SENATE—*Thursday, March 12, 1992*

(Legislative day of Thursday, January 30, 1992)

The Senate met at 9 a.m., on the expiration of the recess, and was called to order by the Honorable RICHARD H. BRYAN, a Senator from the State of Nevada.

PRAYER

The Chaplain, the Reverend Richard C. Halverson, D.D., offered the following prayer:

Let us pray:

God of the ages, give us grace to see, to hear, to take seriously the wisdom of King David.

Blessed is the man that walketh not in the counsel of the ungodly, nor standeth in the way of sinners, nor sitteth in the seat of the scornful.

But his delight is in the law of the Lord; and in his law doth he meditate day and night.

And he shall be like a tree planted by the rivers of water, that bringeth forth his fruit in his season; his leaf also shall not wither; and whatsoever he doeth shall prosper.

The ungodly are not so: but are like the chaff which the wind driveth away.

Therefore the ungodly shall not stand in the judgment, nor sinners in the congregation of the righteous.

For the Lord knoweth the way of the righteous: but the way of the ungodly shall perish.—Psalm 1.

Amen.

APPOINTMENT OF ACTING PRESIDENT PRO TEMPORE

The PRESIDING OFFICER. The clerk will please read a communication to the Senate from the President pro tempore [Mr. BYRD].

The legislative clerk read the following letter:

U.S. SENATE,
PRESIDENT PRO TEMPORE,
Washington, DC, March 12, 1992.

To the Senate:

Under the provisions of rule I, section 3, of the Standing Rules of the Senate, I hereby appoint the Honorable RICHARD H. BRYAN, a Senator from the State of Nevada, to perform the duties of the Chair.

ROBERT C. BYRD,
President pro tempore.

Mr. BRYAN thereupon assumed the chair as Acting President pro tempore.

RESERVATION OF LEADER TIME

The ACTING PRESIDENT pro tempore. Under the previous order, the leadership time is reserved.

MORNING BUSINESS

The ACTING PRESIDENT pro tempore. Under the previous order, there will now be a period for the transaction of morning business, not to extend beyond the hour of 10 a.m., with Senators permitted to speak therein for not to exceed 5 minutes each.

Under the previous order, the Senator from Pennsylvania [Mr. SPECTER] is recognized to speak for up to 15 minutes.

Mr. SPECTER. I thank the Chair.

(The remarks of Mr. SPECTER pertaining to the introduction of S. 2345 are located in today's RECORD under "Statements on Introduced Bills and Joint Resolutions.")

THE NEW WORLD ORDER: A TIME FOR ACTION NOT WHINING

Mr. PELL. Mr. President, in the great sweep of history there are only rare times to make truly revolutionary changes: 1815, 1919, and 1945 were such times. Then leaders truly had the opportunity to remake the world. However, such opportunities lasted only a short period of time. Having been shaken up by war or revolution, international affairs soon settled into new patterns. The patterns set in 1815 lasted 99 years, ending in the First World War. The architects of the peace at Versailles were less successful, largely because the United States opted out of the ambitious peace we ourselves proposed, and the world dissolved into a Second World War just 20 years later. The patterns set in 1945—patterns which evolved into a cold war between adversarial superpowers and which either by luck or the grace of God avoided mutual destruction—lasted 44 years.

We are now blessed by another opportunity to remake the world, an opportunity few of us thought we would have in our lifetimes. Extraordinary circumstances have brought down the Berlin Wall, ended the division of Europe, freed the countries of Eastern Europe and the Baltics, terminated the Warsaw Pact, abolished communism in Europe, and dissolved the Soviet Union itself. Most extraordinary, these events were the product of almost entirely peaceful change. Unlike our predecessors in 1815, 1919, and 1945, we are not remaking a world destroyed by years of total war.

In 1919 the failure of American leadership helped produce a Second World War in just 20 years. We should not delude ourselves about the consequences of a similar failure to lead.

