors alone; and

(6) the States generally have in place mechanisms for verifying the registered weight of trucks and the miles such trucks travel.

(b) PURPOSES.—The purposes of this Act are—

(1) to replace the heavy vehicle use tax and all other Federal highway user charges (except fuel taxes) with a Federal weight-distance tax which is designed to yield at least equal revenues for highway purposes and to provide equity among highway users; and

(2) to provide that such a tax be administered in cooperation with the States.

SEC. 3. REPEAL AND REDUCTION OF CERTAIN HIGHWAY TRUST FUND TAXES.

(a) REPEAL OF HEAVY VEHICLE USE TAX.—Subchapter D of chapter 36 of the Internal Revenue Code of 1986 (relating to tax on use of certain vehicles) is repealed.

(b) REPEAL OF TAX ON HEAVY TRUCKS AND TRAILERS SOLD AT RETAIL.—Section 4051(c) of the Internal Revenue Code of 1986 (relating to termination) is amended by striking ''October 1, 2005'' and inserting ''July 1, 2000''.

(c) REPEAL OF TAX ON TIRES.—Section 4071(d) of the Internal Revenue Code of 1986 (relating to termination) is amended by striking ''October 1, 2005'' and inserting ''July 1, 2000''.

(d) REDUCTION OF TAX RATE ON DIESEL FUEL TO EQUAL RATE ON GASOLINE.—Section 4081(a)(2)((A)(iii) of the Internal Revenue Code of 1986 (relating to rates of tax) is amended by striking ''24.3 cents'' and inserting ''18.3 cents''.

(e) CONFORMING AMENDMENTS.—

(1) Section 4221(a) of the Internal Revenue Code of 1986 (relating to certain tax-free sales) is amended by striking ''October 1, 2005'' and inserting ''July 1, 2000''.

(2) Subchapter A of chapter 62 of such Code (relating to place and due date for payment of tax) is amended by striking section 6156.

(3) The table of sections for subchapter A of chapter 62 of such Code is amended by striking the item relating to section 6156.

(4) Section 9503(b)(1) of such Code (relating to transfer to Highway Trust Fund of amounts equivalent to certain taxes) is amended by striking subparagraphs (B) and (C) and by redesignating subparagraphs (D) and (E) as subparagraphs (B) and (C), respectively

SEC. 4. TAX ON USE OF CERTAIN VEHICLES BASED ON WEIGHT-DISTANCE RATE.

(a) IN GENERAL.—Chapter 36 of the Internal Revenue Code of 1986, as amended by section 3(a), is amended by adding at the end the following:

''Subchapter D—Tax on Use of Certain Vehicles

''Sec. 4481. Imposition of tax.

''Sec. 4482. Definitions.

''Sec. 4483. Exemptions.

''Sec. 4484. Cross references.

''SEC. 4481. IMPOSITION OF TAX.

''(a) IMPOSITION OF TAX.—

''(1) IN GENERAL.—A tax is hereby imposed on the use of any highway motor vehicle (either in a single unit or combination configuration) which, together with the semitrailers and trailers customarily used in connection with highway vehicles of the same type as such highway motor vehicle, has a taxable gross weight of over 25,000 pounds at the rate of—

''(A) the cents per mile rate specified in the table contained in paragraph (2), or

''(B) in the case of a highway motor vehicle with a taxable gross weight in excess of the weight for the highest rate specified in such table for such vehicle, the cents per mile rate specified in paragraph (3).

''(2) RATE SPECIFIED IN TABLE.—The table contained in this paragraph is as follows:

Taxable Gross Weight in Thousands of Pounds	Cents Per Mile								
	2-axle single unit	3-axle single unit	4-axle+ single unit	3-axle combination	4-axle combination	5-axle combination	6-axle combination	7-axle combination	8-axle+ combination
Over 25 to 30	0.50	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Over 30 to 35	1.00	0.25	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Over 35 to 40	3.00	0.50	0.00	0.50	0.00	0.00	0.00	0.00	0.00

Taxable Gross Weight in Thousands of Pounds	Cents Per Mile								
	2-axle single unit	3-axle single unit	4-axle+ single unit	3-axle combination	4-axle combination	5-axle combination	6-axle combination	7-axle combination	8-axle+ combination
Over 40 to 45	5.00	1.50	0.50	1.00	0.00	0.00	0.00	0.00	0.00
Over 45 to 50	8.00	3.00	1.00	1.50	0.25	0.00	0.00	0.00	0.00
Over 50 to 55	12.00	6.00	2.00	2.50	0.50	0.25	0.00	0.00	0.00
Over 55 to 60	21.00	10.00	4.00	3.50	1.00	0.50	0.00	0.00	0.00
Over 60 to 65	30.00	17.00	7.00	5.00	2.50	1.00	0.25	0.00	0.00
Over 65 to 70	....	25.00	10.00	7.50	4.00	2.00	0.50	0.00	0.00
Over 70 to 75	....	33.00	14.00	11.00	5.50	3.00	1.25	0.00	0.00
Over 75 to 80	....	41.00	19.00	17.00	7.50	3.75	2.00	0.00	0.00
Over 80 to 85	....	50.00	24.00	25.00	13.00	7.00	4.00	0.50	0.00
Over 85 to 90	....	....	30.00	....	19.00	11.00	6.00	1.00	0.00
Over 90 to 95	....	....	36.00	....	25.00	15.00	8.50	1.50	0.25
Over 95 to 100	....	....	42.00	....	....	20.00	11.00	2.00	0.50
Over 100 to 105	....	....	50.00	....	....	25.00	14.00	3.50	1.00
Over 105 to 110	....	....	....	....	....	30.00	17.00	5.00	2.00
Over 110 to 115	....	....	....	....	....	35.00	20.00	7.00	3.00
Over 115 to 120	....	....	....	....	....	....	23.00	9.00	4.00
Over 120 to 125	....	....	....	....	....	....	26.00	11.00	6.00
Over 125 to 130	....	....	....	....	....	....	29.00	13.00	8.00
Over 130 to 135	....	....	....	....	....	....	32.00	15.00	10.00
Over 135 to 140	....	....	....	....	....	....	35.00	17.00	12.00
Over 140 to 145	....	....	....	....	....	....	....	19.00	14.00
Over 145 to 150	....	....	....	....	....	....	....	21.00	16.00

''(3) RATE SPECIFIED IN PARAGRAPH.—The cents per mile rate specified in this paragraph is as follows:

''(A) In the case of any single unit highway motor vehicle with 2 or more axles or any combination highway motor vehicle with 3 or 4 axles, the highest rate specified in the table contained in paragraph (2) for such vehicle, plus 10 cents per mile for each 5000 pounds (or fraction thereof) in excess of the taxable gross weight for such highest rate.

''(B) In the case of any combination highway motor vehicle with 5 or 6 axles, the highest rate specified in the table contained in paragraph (2) for such vehicle, plus 5 cents per mile for each 5000 pounds (or fraction thereof) in excess of the taxable gross weight for such highest rate.

''(C) In the case of any combination highway motor vehicle with 7 or more axles, the highest rate specified in the table contained in paragraph (2) for such vehicle, plus 2 cents per mile for each 5000 pounds (or fraction thereof) in excess of the taxable gross weight for such highest rate.

''(b) DETERMINATION OF NUMBER OF AXLES.—For purposes of this section—

''(1) IN GENERAL.—The total number of axles with respect to any highway motor vehicle shall be determined without regard to any variable load suspension axle, except if such axle meets the requirements of paragraph (2).

