sometimes receive care at military (VA & DoD) facilities. With the creation Medicare Subvention Demonstration sights, this will occur more often.

The computation of the AAPCC includes all Medicare beneficiaries in the denominator. However, since the facilities providing care to military eligible beneficiaries do not report Medicare costs to HCFA, the numerator of the AAPCC excludes any costs Medicare beneficiaries received in these facilities. This results in an understatement of the AAPCC wherever there are military health care facilities. States or counties with a significant military medical presence receive disproportionately low rates due to this methodology lapse.

While the national average military AAPCC understatement is 3%, in King County it is 4.3% and Pierce County it's 22.6%.

My legislation will revise the methodology to include both the Medicare beneficiaries and the costs for all their Medicare services—including those received in fee-for-service and at military facilities—in the AAPCC calculations.

Using accuracy as a means to boost AAPCC rates is both a policy-justified and a politically defensible way to begin addressing the geographic inequity in the Medicare system.

TRIBUTE TO LINDA MITCHELL

HON. XAVIER BECERRA

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Thursday, July 1, 1999

Mr. BECERRA. Mr. Speaker, I rise today to pay a heartfelt tribute to Linda Mitchell, a dear friend and tireless fighter for justice and equality. Linda died Tuesday, June 22, 1999 at her home in Pasadena, California. She was 52.

Linda Mitchell was born and raised in the State of Ohio. The third of five children, she received her Bachelor of Science Degree in Home Economics from Ohio State University. After completing her education, she moved to California, first living in San Diego and then in Los Angeles.

Linda was an individual with deep compassion and conviction. She used every bit of her energy and time to fight for the rights of all people, regardless of race, creed, or economic circumstances. She was respected and admired for her work on behalf of those less fortunate, in particular immigrants to the United States of America.

She always employed her expertise in public relations and communications to champion the causes of others. Linda chose her avenues of involvement carefully, working for many of the nation's most worthy organizations, including the Mexican American Legal Defense and Education Fund, United Way of Greater Los Angeles, Coalition for Humane Immigrant Rights of Los Angeles, Dolores Mission Women's Cooperative, and the International Institute. In her quest for justice, she served as a Board Member for the American Civil Liberties Union. Understanding the importance of the press in this country, she was a member of Fairness and Accuracy in Reporting.

Though small in size, Linda Mitchell was big of heart. When she walked into a room, you might not see her right away, but you could feel her presence because she exuded warmth and love for her fellow human being. She helped set up parenting classes for refugees from the former Soviet Union and a support center for Alzheimer's disease victims and their families.

With health a constant challenge, Linda never let physical limitations prevent her from doing anything. She traveled beyond her hemisphere to Europe and to China. She wanted to learn as much as possible about the world so she could change it.

I have never met a person more grounded on the value of human dignity nor more dedicated to promoting its survival. Linda always had a way of extracting that extra effort from me to maximize my service to the public. She has been a partner in work, a counsel in policy and a model in ethics.

Linda is remembered by friends and colleagues for her selflessness, generosity, and integrity—a woman who was dedicated to the pursuit of justice and equality. She is also remembered for her love of children, her wonderful cats, and her scrumptious desserts.

A Memorial Service will be held on Thursday, July 1, 1999 at 3:00 p.m. at the Throop Unitarian Universalist Church in Pasadena, California. There will also be a Memorial Service in Marion, Ohio where Linda will be buried on July 10, 1999.

Linda is survived by her father and mother, Ted and Elaine Mitchell; two sisters Judy LaMusga and Karen Mitchell; one brother Alan Mitchell; two nieces Cindy and Katie Mitchell; and two nephews Rob and Michael Mitchell. Her brother Bob Mitchell is deceased.

Mr. Speaker, Linda Mitchell left us too soon, with so much to do and so much to teach. She epitomized all that is good about America. I feel deeply privileged to have known her. I will forever remember her fondly. It is with great pride, yet profound sorrow, that I ask my colleagues to join me today in saluting this exceptional human being.