Russia, a country that still commands the military resources to destroy the world, has transformed itself from a totalitarian dictatorship to a fledgling democracy. For the first time in its thousand year history, Russia has a firmly established leader democratically chosen by the Russian people. And that President has told us that his country does not merely want to be a partner of the United States but instead would like to be thought of as an ally. He has gone so far as to propose Russian membership in NATO, and with luck we may in a few years be able to speak not of the three permanent Western powers on the United Nation Security Council, but of four such powers.

But we cannot assume that democracy will succeed in Russia and that Russia will be our ally with no effort whatsoever on our part. As the experience of Weimar Germany in the 1930's so graphically demonstrated, democracy cannot thrive and indeed may not survive in the face of economic ruination. Communism has devastated Russia and the other countries that were once part of the Soviet Union. Helping people long oppressed by communism is not merely an act of altruism; it is an act of fundamental national self-interest.

It is a widely remarked fact that in modern history there has never been a war between two democratic nations. Democratic Russia can be our ally; a dictatorial Russia can never be a partner or even a friend. The success of democracy in Russia will vastly reduce the security threat, including the nuclear threat to the United States. With democratic Russia as an ally, we can develop a strategy for other potential threats to our national security such as the situation that existed last year in the Persian Gulf.

If democracy in Russia fails, we might well again be vulnerable to a military threat and a nuclear threat from Russia. With democratic Russia as a friend, nasty regional adversaries such as Iraq, Iran, and Libya can be dealt with effectively. With authoritarian Russia as an adversary even tiny Grenada is considered a threat to the United States worthy of the sacrifice of the lives of our young service people.

In 1948 the United States recognized that an infusion of cash could make an enormous difference in the political evolution of Western Europe. In the 4 years of the Marshall plan we spent $80 billion, in 1990 dollars, to set those war-ravaged countries on their feet. The money we gave Western Europe was without doubt the best investment

• This "bullet" symbol identifies statements or insertions which are not spoken by a Member of the Senate on the floor.

AUTHENTICATED U.S. GOVERNMENT INFORMATION GPO

we made in our national security in the whole cold war period. Imagine how different the world would be if we had adopted the isolationist course of 1919 after World War II, if we had insisted only on looking after our own people and forgotten the people of Western Europe. Without the Marshall plan it is likely that much, if not all, of Western Europe would have gone Communist. The military burden of defending the United States would have been even greater than it was in the divided Europe of the cold war. And we would have been a far less prosperous nation, for the economic success of Europe directly contributed to economic growth in our own country.

As we contemplate the extraordinary opportunity that exists in Russia, we must choose between the policy of 1919 and the policy of 1948. We can do nothing and hope for the best. But if so, we had better prepare for the worst, and preparing for the worst will cost us a lot more than an aggressive policy of assisting democratic Russia.

Let us not delude ourselves. Assisting Russia is a major undertaking. Russia is an enormous land with some 150 million people. So far our much publicized humanitarian airlift has provided enough to feed Moscow for 1 day. The President has proposed $320 million a year to vanquish communism in Russia; just three-fifths of the amount the Reagan administration spent in 1985 to fight communism in the tiny country of El Salvador. And Russia, if I may remind my colleagues, is closer to our shores than EL Salvador.

On the other hand the benefits of aiding Russia are vast. We will be able to make large savings on our military budget, savings that will far exceed, even on an annual basis, the amount of assistance we need to provide Russia. Further, as Russia recovers from 70 years of communism it will become an important trading partner and its economic growth will contribute to our own prosperity much as the earlier recoveries in Western Europe benefited us in the 1950's.

Aiding Russia will not be as expensive as the Marshall plan. When the United States put up $20 billion a year to Western Europe we were the only country in the world capable of putting up such money. With the end of World War II we were, at least economically speaking, the only power left standing. Today, there are other nations able to assist Russia, and indeed, the countries of the European Community and Japan are probably financially better able to provide assistance. U.S. cash is needed but perhaps at only 10–20 percent of our Marshall plan commitments, hat is to say between $2 and $4 billion a year. Europe, Japan, and the wealthy Arab OPEC States, who really owe us after the gulf war, can certainly come up with most of the cash. But such assistance will not be forthcoming without U.S. leadership. Leadership is the burden of being the world's last superpower, and so far such leadership has been woefully lacking.