''(2) ELIGIBILITY REQUIREMENTS.—The requirements of this paragraph are as follows:

''(A) All controls with respect to the variable load suspension axle are located outside of and inaccessible from the driver's compartment of the highway motor vehicle.

''(B) The gross axle weight rating of all such axles with respect to the highway motor vehicle shall conform to the greater of—

''(i) the expected loading of the suspension of such vehicle, or

''(ii) 9,000 pounds.

''(3) VARIABLE LOAD SUSPENSION AXLE DEFINED.—The term 'variable load suspension axle' means an axle upon which a load may be varied voluntarily while the highway motor vehicle is enroute, whether by air, hydraulic, mechanical, or any combination of such means.

''(4) TERMINATION OF EXCEPTION.—The exception under paragraph (1) shall not apply after June 30, 2004.

''(c) DETERMINATION OF MILES.—

''(1) USE OF CERTAIN TOLL FACILITIES EXCLUDED.—For purposes of this section, the number of miles any highway motor vehicle is used shall be determined without regard to the miles involved in the use of a facility described in paragraph (2).

''(2) TOLL FACILITY.—A facility is described in this paragraph if such facility is a highway, bridge, or tunnel, the use of which is subject to a toll.

''(d) BY WHOM PAID.—The tax imposed by this section shall be paid by the person in whose name the highway motor vehicle is, or is required to be, registered under the law of the State or contiguous foreign country in which such vehicle is, or is required to be, registered, or, in case the highway motor vehicle is owned by the United States, by the agency or instrumentality of the United States operating such vehicle.

''(e) TIME FOR PAYING TAX.—The time for paying the tax imposed by subsection (a) shall be the time prescribed by the Secretary by regulations.

''(f) PERIOD TAX IN EFFECT.—The tax imposed by this section shall apply only to use before October 1, 2005.

''SEC. 4482. DEFINITIONS.

''(a) HIGHWAY MOTOR VEHICLE.—For purposes of this subchapter, the term 'highway motor vehicle' means any motor vehicle which is a highway vehicle.

''(b) TAXABLE GROSS WEIGHT.—For purposes of this subchapter—

''(1) IN GENERAL.—Except as provided in paragraph (2), the term 'taxable gross weight' means, when used with respect to any highway motor vehicle, the maximum weight at which the highway motor vehicle is legally authorized to operate under the laws of the State in which it is registered.

''(2) SPECIAL PERMITS.—If a State allows a highway motor vehicle to be operated for any period at a maximum weight which is greater than the weight determined under paragraph (1), its taxable gross weight for such period shall be such greater weight.

''(c) OTHER DEFINITIONS AND SPECIAL RULE.—For purposes of this subchapter—

''(1) STATE.—The term 'State' means a State and the District of Columbia.

''(2) USE.—The term 'use' means use in the United States on the public highways.

''SEC. 4483. EXEMPTIONS.

''(a) STATE AND LOCAL GOVERNMENT EXEMPTION.—Under regulations prescribed by the Secretary, no tax shall be imposed by section 4481 on the use of any highway motor vehicle by any State or any political subdivision of a State.

''(b) EXEMPTION FOR UNITED STATES.—The Secretary may authorize exemption from the tax imposed by section 4481 as to the use by the United States of any particular highway motor vehicle, or class of highway motor vehicles, if the Secretary determines that the imposition of such tax with respect to such use will cause substantial burden or expense which can be avoided by granting tax exemption and that full benefit of such exemption, if granted, will accrue to the United States.

''(c) CERTAIN TRANSIT-TYPE BUSES.—Under regulations prescribed by the Secretary, no tax shall be imposed by section 4481 on the use of any bus which is of the transit type (rather than of the intercity type) by a person who, for the last 3 months of the preceding year (or for such other period as the Secretary may by regulations prescribe for purposes of this subsection), met the 60-percent passenger fare revenue test set forth in section 6421(b)(2) (as in effect on the day before the day of the enactment of the Energy Tax Act of 1978) as applied to the period prescribed for the purposes of this subsection.

''(d) TERMINATION OF EXEMPTIONS.—Subsections (a) and (c) shall not apply on and after October 1, 2005.

''SEC. 4484. CROSS REFERENCES.

''(1) For penalties and administrative provisions applicable to this subchapter, see subtitle F.

''(2) For exemption for uses by Indian tribal governments (or their subdivisions), see section 7871.''

(b) ADMINISTRATION OF TAX.—To the maximum extent possible, the Secretary of the Treasury shall administer the tax imposed by section 4481 of the Internal Revenue Code of 1986 (as added by this section)—

(1) in cooperation with the States and in coordination with State administrative and reporting mechanisms, and

(2) through the use of the International Registration Plan and the International Fuel Tax Agreement.

SEC. 5. COOPERATIVE TAX EVASION EFFORTS.

The Secretary of Transportation is authorized to use funds authorized for expenditure under section 143 of title 23, United States Code, and administrative funds deducted under 104(a) of such title 23, to develop automated data processing tools and other tools or processes to reduce evasion of the tax imposed by section 4481 of the Internal Revenue Code of 1986 (as added by section 4(a)). These funds may be allocated to the Internal Revenue Service, States, or other entities.

SEC. 6. STUDY.

(a) IN GENERAL.—The Secretary of Transportation, in consultation with the Secretary of the Treasury, shall conduct a study of—

(1) the tax equity of the various Federal taxes deposited into the Highway Trust Fund,

(2) any modifications to the tax rates specified in section 4481 of the Internal Revenue Code of 1986 (as added by section 4(a)) to improve tax equity, and

(3) the administration and enforcement under subsection (e) of the tax imposed by section 4481 of the Internal Revenue Code of 1986 (as so added).

(b) REPORT.—Not later than July 1, 2002, and July 1 of every fourth year thereafter, the Secretary of Transportation shall submit to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate a report on the study conducted under subsection (a) together with—

(1) recommended tax rate schedules developed under subsection (a)(2), and

(2) such recommendations as the Secretary may deem advisable to make the administration and enforcement described in subsection (a)(3) more equitable.

SEC. 7. EFFECTIVE DATE AND FLOOR STOCK REFUNDS.

(a) EFFECTIVE DATE.—The amendments made by this Act shall take effect on July 1, 2000.

(b) FLOOR STOCK REFUNDS.—

(1) IN GENERAL.—If—

(A) before July 1, 2000, tax has been imposed under section 4071 or 4081 of the Internal Revenue Code of 1986 on any article, and

(B) on such date such article is held by a dealer and has not been used and is intended for sale,

there shall be credited or refunded (without interest) to the person who paid such tax (hereafter in this subsection referred to as the ''taxpayer'') an amount equal to the excess of the tax paid by the taxpayer over the amount of such tax which would be imposed on such article had the taxable event occurred on such date.

(2) TIME FOR FILING CLAIMS.—No credit or refund shall be allowed or made under this subsection unless—

(A) claim therefore is filed with the Secretary of the Treasury before January 1, 2001, and

(B) in any case where an article is held by a dealer (other than the taxpayer) on July 1, 2000—

(i) the dealer submits a request for refund or credit to the taxpayer before October 1, 2000, and

(ii) the taxpayer has repaid or agreed to repay the amount so claimed to such dealer or has obtained the written consent of such dealer to the allowance of the credit or the making of the refund.

(3) EXCEPTION FOR ARTICLES HELD IN RETAIL STOCKS.—No credit or refund shall be allowed under this subsection with respect to any article in retail stocks held at the place where intended to be sold at retail.