INTEREST ALLOCATION REFORM ACT

HON. ROB PORTMAN

OF OHIO

IN THE HOUSE OF REPRESENTATIVES

Thursday, July 1, 1999

Mr. PORTMAN. Mr. Speaker, on June 17, 1999, joined by Mr. MATSUI of California, I introduced H.R. 2270, a bill to correct a fundamental distortion in the U.S. tax law that results in double taxation of U.S. taxpayers that have operations abroad.

The United States taxes U.S. persons on their worldwide income, but allows a foreign tax credit against the U.S. tax on foreign-source income. The foreign tax credit limitation applies so that foreign tax credits may be used to offset only the U.S. tax on foreign-source income and not the U.S. tax on U.S.-source income. In order to compute the foreign tax credit limitation, the taxpayer must determine its taxable income from foreign sources. This determination requires the allocation of deductions between U.S.-source gross income and foreign-source gross income.

Special rules enacted as part of the Tax Reform Act of 1986 apply for purposes of the allocation of interest expense. These rules generally require that interest expense incurred by the U.S. members of an affiliated group of corporations must be allocated based on the aggregate of all the U.S. and foreign assets of the U.S. members of the group.

The interest allocation rules purport to reflect a principle of fungibility of money, with interest expense treated as attributable to all the activities and property of the U.S. members of a group regardless of the specific purpose for which the debt is incurred. However, the present-law rules enacted with the 1986 Act do not accurately reflect the fungibility principle because they apply fungibility only in one direction. Accordingly, the interest expense incurred by the U.S. members of an affiliated group is treated as funding all the activities and assets of such group, including the activities and assets of the foreign members of the group. However, in this calculation, the interest expense actually incurred by the foreign members of the group is ignored and thus is not recognized as funding either their own activities and assets or any of the activities and assets of other group members. This ‘‘one-way-street’’ approach to fungibility is a gross economic distortion.

By disregarding the interest expense of the foreign members of a group, the approach reflected in the present-law interest allocation rules causes a disproportionate amount of U.S. interest expense to be allocated to the foreign assets of the group. This over-allocation of U.S. interest expense to foreign assets has the effect of reducing the amount of the group's income that is treated as foreign-source income for U.S. tax purposes, which in turn reduces the group's foreign tax credit limitation. The present-law interest allocation rules thus prevent the group from fully utilizing its available foreign tax credits, and lead to double taxation of the foreign income earned by the U.S. multinational group.

This double taxation of the income that U.S. multinational corporations earn abroad is contrary to fundamental principles of international taxation and imposes on U.S. multinational corporations a significant cost that is not borne by their foreign competitors. The present-law interest allocation rules thus impose a burden on U.S.-based multinationals that hinders their ability to compete against their foreign counterparts. Indeed, the distortions caused by the interest allocation rules impose a substantial cost that affects the ability of U.S.-based multinationals to compete against their foreign counterparts both with respect to foreign operations and with respect to their operations in the United States.

H.R. 2270 will reform the interest allocation rules to eliminate the distortions caused by the present-law approach. The elimination of these distortions will reflect the fundamental tax policy goal of avoiding double taxation and will eliminate the competitive disadvantage at which the present-law interest allocation rules place U.S.-based multinationals. A detailed technical explanation of the provisions of H.R. 2270 follows.

TECHNICAL EXPLANATION OF H.R. 2270

IN GENERAL

The bill would modify the present-law interest allocation rules of section 864(c) that were enacted by the Tax Reform Act of 1986. The bill embodies the provisions that were passed by the Senate in connection with the 1986 Act. Under the bill's modifications, interest expense generally would be allocated by applying the principle of fungibility to the taxpayer's worldwide affiliated group (rather than to just the U.S. affiliated group). In addition, under special rules, interest expense incurred by a lower-tier U.S. member of an affiliated group could be allocated by applying the principle of fungibility to the subgroup consisting of the borrower and its direct and indirect subsidiaries. The bill also allows members engaged in the active conduct of a financial services business to be treated as a separate group; this provision reflects an expansion of the present-law bank group rule to other financial services firms which is similar to the expansion that was proposed in the Foreign Income Tax Rationalization and Simplification bill introduced in 1992 by Representatives Rostenkowski and Gradison. Finally, the bill would provide specific regulatory authority for the direct allocation of interest expense in other circumstances where such tracing is appropriate.