The administration has shown a stunning lack of vision in its approach to aid to Russia and other countries of the former Soviet Union. President Nixon rightly described President Bush's proposals as "pathetically inadequate." But the Congress, too, has shown a decided lack of leadership and vision in responding to the new world order.

The new cooperative relationship between the United States and Russia has enabled us to resolve an astonishing array of regional conflicts. Working under the umbrella of the United Nations, settlements have been reached to such longstanding and divisive conflicts as those in Namibia, Angola, El Salvador, Western Sahara, Cambodia, Iran-Iraq, as well as the more recent wars between Iraq and Kuwait and within the former Yugoslavia.

During the cold war the United States was engaged at various levels of cost and commitment in these conflicts. For example, we gave some $15 million a year to the non-Communist resistance in Cambodia, we gave much larger sums to Jonas Savimbi's fight against the Marxist regime in Angola, and we spent billions fighting the Communists in El Salvador. Now these conflicts are being resolved entirely on American terms. In each of the above cases free elections are being arranged by the United Nations, and in no case did the Marxist forces gain even one iota of what they sought.

Now, however, having won our battles with the Marxists at great expense, the Congress appears unwilling to spend the relatively small sums required to win the war. I am dismayed at the apparent unwillingness of many in Congress to pay the relatively modest sums required for the peacekeeping forces needed to consolidate our victories. I read in the press of complaints at the skyrocketing cost of U.N. peacekeeping. Of course, the costs have gone up. It is entirely a function of how many of the world's conflicts have been resolved and of how many victories America has won. And may I remind my colleagues that, however costly U.N. peacekeeping is, it is far less costly to the United States than the price we paid for our earlier involvements in these regional conflicts. And, of course, the success of peacekeeping promises to save hundreds of thousands of lives around the world as well as reorient billions of dollars from the destruction of war to the promise of peace.

Both the Bush administration and the Congress have been counting the pennies while missing the prize. The Bush administration risks letting slip by an historic opportunity to remake the world by helping Russia remake itself. The Congress, by its reticence to fund the administration's request for peacekeeping, risks jeopardizing the extraordinary gains freedom has made in all corners of the globe.

I accept that we have enormous problems at home. Many of these problems are the direct result of the enormous financial burden carried by the American people in the defense of freedom during the cold war. But let us not delude ourselves: many of our problems are also due to our self-indulgent behavior during the 1980's when we borrowed from our children to avoid paying our own bills. Sure, the cold war was expensive, but a lot of our problems are the product of a decade of borrow, borrow; spend, spend and have nothing to do with the need to protect against the Soviet Union. And, therefore, it is a tired and pathetic excuse to say that our past burdens exempt us from meeting our current obligations either with regard to the opportunities in Russia or the legally owed dues for peacekeeping.

LIFTING OF MISSILE TECHNOLOGY SANCTIONS ON CHINA

Mr. PELL. Mr. President, on February 27, the Senate received formal notification of the administration's publicly announced intention to waive sanctions the United States imposed on China in June 1991 for missile proliferation activities. This notification was provided pursuant to section 73 of the Arms Export Control Act, which requires the President to notify Congress 20 working days before issuing such a waiver.

According to the administration's public statements, this action was taken because China agreed to abide by the guidelines and parameters of the Missile Technology Control Regime, or MTCR.

Regrettably, I cannot discuss the contents of the notification on the Senate floor because the letter is classified in its entirety. I have asked the administration to deliver a sanitized version of the letter to the Congress within the next several days, so that it can be openly reviewed and discussed during the 20 working day notification period provided for by law.

With regard to the substance of the Chinese commitment itself, as publicly characterized by the administration, I believe it is important to clarify whether China could engage in significant missile proliferation activities while—perhaps—living up to the letter of its commitment to the Bush administration.