(4) DEFINITIONS.—For purposes of this subsection, the terms ''dealer'' and ''held by a dealer'' have the respective meanings given to such terms by section 6412 of such Code; except that the term ''dealer'' includes a producer.

(5) CERTAIN RULES TO APPLY.—Rules similar to the rules of subsections (b) and (c) of section 6412 of such Code shall apply for purposes of this subsection.

HIGHWAY TAX EQUITY AND SIMPLIFICATION ACT (HTESA) OF 1999

BILL SUMMARY

The Highway Tax Equity and Simplification Act of 1999 is designed to improve the equity among taxpayers paying into the Highway Trust Fund. In doing so, it eliminates 3 of the separate taxes paid into the Highway Trust Fund and replaces them with a straightforward tax that more fairly distributes the tax burden among highway users.

TEA 21 restructured the Highway Trust Fund's budgetary treatment to ensure that transportation taxes would be spent for transportation purposes. Congress did not, however, take any steps to improve the allocation of transportation taxes among highway users. Under current law, some users pay too much into the trust fund relative to the costs they impose on the nation's highway system while others pay too little. This proposal more fairly apportions the tax burden to those who impose the greatest costs to our highway infrastructure.

SPECIFIC POINTS

Tax Simplification—3 Taxes Replaced with 1.

This bill eliminates three taxes (the 12% sales tax on new trucks, the tire tax, and the Heavy Vehicle Use Tax) and replaces it with a straightforward and fair axle-weight distance tax. The taxes that are eliminated are either poor surrogates for user impact or raise relatively small amounts of money and are duplicative of the new axle-weight distance tax.

Direct Correlation Between Taxes and Road Damage.

Pavement and bridge damage imposed by trucks is directly correlated to axle-weight loads and distance traveled. This bill recognizes this clear and direct relationship and imposes user fees based on this principle.

No Tax Increase for Trucks Overall.

The bill collects the same amount of tax revenue from trucks overall as current law. The U.S. Department of Transportation estimates that transportation taxes paid by trucks total $11 billion annually, the same as under the bill.

Overwhelming More Winner than Losers.

Under the bill, the vast majority of trucks—more than 5.9 million trucks—will see a tax reduction. This compares to roughly 1.5 million who will see an increase.

Eliminates ''Corporate Welfare'' for Heavy Trucks.

By reforming the Highway Trust Fund taxes, this legislation substantially reduces the subsidy provided to the heaviest trucks using our nation's roadways. Most heavy trucks pay less into the Highway Trust Fund than the costs they impose on roads. The heaviest trucks pay less than half of the costs of damage they inflict.

Eliminates Perverse Provisions in Current Law.

The Heavy Vehicle Use Tax (HVUT) under current law doesn't apply to ''heavy trucks''. The HVUT is capped at 75,000 pounds—meaning that ''heavy trucks'' don't pay any more in taxes as their weight increases even though the extra weight does exponentially more damage to the nation's roads and bridges.

Secondly, the HVUT has no mileage component meaning that a truck registered at 70,000 lbs traveling 10,000 miles per year pays the same HVUT tax as an identical 70,000 pound truck traveling 100,000 miles per year—not a fair or sensible result.

Administrative Burden.

Under the bill, taxes are paid according to the distance you traveled and your registered weight. The process is no more complicated than reading your odometer and your truck registration.

Current Mileage Filing Requirements for Interstate Carriers.

Under current law, all Interstate trucks are required to file with their ''base state'' mileage logs that report mileage driven in individual states. This existing requirement of the International Fuel Tax Agreement (IFTA) is more detailed than what is required for the axle-weight tax included in this bill, which only requires the aggregate total of all mileage driven.

Reduces Double Taxation on Toll Roads.

This bill reduces double taxation on toll roads by allowing a credit against the axle-weight distance tax for travel on a toll facility. (e.g., the Oklahoma Turnpike, the Pennsylvania Turnpike, Ohio Turnpike, Florida Turnpike, etc.).

Eliminates ''Diesel Differential''.

The bill also eliminates the so-called ''diesel differential'', where diesel is taxed at a higher rate than gasoline. Under this proposal, the diesel fuel tax is lowered from 24.3 cents to 18.3 cents, the same rate as gasoline.

Overall Tax Equity Still Short by $4 Billion Annually.

Proposal does not achieve perfect equity among all contributors to the Highway Trust Fund. Although the bill equalizes the relative tax burden among trucks, the trucking sector as a whole will still underpay its fair share of transportation taxes by $4 billion annually.

State Transportation Departments Support Weight-Distance Taxes.

The American Association of State Highway and Transportation Officials (AASHTO), the association representing State Transportation Departments, supports weight-distance taxes. AASHTO's policy resolution on this matter finds:

''Truck taxes based upon a combination of the weight of the vehicles and the distance they travel more equitably distribute financing responsibility proportional to costs imposed on the system than other tax alternatives.''

AASHTO policy call for substituting a weight-distance tax for the heavy vehicle use tax and all other federal user fees on trucks except for a federal fuel tax—(the HTESA proposal).

Cost allocation for cars and trucks

[Revenue to cost ratio—Current law]

Automobiles	1.0
Pickups/Vans	1.5
Single-unit trucks:	
<25,000 lbs	1.5
25,001–50,000 lbs	0.7
>50,000 lbs	0.4
Combination trucks:	
<50,000 lbs	1.5
50,000–70,000 lbs	1.0
70,001–75,000 lbs	0.9
75,001–80,000 lbs	0.8
80,001–100,000 lbs	0.5
>100,000 lbs	0.4

ANNUAL PER VEHICLE SUBSIDIES

[Comparing taxes paid to pavement costs imposed]

	5-axle semitrailer	6-axle semitrailer
Registered weight:		
90,000	−$3,864	−$2,188
100,000	−5,176	−4,985
110,000	−6,022	−7,746

PAVEMENT DAMAGE—CARS VS. TRUCKS

Underlying Principle—Pavement damage goes up dramatically with weight.

On a rural Interstate highway, a 100,000 lb standard tractor-trailer wears the equivalent of more than 1,700 cars.

On a rural arterial road, the same truck is equivalent to 3,500 cars.

DIESEL FUEL TAX

Diesel Tax meets one of the two guiding principles discussed earlier, because the amount paid by trucks varies by mileage.

However, because diesel fuel usage only rises marginally with weight increases, while pavement damage increases *exponentially*, it also is a poor mechanism to align costs and payments.

Increasing rates for diesel, as is sometimes advocated by the trucking industry in reaction to concerns about truck underpayment, will not resolve this fundamental flaw.

HEAVY VEHICLE USE TAX (HVUT)

HEAVY VEHICLE USE TAX DOESN'T LIVE UP TO ITS NAME

1. The HVUT is a poor surrogate for cost responsibility as shown by the widening gap between the red and blue lines to the right. HVUT taxes go up slightly with weight while pavement damage goes up dramatically.

2. Although the word use is in its name—this tax does not vary by use or mileage. A truck traveling 100,000 miles per year and another of the same weight traveling 10,000 per year will pay the same tax.

3. Although, the name implies it is targeted at heavy vehicles, it does not increase with truck weight. Incredibly, the tax is capped at 75,000 lbs, the point at which pavement damage goes up dramatically.

By Mr. MACK (for himself, Mr. GRAHAM, Mr. HATCH, Mr. CONRAD, Mr. NICKLES, Mr. KERREY, Mr. GRAMM, Mr. BRYAN, Mr. CHAFEE, Mr. BAUCUS, Mr. MURKOWSKI, Mr. BREAUX, Mr. JEFFORDS, Mr. ROBB, Mr. COVERDELL, Mr. ROCKEFELLER, Mr. HELMS, Mr. TORRICELLI, and Mrs. HUTCHISON):

S. 1057. A bill to amend the Internal Revenue Code of 1986 to simplify certain provisions applicable to real estate investment trusts; to the Committee on Finance.