Under the bill, a taxpayer would be able to make a one-time election to apply either the interest allocation rules currently contained in section 864(e) or the modified rules reflected in the bill. Such election would be required to the made for the taxpayer's first taxable year to which the bill is applicable and for which it is a member of an affiliated group, and could be revoked only with IRS consent. Such election, if made, would apply to all the members of the affiliated group.

The bill generally is not intended to modify the interpretive guidance contained in the regulations under the present-law interest allocation rules that is relevant to the rules reflected in the bill, and such guidance is intended to continue to be applicable.

WORLDWIDE FUNGIBILITY

Under the bill, the taxable income of an affiliated group from sources outside the United States generally would be determined by allocating and apportioning all interest expense of the worldwide affiliated group on a group-wide basis. For this purpose, the worldwide affiliated group would include not only the U.S. members of the affiliated group, but also the foreign corporations that would be eligible to be included in a consolidated return if they were not foreign. Both the interest expense and the assets of all members of the worldwide affiliated group would be taken into account for purposes of the allocation and apportionment of interest expense. Accordingly, interest expense incurred by a foreign subsidiary would be taken into account in determining the initial allocation and apportionment of interest expense to foreign-source income. The interest expense incurred by the foreign subsidiaries would not be deductible on the U.S. consolidated return. Accordingly, the amount of interest expense allocated to foreign-source income on the U.S. consolidated return would then be reduced (but not below zero) by the amount of interest expense incurred by the foreign members of the worldwide group, to the extent that such interest would be allocated to foreign sources if these rules were applied separately to a group consisting of just the foreign members of the worldwide affiliated group. As under the present-law rules for affiliated groups, debt between members of the worldwide affiliated group, and stockholdings in group members, would be eliminated for purposes of determining total interest expense of the worldwide affiliated group, computing asset ratios, and computing the reduction in the allocation to foreign-source income for interest expense incurred by a foreign member.

As under the present-law rules, taxpayers would be required to allocate and apportion interest expense on the basis of assets (rather than gross income). Because foreign members would be included in the worldwide affiliated group, the computation would take into account the assets of such foreign members (rather than the stock in such foreign members). For purposes of applying this asset method, as under the present-law rules, if members of the worldwide affiliated group hold at least 10 percent (by vote) of the stock of a corporation (U.S. or foreign) that is not a member of such group, the adjusted basis in such stock would be increased by the earnings and profits that are attributable to such stock and that are accumulated during the period that the members hold such stock. Similarly, the adjusted basis in such stock would be reduced by any deficit in earnings and profits that is attributable to such stock and that arose during such period. However, unlike under the present-law rules, these basis adjustment rules would not be applicable to the stock of the foreign members of the expanded affiliated group (because such members would be included in the group for interest allocation purposes).

Under the bill, interest expense would be allocated and apportioned based on the assets of the expanded affiliated group. For interest allocation purposes, the affiliated group would be determined under section 1504 but would include life insurance companies without regard to whether such companies are covered by an election under section 1504(c)(2) to include them in the affiliated group under section 1504. This definition of affiliated group would be the starting point for the expanded affiliated group. In addition, the expanded affiliated group would include section 936 companies (which are included in the group for interest allocation purposes under present law). The expanded affiliated group also would include foreign corporations that would be included in the affiliated group under section 1504 if they were domestic corporations; consistent with the present-law exclusion of DISCs from the affiliated groups, FSCs would not be included in the expanded affiliated group.

