E. Summary of Findings and Recommendations

1. General findings relating to business tax matters

The Joint Committee staff believes that the transactions that are the subject of this Report demonstrate the need for strong anti-avoidance rules to combat tax-motivated transactions that might satisfy the technical requirements of the tax statutes and administrative rules, but that serve little or no purpose other than to generate income tax or financial statements benefits. Accordingly, the Joint Committee staff makes the following general findings with respect to tax-motivated transactions:

- Stronger measures (e.g., the imposition of substantial, punitive penalties) are necessary to increase the costs to taxpayers of engaging in transactions that lack a non-tax business purpose or economic substance;

- Attainment of financial statement benefits based solely on Federal income tax savings is not a valid business purpose for Federal income tax purposes;

- The tax laws should impose severe penalties on the use of accommodation parties such as employees, consultants, or advisors, as parties in a transaction or arrangement to permit a taxpayer to achieve Federal income tax benefits;

- The Treasury Department and IRS should have a broad array of sanctions to impose on advisors who render opinions that rely on representations that the advisor knows, or has reason to believe, are incorrect, incomplete, or inconsistent with the facts; State licensing authorities should be notified when these sanctions are imposed, and the licensing authorities should discipline the advisor as appropriate;

- Many taxpayers are engaging in transactions primarily to obtain financial accounting benefits and those responsible for promulgating the accounting standards should evaluate whether changes to the rules governing accounting for income taxes should be made; and

- The use of multiple entities in connection with tax-motivated transactions, coupled with the inherent complexity of these transactions and the delayed realization of the tax benefits, makes it exceedingly difficult for the IRS to timely identify and properly evaluate these transactions; thus, taxpayers should be required to make a detailed disclosure of any tax-motivated transaction on a timely basis, irrespective of whether the transaction has immediate tax return effect.

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2. Specific recommendations relating to business tax issues

In addition to the general recommendations and findings relating to tax-motivated transactions, the Joint Committee staff makes the following specific recommendations:

- The duplication of losses should be curtailed so that a single economic loss is not deducted more than once;
- The rules that prevent corporate acquisitions made to evade or avoid Federal income tax should be strengthened;
- The extraordinary dividend rules should be strengthened;
- Guidance should be provided on the replication of earnings and profits in a consolidated group;
- There should be greater disclosure of partnership disguised sales;
- The partnership allocation anti-abuse rules should be strengthened;
- Guidance should be provided regarding the transfer of partial partnership interests;
- Rules are needed to address the appropriate interaction between the partnership basis rules and the corporate stock nonrecognition rules;
- The rules for allocating subpart F income should include an anti-abuse provision;
- The exception to the passive foreign investment company rules for U.S. shareholders of controlled foreign corporations should relate more closely to the U.S. shareholder's potential taxability under subpart F;
- The earnings stripping rules should be strengthened;
- Annual information reporting should be required with respect to entities that are disregarded pursuant to a check-the-box election;
- The financial asset securitization investment trust provisions should be repealed;
- The pre-June 20, 1986, grandfather rule for certain corporate-owned life insurance contracts should be repealed;

- The rules relating to the characterization and treatment of debt and equity should be modified; and

- The 50-percent related party threshold under the interest expense disallowance rules for disqualified indebtedness should be eliminated.

3. General findings relating to pensions and compensation

This Report's detailed review of Enron's compensation programs reveals a process which rested approval of executive compensation packages almost entirely with internal management. Although the Compensation Committee of the Board of Directors formally approved both the total amount of compensation paid to executives and the form of such compensation, the Committee's approval generally was a rubber stamp of recommendations made by Enron's management.

Underlying Enron's compensation programs was an apparent lack of consistent or centralized recordkeeping with respect to compensation arrangements in general and executive compensation in particular. Enron could not provide documentation relating to many of Enron's special compensation arrangements for its top executives. Although Enron represented that it properly reported income with respect to employee compensation arrangements, the lack of recordkeeping made it impossible to verify whether this was true.

Enron's heavy reliance on stock-based compensation, both with respect to executives and with respect to rank and file employees, caused significant financial loss when Enron's stock price collapsed. Although some executives suffered losses that appear stunning in amount, many executives also reaped substantial gains from their compensation arrangements. Enron's rank and file employees in many cases lost virtually all of their retirement savings because they believed statements made by Enron's top executives up to the very end that Enron was viable and that Enron's stock price would turn around.

4. Findings and recommendations relating to pensions and compensation

Some of the issues examined by the Joint Committee staff with respect to Enron's retirement plans and compensation arrangements raise nontax issues, such as issues of corporate governance and fiduciary responsibility. The Joint Committee staff finds it appropriate to make the following recommendations with respect to these plans and arrangements:

- Clear rules should be adopted with respect to the operations of cash balance plans and the conversion of traditional defined benefit plans into cash balance plans;

- To better protect retirement benefits, legislative changes should be made to reduce the likelihood that defined contribution plan participants will have high concentrations of assets in a single investment, such as employer securities. Such changes include allowing participants greater opportunities to move plan assets out of employer securities and into more diversified investments, and requiring plans to provide notices regarding investment principles. In addition, plan participants should receive investment education consistent with fiduciary rules;

- To help prevent plan participants from being misled with respect to investments in employer securities, fiduciary rules should apply to statements made by company executives regarding investments under participant-directed defined contributions plans, regardless of whether such officials are otherwise plan fiduciaries. The Department of Labor should also make additional efforts to educate plan fiduciaries and company executives regarding fiduciary obligations;

- Changes should be made to the rules relating to nonqualified deferred compensation arrangements to curb current practices that allow for the deferral of tax on compensation income while providing executives with inappropriate levels of security, control, and flexibility with respect to deferred compensation. These changes include repealing the prohibition on the issuance of related Treasury guidance, and providing that certain plan features result in current taxation, including the ability to obtain accelerated distributions, participant directed investments, and subsequent elections.

- Guidance relating to split-dollar life insurance should be finalized; and

- The limitation on the deduction for compensation in excess of $1 million should be repealed.