REAL ESTATE INVESTMENT TRUST MODERNIZATION ACT OF 1999

Mr. MACK. Mr. President, today Senator BOB GRAHAM and I, along with 17 of our colleagues, are introducing legislation to modernize the tax rules that apply to real estate investment trusts (''REITs'').

This legislation is designed to remove barriers in the tax laws that impose unnecessary administrative burdens and make it more difficult for REITs to compete in an evolving marketplace. Our bill is similar to a proposal included in the President's Fiscal Year 2000 budget that permits REITs to establish a new type of subsidiary called a ''taxable REIT subsidiary'' (''TRS''). As with the President's proposal, the legislation we introduce today would permit REITs to establish a TRS to provide non-customary services to their tenants and to provide services to third parties. In return for these new rules, the TRS would be subject to a number of rules designed to prevent any income from being shifted out of the taxable subsidiary to the REIT.

Congress created REITs in 1960 to enable small investors to invest in real estate. The REIT provisions were modeled after the rules that applied to mutual funds. If a number of requirements are met, a corporation electing to be a REIT may deduct all dividends paid to its shareholders. One of the major requirements for REIT status is that REITs must distribute virtually all of their taxable income to their shareholders. Thus, unlike other C corporations that tend to retain most of their earnings, the income tax burden for REITs is shifted to the shareholder level. Unlike partnerships, REITs cannot pass losses through to their investors.

REITs are subject to a number of rules to ensure their primary focus is real estate activities. For example, at least 75% of a REIT's assets must be comprised of rental real estate, mortgages, cash items and government securities. A REIT also must satisfy two income tests. First, at least 75% of a REIT's annual gross income must consist of real property rents, mortgage interest, gain from the sale of a real estate asset and certain other real estate-related sources. Second, at least 95% of a REIT's annual gross income must be derived from the income items from the above 75% test plus other ''passive income'' sources such as dividends and any type of interest. In addition, a REIT cannot own more than 10% of the voting securities of a non-REIT corporation, and the securities of a single non-REIT corporation cannot be worth more than 5% of the REIT's assets.

Although REITs were created in 1960, they did not really become a significant part of the real estate marketplace until the 1990s—partly because the original legislation did not permit REITs to manage their own property. The Tax Reform Act of 1986 changed this, by permitting REITs to manage their own properties through the provision of ''customary services'' to tenants.

The market capitalization of REITs grew from about $13 billion at the end of 1991 to over $140 billion today. The taxes generated from REITs similarly have increased, with dividends from public REITs increasing from about $1 billion in 1991 to more than $8 billion today. While REITs remain a small portion of the entire real estate sector—in the range of 10% nationally—they account for as much as half of some sectors that require immense amounts of capital, such as shopping centers. While the REIT industry has come a long way in recent years, it continues to fulfill its original mission: permitting small investors access to attractive real estate investments. Almost 90% of REIT shareholders are individuals either investing directly or through mutual funds.

Although REITs have seen remarkable growth in the 1990s, their ability to meet new competitive pressures in the real estate sector is in question as a result of tax law limitations on their activities. These rules limit the ability of REITs to provide full services to their tenants and to third parties. In general, REITs may only provide services to their tenants which the IRS has determined to be ''customary'' in the business, meaning services already provided by the typical real estate company in the market. REITs may only provide real estate-related services to third parties through preferred stock subsidiaries which they can own but not control. REITs are thus prohibited from offering leading edge, full service options to their tenants and limited in the use of their expertise to serve third parties. This presents competitive problems for REITs as the real estate marketplace has evolved and property owners have sought to provide a range of services to their tenants and other customers.

As a result, REITs increasingly have been unable to compete with privately-held partnerships and other more exclusive forms of ownership. Today, the rules prevent REITs from offering the same types of customer services as their competitors, even as such services are becoming more central to marketing efforts. Examples abound: (1) offering concierge services to office and apartment tenants to pick up tickets or dry cleaning, to walk pets, etc.; (2) offering a branded credit card at shopping malls, with rebates to be used as store credits at stores in the mall; (3) high speed Internet hook-ups, including enhanced telecommunications services (e.g., creating and maintaining a website) offered by a landlord's partner; (4) partnering with an office supply provider to offer reduced prices on office supplies; and (5) pick-up and delivery services at self-storage rentals.

Without greater flexibility to provide competitive services to tenants and other customers, REITs will become less and less competitive with others in the real estate marketplace. REITs will have to wait for services to be deemed ''customary.'' As a practical matter, that means a REIT must wait until the IRS concludes that almost everybody else has been providing the service. If a REIT is forced to lag the market, it can be neither competitive nor provide its investors with a satisfactory return on their investment. Certainly, this is not consistent with what Congress intended when it created REITs, and when it modified the REIT rules over the years. In keeping with the Congressional mandate to provide a sensible and effective way for the average investor to benefit from ownership of income-producing real estate, REITs should be able to provide a range of services through taxable subsidiaries.

The Administration's proposed Fiscal Year 2000 Budget acknowledges this problem. The Administration proposes modernizing REIT rules to permit REITs, on a limited basis, to use taxable subsidiaries to provide the services necessary to compete in the evolving real estate marketplace. The Administration proposal is a good start, but I believe additional refinements would further promote competitiveness. The legislation that we are introducing today builds upon the Administration proposal. Our bill addresses the appropriate needs of the REIT industry and its investors in a manner consistent with the underlying rationale for REITs and the requirements of the highly competitive, evolving real estate marketplace.

This legislation would give greater flexibility to REITs by permitting them to establish ''taxable REIT subsidiaries'' (''TRSs'') that could provide non-customary services to tenants and services to third parties. The 5% and 10% asset tests would not apply to the TRS. REITs would continue to be subject to the 75% asset tests so the value of their TRS, together with the value of other non-real estate assets, could not exceed 25% of the total value of a REIT's assets. In addition, the REIT would have to continue to satisfy the 95% and 75% income tests, with dividends or interest from a TRS to a REIT counting towards the 95% test, but not the 75% test. Accordingly, at least 75% of a REIT's gross income would continue to consist of rents, mortgage interest, real estate capital gains and the other miscellaneous real estate-related items already listed in the Code. The income a TRS would receive from both third parties and REIT tenants would be fully subject to corporate tax.

To ensure that a TRS could not inappropriately reduce its corporate tax liability by shifting income to the REIT, the bill includes a number of stringent rules that limit the relationship between the REIT and the TRS. To prevent the TRS from making excessive intra-party interest payments to its affiliated REIT, the proposal contains two safeguards. One, it would apply the current anti-earnings stripping provisions of Code section 163(j) to payments between a REIT and its TRS. This would prevent the TRS from deducting intra-party interest beyond a modest amount regulated by objective criteria in the Code. Two, a 100% excise tax would be imposed on any interest payments by a TRS to its affiliated REIT to the extent the interest rate was above a commercially-reasonable rate.

Also, to be certain that a TRS could not reduce its tax obligations by deducting rents to its affiliated REIT, our legislation would retain the current rules under which any payments to a REIT by a related party would not be considered qualified rents for purposes of the REIT gross income tests. The only exception would be when a TRS rents less than 10% of a REIT-owned property and pays rents to the REIT comparable to the rents the REIT charges to its unrelated tenants at the same property. Under this exception, any rents paid to the REIT that turn out to be above comparable rents would be subject to a 100% excise tax.