SUBGROUP ELECTION

The bill also provides a special method for the allocation and apportionment of interest expense with respect to certain debt incurred by members of an affiliated group below the top tier. Under this method, interest expense attributable to qualified debt incurred by a U.S. member of an affiliated group could be allocated and apportioned by looking just to the subgroup consisting of the borrower and its direct and indirect subsidiaries (including foreign subsidiaries). Debt would quality for this purpose if it is a borrowing from an unrelated person that is not guaranteed or otherwise directly supported by any other corporation within the worldwide affiliated group (other than another member of such subgroup). Debt that does not qualify because of such a guarantee (or other direct supply) would be treated as debt of the guarantor (or, if the guarantor is not in the same chain of corporations as the borrower, as debt of the common parent of the guarantor and the borrower). If this subgroup method is elected by any member of an affiliated group, it would be required to be applied to the interest expense attributable to all qualified debt of all U.S. members of the group.

When this subgroup method is used, certain transfers from one U.S. member of the affiliated group to another would be treated as reducing the amount of qualified debt. If a U.S. member with qualified debt makes dividend or other distributions in a taxable year to another member of the affiliated group that exceed the greater of its average annual dividend (as a percentage of current earnings and profits) during the five preceding years or 25 percent of its average annual earnings and profits for such period, an amount of its qualified debt equal to such excess would be recharacterized as non-qualified. A similar rule would apply to the extent that a U.S. member with qualified debt deals with a related party on a basis that is not arm's length. Interest attributable to any debt that is recharacterized as non-qualified would be allocated and apportioned by looking to the entire worldwide affiliated group (rather than to the subgroup).

If this subgroup method is used, an equalization rule would apply to the allocation and apportionment of interest expense of members of the affiliated group that is attributable to non-qualified debt. Such interest expense would be allocated and apportioned first to foreign sources to the extent necessary to achieve (to the extent possible) the allocation and apportionment that would have resulted had the subgroup method not been applied.

FINANCIAL SERVICES GROUP ELECTION

Under the bill, a modified and expanded version of the special bank group rule of present law would apply. Under this election, the allocation and apportionment of interest expense could be determined separately for the subgroup of the expanded affiliated group that consists solely of members that are predominantly engaged in the active conduct of a banking, insurance, financing or similar business. For this purpose, the determination of whether a member is predominantly so engaged would be made under rules similar to the rules of section 904(d)(2)(C) and the regulations thereunder (relating to the determination of income in the financial services basket for foreign tax credit purposes). Accordingly, a member would be considered to be predominantly engaged in the active conduct of a banking, insurance, financing, or similar business if at least 80 percent of its gross income is active financing income as described in Treas. Reg. sec. 1.904–4(e)(2). As under the subgroup rule, certain transfers of funds from a U.S. member of the financial services group to another member of the affiliated group that is not a member of the financial services group would reduce the interest expense that is allocated and apportioned based on the financial services group. Also as under the subgroup rule, if elected, this rule would apply to all members that are considered to be predominantly engaged in the active conduct of a banking, insurance, financing, or similar business.

EFFECTIVE DATE

The bill would be effective for taxable years ending after December 31, 1999.

IN MEMORY OF BETTY SUR GUERRERO

HON. ROBERT A. UNDERWOOD

OF GUAM

IN THE HOUSE OF REPRESENTATIVES

Thursday, July 1, 1999

Mr. UNDERWOOD. Mr. Speaker, the island of Guam bids farewell to an esteemed resident. Betty Sur Guerrero, a colleague in the field of education and public administration, was called to her eternal rest last Monday, June 28, 1999.

The daughter of Chai Kuen and Bok Soo Sur, Betty was born in Honolulu, Hawaii, on June 25, 1926. Having graduated from St. Francis Convent High School in Hawaii, she went on to attend Graceland Junior College in Lamoni, Iowa—earning an A.A. Degree in 1946. Later, in 1948, the Iowa Teachers College in Cedar Falls, Iowa, awarded her a B.S.