Under our bill, a 100% excise tax is also imposed on any rents a REIT charges its tenants that are inflated to disguise charges for services rendered to the tenant by its affiliated TRS. Limited exceptions would be made when: (1) the TRS charges the same amounts for its services to both REIT tenants and third parties; (2) rents for comparable space are the same regardless of whether the TRS provides a service to the tenant; and (3) the TRS recognizes income for its services at least equal to 150% of its direct costs of providing the service to an affiliated REIT's tenants.

To discourage a REIT from allocating its expenses to its TRS (which would reduce the TRS's corporate tax obligation), the proposal would impose a 100% excise tax on any improper cost allocations between a REIT and its TRS. The Treasury Department would issue guidance on proper ways to allocate such costs.

Finally, the bill proposes to eliminate the use of preferred stock subsidiaries by REITs. These subsidiaries, which have been established pursuant to IRS letter rulings since 1988, allow a REIT to provide services to third parties. While the asset test rules prevent a REIT from owning more than 10% of the voting securities of these subsidiaries, they typically own more than 95% of the value of the subsidiary. We propose to eliminate these subsidiaries by prohibiting REITs from owning more than 10% of the vote or the value in another corporation other than a TRS. REITs would be given three years to convert, tax-free, their preferred stock subsidiaries to taxable REIT subsidiaries.

In addition, the bill includes some miscellaneous changes to the REIT rules that were under consideration when Congress approved a REIT simplification package a few years ago. The first provision deals with health care property. Under current law, a REIT can conduct a trade or business using property acquired through foreclosure for 90 days after it acquired such property, if it makes a ''foreclosure property'' election. After this period, the REIT can only conduct the trade or business through an independent contractor from whom the REIT does not derive any income. A health care REIT faces special challenges in using these rules when its lease of a nursing home or other health care property expires.

To remedy these challenges and to ensure that care to patients remains uninterrupted, the proposal would make two technical changes to the REIT foreclosure rules. First, the foreclosure property rules would be extended to include leases that terminate (they already apply to leases that are breached). Second, for purposes of the foreclosure rules, a health care provider would not be disqualified as an independent contractor solely because the REIT receives rental income from the provider with respect to one or more other properties. For this purpose, other rules would be made to ensure that the terms of leases of other properties could not be manipulated to circumvent this rule.

Another provision deals with the 95% distribution rule. From 1960 through 1980, REITs and mutual funds shared a requirement to distribute at least 90% of their taxable income. Since 1980, REITs have had to distribute 95% of their taxable income. The proposal would restore the 90% distribution requirement.

Mr. President, I believe this is a major improvement in the REIT rules that preserves the original intent of Congress when it first created REITs in 1960, while permitting the industry to adapt to a changing marketplace. Most importantly, these REIT modernization rules would not expand the activities that can be conducted within the REIT, they simply give the REIT greater flexibility to establish fully-taxable subsidiaries that will enable the REIT to better serve its customers.

This legislation is supported by the American Resort Development Association, the International Council of Shopping Centers, the National Apartment Association, the National Association of Real Estate Investment Trusts, the American Seniors Housing Association, the Mortgage Bankers Association of America, the National Association of Industrial and Office Properties, the National Association of Realtors, the National Multi Housing Council, and the National Realty Committee.

Mr. President, I ask unanimous consent that the text of the bill be printed in the RECORD.

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

S. 1057

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

SECTION 1. SHORT TITLE.

(a) SHORT TITLE.—This Act may be cited as the ''Real Estate Investment Trust Modernization Act of 1999''.

(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.

TITLE I—TREATMENT OF INCOME AND SERVICES PROVIDED BY TAXABLE REIT SUBSIDIARIES

SEC. 101. MODIFICATIONS TO ASSET DIVERSIFICATION TEST.

Subparagraph (B) of section 856(c)(4) is amended to read as follows:

''(B)(i) not more than 25 percent of the value of its total assets is represented by securities (other than those includible under subparagraph (A)), and

''(ii) except with respect to a taxable REIT subsidiary and securities includible under subparagraph (A)—

''(I) not more than 5 percent of the value of its total assets is represented by securities of any 1 issuer,

''(II) the trust does not hold securities possessing more than 10 percent of the total voting power of the outstanding securities of any 1 issuer, and

''(III) the trust does not hold securities having a value of more than 10 percent of the total value of the outstanding securities of any 1 issuer.''

SEC. 102. TREATMENT OF INCOME AND SERVICES PROVIDED BY TAXABLE REIT SUBSIDIARIES.

(a) INCOME FROM TAXABLE REIT SUBSIDIARIES NOT TREATED AS IMPERMISSIBLE TENANT SERVICE INCOME.—Clause (i) of section 856(d)(7)(C) (relating to exceptions to impermissible tenant service income) is amended by inserting ''or through a taxable REIT subsidiary of such trust'' after ''income''.

(b) CERTAIN INCOME FROM TAXABLE REIT SUBSIDIARIES NOT EXCLUDED FROM RENTS FROM REAL PROPERTY.—

(1) IN GENERAL.—Subsection (d) of section 856 (relating to rents from real property defined) is amended by adding at the end the following new paragraphs:

''(8) SPECIAL RULE FOR TAXABLE REIT SUBSIDIARIES.—For purposes of this subsection, amounts paid to a real estate investment trust by a taxable REIT subsidiary of such trust shall not be excluded from rents from real property by reason of paragraph (2)(B) if the requirements of subparagraph (A) or (B) are met.

''(A) LIMITED RENTAL EXCEPTION.—The requirements of this subparagraph are met with respect to any property if at least 90 percent of the leased space of the property is rented to persons other than taxable REIT subsidiaries of such trust and other than persons described in section 856(d)(2)(B). The preceding sentence shall apply only to the extent that the amounts paid to the trust as rents from real property (as defined in paragraph (1) without regard to paragraph (2)(B)) from such property are substantially comparable to such rents made by the other tenants of the trust's property for comparable space.

''(B) EXCEPTION FOR CERTAIN LODGING FACILITIES.—The requirements of this subparagraph are met with respect to an interest in real property which is a qualified lodging facility leased by the trust to a taxable REIT subsidiary of the trust if the property is operated on behalf of such subsidiary by a person who is an eligible independent contractor.

''(9) ELIGIBLE INDEPENDENT CONTRACTOR.—For purposes of paragraph (8)(B)—

''(A) IN GENERAL.—The term 'eligible independent contractor' means, with respect to any qualified lodging facility, any independent contractor if, at the time such contractor enters into a management agreement or other similar service contract with the taxable REIT subsidiary to operate the facility, such contractor (or any related person) is actively engaged in the trade or business of operating qualified lodging facilities for any person who is not a related person with respect to the real estate investment trust or the taxable REIT subsidiary.

''(B) SPECIAL RULES.—Solely for purposes of this paragraph and paragraph (8)(B), a person shall not fail to be treated as an independent contractor with respect to any qualified lodging facility by reason of any of the following:

''(i) The taxable REIT subsidiary bears the expenses for the operation of the facility pursuant to the management agreement or other similar service contract.

''(ii) The taxable REIT subsidiary receives the revenues from the operation of such facility, net of expenses for such operation and fees payable to the operator pursuant to such agreement or contract.

''(iii) The real estate investment trust receives income from such person with respect to another property that is attributable to a lease of such other property to such person that was in effect as on the later of—

''(I) January 1, 1999, or

''(II) the earliest date that any taxable REIT subsidiary of such trust entered into a management agreement or other similar service contract with such person with respect to such qualified lodging facility.

''(C) RENEWALS, ETC., OF EXISTING LEASES.—For purposes of subparagraph (B)(iii)—

''(i) a lease shall be treated as in effect on January 1, 1999, without regard to its renewal after such date, so long as such renewal is pursuant to the terms of such lease as in effect on whichever of the dates under subparagraph (B)(iii) is the latest, and

''(ii) a lease of a property entered into after whichever of the dates under subparagraph (B)(iii) is the latest shall be treated as in effect on such date if—

''(I) on such date, a lease of such property from the trust was in effect, and

''(II) under the terms of the new lease, such trust receives a substantially similar or lesser benefit in comparison to the lease referred to in subclause (I).

''(D) QUALIFIED LODGING FACILITY.—For purposes of this paragraph—

''(i) IN GENERAL.—The term 'qualified lodging facility' means any lodging facility unless wagering activities are conducted at or in connection with such facility by any person who is engaged in the business of accepting wagers and who is legally authorized to engage in such business at or in connection with such facility.

''(ii) LODGING FACILITY.—The term 'lodging facility' means a hotel, motel, or other establishment more than one-half of the dwelling units in which are used on a transient basis.

''(iii) CUSTOMARY AMENITIES AND FACILITIES.—The term 'lodging facility' includes customary amenities and facilities operated as part of, or associated with, the lodging facility so long as such amenities and facilities are customary for other properties of a comparable size and class owned by other owners unrelated to such real estate investment trust.

''(E) OPERATE INCLUDES MANAGE.—References in this paragraph to operating a property shall be treated as including a reference to managing the property.

''(F) RELATED PERSON.—Persons shall be treated as related to each other if such persons are treated as a single employer under subsection (a) or (b) of section 52.''.

(2) CONFORMING AMENDMENT.—Subparagraph (B) of section 856(d)(2) is amended by inserting ''except as provided in paragraph (8),'' after ''(B)''.

SEC. 103. TAXABLE REIT SUBSIDIARY.

(a) IN GENERAL.—Section 856 is amended by adding at the end the following new subsection:

''(l) TAXABLE REIT SUBSIDIARY.—For purposes of this part—

''(1) IN GENERAL.—The term 'taxable REIT subsidiary' means, with respect to a real estate investment trust, a corporation (other than a real estate investment trust) if—

''(A) such trust directly or indirectly owns stock in such corporation, and

''(B) such trust and such corporation jointly elect that such corporation shall be treated as a taxable REIT subsidiary of such trust for purposes of this part.

Such an election, once made, shall be irrevocable unless both such trust and corporation consent to its revocation. Such election, and any revocation thereof, may be made without the consent of the Secretary.

''(2) 35 PERCENT OWNERSHIP IN ANOTHER TAXABLE REIT SUBSIDIARY.—The term 'taxable REIT subsidiary' includes, with respect to any real estate investment trust, any corporation (other than a real estate investment trust) with respect to which a taxable REIT subsidiary of such trust owns directly or indirectly—

''(A) securities possessing more than 35 percent of the total voting power of the outstanding securities of such corporation, or

''(B) securities having a value of more than 35 percent of the total value of the outstanding securities of such corporation.

The preceding sentence shall not apply to a qualified REIT subsidiary (as defined in subsection (i)(2)).

''(3) EXCEPTIONS.—The term 'taxable REIT subsidiary' shall not include—

''(A) any corporation which directly or indirectly operates or manages a lodging facility or a health care facility, and

''(B) any corporation which directly or indirectly provides to any other person (under a franchise, license, or otherwise) rights to any brand name under which any lodging facility or health care facility is operated.

Subparagraph (B) shall not apply to rights provided to an eligible independent contractor to operate or manage a lodging facility if such rights are held by such corporation as a franchisee, licensee, or in a similar capacity and such lodging facility is either owned by such corporation or is leased to such corporation from the real estate investment trust.

''(4) DEFINITIONS.—For purposes of paragraph (3)—

''(A) LODGING FACILITY.—The term 'lodging facility' has the meaning given to such term by paragraph (9)(D)(ii).

''(B) HEALTH CARE FACILITY.—The term 'health care facility' has the meaning given to such term by subsection (e)(6)(D)(ii).''.

(b) CONFORMING AMENDMENT.—Paragraph (2) of section 856(i) is amended by adding at the end the following new sentence: ''Such term shall not include a taxable REIT subsidiary.''

SEC. 104. LIMITATION ON EARNINGS STRIPPING.

Paragraph (3) of section 163(j) (relating to limitation on deduction for interest on certain indebtedness) is amended by striking ''and'' at the end of subparagraph (A), by striking the period at the end of subparagraph (B) and inserting '', and'', and by adding at the end the following new subparagraph:

''(C) any interest paid or accrued (directly or indirectly) by a taxable REIT subsidiary (as defined in section 856(l)) of a real estate investment trust to such trust.''.

SEC. 105. 100 PERCENT TAX ON IMPROPERLY ALLOCATED AMOUNTS.

(a) IN GENERAL.—Subsection (b) of section 857 (relating to method of taxation of real estate investment trusts and holders of shares or certificates of beneficial interest) is amended by redesignating paragraphs (7) and (8) as paragraphs (8) and (9), respectively, and by inserting after paragraph (6) the following new paragraph:

''(7) INCOME FROM REDETERMINED RENTS, REDETERMINED DEDUCTIONS, AND EXCESS INTEREST.—

''(A) IMPOSITION OF TAX.—There is hereby imposed for each taxable year of the real estate investment trust a tax equal to 100 percent of redetermined rents, redetermined deductions, and excess interest.

''(B) REDETERMINED RENTS.—

''(i) IN GENERAL.—The term 'redetermined rents' means rents from real property (as defined in subsection 856(d)) the amount of which would (but for subparagraph (E)) be reduced on distribution, apportionment, or allocation under section 482 to clearly reflect income as a result of services furnished or rendered by a taxable REIT subsidiary of the real estate investment trust to a tenant of such trust.

''(ii) EXCEPTION FOR CERTAIN SERVICES.—Clause (i) shall not apply to amounts received directly or indirectly by a real estate investment trust for services described in paragraph (1)(B) or (7)(C)(i) of section 856(d).

''(iii) EXCEPTION FOR DE MINIMIS AMOUNTS.—Clause (i) shall not apply to amounts described in section 856(d)(7)(A) with respect to a property to the extent such amounts do not exceed the one percent threshold described in section 856(d)(7)(B) with respect to such property.

''(iv) EXCEPTION FOR COMPARABLY PRICED SERVICES.—Clause (i) shall not apply to any service rendered by a taxable REIT subsidiary of a real estate investment trust to a tenant of such trust if—

''(I) such subsidiary renders a significant amount of similar services to persons other than such trust and tenants of such trust who are unrelated (within the meaning of section 856(d)(8)(F)) to such subsidiary, trust, and tenants, but

''(II) only to the extent the charge for such service so rendered is substantially comparable to the charge for the similar services rendered to persons referred to in subclause (I).

''(v) EXCEPTION FOR CERTAIN SEPARATELY CHARGED SERVICES.—Clause (i) shall not apply to any service rendered by a taxable REIT subsidiary of a real estate investment trust to a tenant of such trust if—

''(I) the rents paid to the trust by tenants (leasing at least 25 percent of the net leasable space in the trust's property) who are not receiving such service from such subsidiary are substantially comparable to the rents paid by tenants leasing comparable space who are receiving such service from such subsidiary, and

''(II) the charge for such service from such subsidiary is separately stated.

''(vi) EXCEPTION FOR CERTAIN SERVICES BASED ON SUBSIDIARY'S INCOME FROM THE SERVICES.—Clause (i) shall not apply to any service rendered by a taxable REIT subsidiary of a real estate investment trust to a tenant of such trust if the gross income of such subsidiary from such service is not less than 150 percent of such subsidiary's direct cost in furnishing or rendering the service.

''(vii) EXCEPTIONS GRANTED BY SECRETARY.—The Secretary may waive the tax otherwise imposed by subparagraph (A) if the trust establishes to the satisfaction of the Secretary that rents charged to tenants were established on an arms' length basis even though a taxable REIT subsidiary of the trust provided services to such tenants.

''(viii) NO INFERENCE WITH RESPECT TO RENTS NOT WITHIN EXCEPTIONS.—In determining whether rents are subject to reduction upon distribution, apportionment, or allocation under section 482 for purposes of subparagraph (B), the fact that rents from real property do not meet the requirements of clauses (ii) through (vii) shall not be taken into account; and such determination, in the case of rents not meeting such requirements, shall be made as if such clauses had not been enacted.

''(ix) NO INFERENCE AS TO WHETHER REDETERMINED RENT IS RENT FROM REAL PROPERTY.—Rent received by a real estate investment trust shall not fail to qualify as rents from real property under section 856(d) by reason of the fact that all or any portion of such rent is determined to be redetermined rent.

''(C) REDETERMINED DEDUCTIONS.—The term 'redetermined deductions' means deductions (other than redetermined rents) of a taxable REIT subsidiary of a real estate investment trust if the amount of such deductions would (but for subparagraph (E)) be increased on distribution, apportionment, or allocation under section 482 to clearly reflect income as between such subsidiary and such trust.

''(D) EXCESS INTEREST.—The term 'excess interest' means any deductions for interest payments by a taxable REIT subsidiary of a real estate investment trust to such trust to the extent that the interest payments are in excess of a rate that is commercially reasonable.

''(E) COORDINATION WITH SECTION 482.—The imposition of tax under subparagraph (A) shall be in lieu of any distribution, apportionment, or allocation under section 482.

''(F) REGULATORY AUTHORITY.—The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of this paragraph. Until the Secretary prescribes such regulations, real estate investment trusts and their taxable REIT subsidiaries may base their allocations on any reasonable method.''.

(b) AMOUNT SUBJECT TO TAX NOT REQUIRED TO BE DISTRIBUTED.—Subparagraph (E) of section 857(b)(2) (relating to real estate investment trust taxable income) is amended by striking ''paragraph (5)'' and inserting ''paragraphs (5) and (7)''.

SEC. 106. EFFECTIVE DATE.

(a) IN GENERAL.—The amendments made by this title shall apply to taxable years beginning after the date of enactment of this Act.

(b) TRANSITIONAL RULES RELATED TO SECTION 101.—

(1) EXISTING ARRANGEMENTS.—

(A) IN GENERAL.—Except as otherwise provided in this paragraph, the amendment made by section 101 shall not apply to a real estate investment trust with respect to—

(i) securities of a corporation held directly or indirectly by such trust on April 28, 1999,

(ii) securities received by such trust (or a successor) in exchange for, or with respect to, securities described in clause (i) in a transaction in which gain or loss is not recognized, and

(iii) securities acquired directly or indirectly by such trust as part of a reorganization (as defined in section 368(a)(1) of the Internal Revenue Code of 1986) with respect to such trust if such securities are described in clause (i) or (ii) with respect to any other real estate investment trust.

(B) NEW TRADE OR BUSINESS OR SUBSTANTIAL NEW ASSETS.—Subparagraph (A) shall cease to apply to securities of a corporation as of the first day after April 28, 1999, on which such corporation engages in a substantial new line of business, or acquires any substantial asset, other than—

(i) pursuant to a binding contract in effect on such date and at all times thereafter before the acquisition of such asset,

(ii) in a transaction in which gain or loss is not recognized by reason of section 1031 or 1033 of the Internal Revenue Code of 1986, or

(iii) in a reorganization (as so defined) with another corporation the securities of which are described in paragraph (1)(A) of this subsection.

(2) TAX-FREE CONVERSION.—If—

(A) at the time of an election for a corporation to become a taxable REIT subsidiary, the amendment made by section 101 does not apply to such corporation by reason of paragraph (1), and

(B) such election first takes effect during the 3-year period beginning on the date of the enactment of this Act,

such election shall be treated as a reorganization qualifying under section 368(a)(1)(A) of such Code.

TITLE II—HEALTH CARE REITS

SEC. 201. HEALTH CARE REITS.

(a) SPECIAL FORECLOSURE RULE FOR HEALTH CARE PROPERTIES.—Subsection (e) of section 856 (relating to special rules for foreclosure property) is amended by adding at the end the following new paragraph:

''(6) SPECIAL RULE FOR QUALIFIED HEALTH CARE PROPERTIES.—For purposes of this subsection—

''(A) ACQUISITION AT EXPIRATION OF LEASE.—The term 'foreclosure property' shall include any qualified health care property acquired by a real estate investment trust as the result of the termination of a lease of such property (other than a termination by reason of a default, or the imminence of a default, on the lease).

''(B) GRACE PERIOD.—In the case of a qualified health care property which is foreclosure property solely by reason of subparagraph (A), in lieu of applying paragraphs (2) and (3)—

''(i) the qualified health care property shall cease to be foreclosure property as of the close of the second taxable year after the taxable year in which such trust acquired such property, and

''(ii) if the real estate investment trust establishes to the satisfaction of the Secretary that an extension of the grace period in clause (i) is necessary to the orderly leasing or liquidation of the trust's interest in such qualified health care property, the Secretary may grant 1 or more extensions of the grace period for such qualified health care property.

Any such extension shall not extend the grace period beyond the close of the 6th year after the taxable year in which such trust acquired such qualified health care property.

''(C) INCOME FROM INDEPENDENT CONTRACTORS.—For purposes of applying paragraph (4)(C) with respect to qualified health care property which is foreclosure property by reason of subparagraph (A) or paragraph (1), income derived or received by the trust from an independent contractor shall be disregarded to the extent such income is attributable to—

''(i) any lease of property in effect on the date the real estate investment trust acquired the qualified health care property (without regard to its renewal after such date so long as such renewal is pursuant to the terms of such lease as in effect on such date), or

''(ii) any lease of property entered into after such date if—

''(I) on such date, a lease of such property from the trust was in effect, and

''(II) under the terms of the new lease, such trust receives a substantially similar or lesser benefit in comparison to the lease referred to in subclause (I).

''(D) QUALIFIED HEALTH CARE PROPERTY.—

''(i) IN GENERAL.—The term 'qualified health care property' means any real property (including interests therein), and any personal property incident to such real property, which—

''(I) is a health care facility, or

''(II) is necessary or incidental to the use of a health care facility.

''(ii) HEALTH CARE FACILITY.—For purposes of clause (i), the term 'health care facility' means a hospital, nursing facility, assisted living facility, congregate care facility, qualified continuing care facility (as defined in section 7872(g)(4)), or other licensed facility which extends medical or nursing or ancillary services to patients and which, immediately before the termination, expiration, default, or breach of the lease of or mortgage secured by such facility, was operated by a provider of such services which was eligible for participation in the medicare program under title XVIII of the Social Security Act with respect to such facility.''

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

TITLE III—CONFORMITY WITH REGULATED INVESTMENT COMPANY RULES

SEC. 301. CONFORMITY WITH REGULATED INVESTMENT COMPANY RULES.

(a) DISTRIBUTION REQUIREMENT.—Clauses (i) and (ii) of section 857(a)(1)(A) (relating to requirements applicable to real estate investment trusts) are each amended by striking

''95 percent (90 percent for taxable years beginning before January 1, 1980)'' and inserting ''90 percent''.

(b) IMPOSITION OF TAX.—Clause (i) of section 857(b)(5)(A) (relating to imposition of tax in case of failure to meet certain requirements) is amended by striking ''95 percent (90 percent in the case of taxable years beginning before January 1, 1980)'' and inserting ''90 percent''.

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

TITLE IV—CLARIFICATION OF DEFINITION OF INDEPENDENT CONTRACTOR

SEC. 401. CLARIFICATION OF DEFINITION OF INDEPENDENT CONTRACTOR.

(a) IN GENERAL.—Paragraph (3) of section 856(d) (relating to independent contractor defined) is amended by adding at the end the following flush sentence:

''In the event that any class of stock of either the real estate investment trust or such person is regularly traded on an established securities market, only persons who own, directly or indirectly, more than 5 percent of such class of stock shall be taken into account as owning any of the stock of such class for purposes of applying the 35 percent limitation set forth in subparagraph (B) (but all of the outstanding stock of such class shall be considered outstanding in order to compute the denominator for purpose of determining the applicable percentage of ownership).''

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

TITLE V—MODIFICATION OF EARNINGS AND PROFITS RULES

SEC. 501. MODIFICATION OF EARNINGS AND PROFITS RULES.

(a) RULES FOR DETERMINING WHETHER REGULATED INVESTMENT COMPANY HAS EARNINGS AND PROFITS FROM NON-RIC YEAR.—Subsection (c) of section 852 is amended by adding at the end the following new paragraph:

''(3) DISTRIBUTIONS TO MEET REQUIREMENTS OF SUBSECTION (a)(2)(B).—Any distribution which is made in order to comply with the requirements of subsection (a)(2)(B)—

''(A) shall be treated for purposes of this subsection and subsection (a)(2)(B) as made from the earliest earnings and profits accumulated in any taxable year to which the provisions of this part did not apply rather than the most recently accumulated earnings and profits, and

''(B) to the extent treated under subparagraph (A) as made from accumulated earnings and profits, shall not be treated as a distribution for purposes of subsection (b)(2)(D) and section 855.''.

(b) CLARIFICATION OF APPLICATION OF REIT SPILLOVER DIVIDEND RULES TO DISTRIBUTIONS TO MEET QUALIFICATION REQUIREMENT.—Subparagraph (B) of section 857(d)(3) is amended by inserting before the period ''and section 858''.

(c) APPLICATION OF DEFICIENCY DIVIDEND PROCEDURES.—Paragraph (1) of section 852(e) is amended by adding at the end the following new sentence: ''If the determination under subparagraph (A) is solely as a result of the failure to meet the requirements of subsection (a)(2), the preceding sentence shall also apply for purposes of applying subsection (a)(2) to the non-RIC year.''

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning before, on, or after the date of the enactment of this Act.

Mr. GRAHAM. Mr. President, I am pleased to join my colleague, Senator MACK, in the introduction of the REIT Modernization Act, legislation that would modernize the tax rules that apply to real estate investment trusts (''REITs'').

REITs were created in 1960 to give small investors the ability to invest in income producing real estate. But it was not until the early part of this decade that REITs emerged as a significant factor in real estate finance. Their repid growth then contributed in a major way to the development of real estate markets. The real estate industry is experiencing change today as owners seek to maximize returns by taking greater advantage of their employee expertise and tenant base. This bill will better enable REITS to expand their services to tenants and customers.

The Administration's Fiscal Year 2000 budget includes a proposal to change the rules governing REITs. The legislation that we are introducing today is largely based on that proposal. It would permit REITs to establish taxable subsidiaries to offer services that a REIT cannot offer directly to tenants and third parties. Stringent rules are included to ensure that the subsidiary would be fully subject to taxation. Current rules designed to ensure that REIT income is primarily earned from real estate activities would continue to apply. The bill also modifies the tratment of health care facilities to ensure that patients' lives are not disrupted in the event of an expired lease, and restores the 90% distribution rule that had previously applied to REITs.

REITs play a positive role in the real estate economy that has helped to stabilize property values and provide liquidity to the market. As long as the basic limitations on REIT activities are preserved, those tax rules which impose restraints on REIT activities must be modified. In my own state of Florida, REITs have invested more than $13 billion in the Florida economy, and are an important source of investment capital that has reinvigorated real estate markets.

I want to thank Senator MACK for his leadership on this issue and I welcome the bipartisan support this measure has received from members of the Senate Finance Committee, along with others, who have joined as cosponsors of the bill. I look forward to working with them in the months ahead.

Mr. MOYNIHAN. Mr. President: I commend the efforts of my respected colleagues from Florida, Senator MACK and Senator GRAHAM, as they work to modernize the tax rules that apply to Real Estate Investment Trusts (REITs). I have worked with the REIT industry over the years and have seen it grow to be a major contributor to the strength of the real estate sector in New York and nationally.

Congress first authorized REITs in 1960 so that investors of modest means could invest in income producing real estate assets. During the last four decades, REITs have provided not only real estate ownership opportunities for individual investors, but also an important source of capital for real estate investment.

As tax policy makers we have the responsibility to make sure that tax laws governing REITs are updated to reflect the realities of a dynamic market and to maintain a proper competitive balance between real estate owned through the REIT structure and through more traditional corporate and partnership structures. But because REITs are pass-through entities, we also have a responsibility to ensure that they are not used as vehicles for sheltering corporate taxes in a manner inconsistent with Congressional intent. In fact, twice in the last Congress the Finance Committee crafted legislation, later signed into law, to stop inappropriate use of the REIT structure in the case of so-called ''stapled entities'' and liquidating subsidiaries.

The Administration has included a proposal in its FY 2000 budget that would, among other things, allow REITs to own a taxable REIT subsidiary. The legislation introduced by Senators MACK and GRAHAM builds on the Administration proposal, and would expand the permissible business activities of REITs.

The approach taken in the proposals advanced by the Administration and by Senators MACK and GRAHAM warrant consideration. I have asked my staff to review the legislation and work with the authors of the bill. It is my hope that Congress can enact REIT modernization legislation this year.

ADDITIONAL COSPONSORS

S. 201

At the request of Mr. DODD, the name of the Senator from Connecticut (Mr. LIEBERMAN) was added as a cosponsor of S. 201, a bill to amend the Family and Medical Leave Act of 1993 to apply the Act to a greater percentage of the United States workforce, and for other purposes.

S. 247

At the request of Mr. BAUCUS, his name was added as a cosponsor of S. 247, a bill to amend title 17, United States Code, to reform the copyright law with respect to satellite retransmissions of broadcast signals, and for other purposes.

S. 335

At the request of Ms. COLLINS, the names of the Senator from Nevada (Mr. BRYAN), the Senator from Utah (Mr. HATCH), and the Senator from Delaware (Mr. ROTH) were added as cosponsors of S. 335, a bill to amend chapter 30 of title 39, United States Code, to provide for the nonmailability of certain deceptive matter relating to games of chance, administrative procedures, orders, and civil penalties relating to such matter, and for other purposes.

S. 459

At the request of Mr. BREAUX, the names of the Senator from Kentucky