Central to this question is the underlying character of the Chinese commitment to the MTCR. For example, this commitment would be hollow and onerous if the Chinese Government continued missile sales with modest changes in range or payloads to put its market-

able medium-range missiles outside the control of MTCR. Such adherence to the literal letter of the law and flouting of its spirit would be unacceptable and would exacerbate our concern over Chinese comportment.

We must know whether the Chinese Government's commitment to respect MTCR guidelines and parameters applies to existing contracts. Anything short of this leaves open the possibility that Chinese weapons manufacturers could continue to engage in missile proliferation activities under the claim of existing contracts.

Finally, it must be clarified whether the Chinese Government's commitment applies to sales of missile equipment and technology for space launch vehicle programs. The MTCR does not prohibit exports to peaceful space exploration programs. At the same time however, it is important to note that, because of the interchangability of missile and space launch vehicle technology, United States policy is to treat exports to the latter—excluding the European Space Agency and Japan—as restrictively as exports to missile programs.

A commitment that allows the Chinese Government to continue missile and missile technology exports under the guise of ostensibly peaceful space launch vehicle programs would be unacceptable.

To help in resolving these questions, the administration should make available the exchange of letters between Secretary Baker and Foreign Minister Qian Qichen. These letters form the basis of the United States-Chinese understanding on China's commitment to adhere to the MTCR and could contribute significantly to Congress' and the public's understanding of the Chinese Government's commitment.

Mr. President, last week I wrote Secretary Baker raising many of these concerns. Since then, a reply to an earlier letter I and many colleagues sent on January 29 has been received addressing some of these matters. Unfortunately, the response left a number of the key questions still unresolved. I ask unanimous consent that a copy of my letter regarding the notification be printed in the RECORD.

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

U.S. SENATE,
COMMITTEE ON FOREIGN RELATIONS,
Washington, DC, March 5, 1992.

Hon. JAMES A. BAKER III
Secretary of State,
Washington, DC.

DEAR MR. SECRETARY: On February 26, the Senate received formal notification pursuant to section 73 of the Arms Export Control Act of the Administration's intent to lift sanctions imposed on China for missile proliferation activities. In order to facilitate the Committee's consideration of this waiver within the twenty-day notification period provided for under law, we would appreciate it if you could provide us with the following:

(a) a sanitized version of the waiver notification;

(b) a response to the issues we and fifteen colleagues, raised with you in our letter of January 29, 1992;

(c) a clarification as to whether the Chinese government's commitment to abide by the MTCR guidelines and parameters applies to existing contracts;

(d) a clarification as to whether the Chinese government's commitment applies to sales of missile equipment and technology to space launch vehicle programs; and

(e) a copy of the exchange of letters between yourself and Foreign Minister Qian Qichen.

Thank you very much for your cooperation in providing us with this material. We believe it will facilitate our and the Committee's review of the Administration's decision to waive sanctions on China.

Sincerely,

JESSE HELMS.
CLAIBORNE PELL.

The ACTING PRESIDENT pro tempore. Under the previous order, the Senator from Kansas [Mrs. KASSEBAUM] is recognized to speak for 10 minutes.

Mrs. KASSEBAUM. I thank the Chair.

(The remarks of Mrs. KASSEBAUM pertaining to the introduction of S. 2346 are located in today's RECORD under "Statements on Introduced Bills and Joint Resolutions.")

Mrs. KASSEBAUM. Mr. President, I yield the floor and suggest the absence of a quorum.

The ACTING PRESIDENT pro tempore. The absence of a quorum having been suggested, the clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. PRESSLER. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

THE TELECOMMUNICATIONS INFRASTRUCTURE OF ENGLAND, ITALY, AND FRANCE

Mr. PRESSLER. Mr. President, I recently returned from a trip to Europe where I examined the telecommunications infrastructures of England, Italy, and France. Congress needs to follow closely events in these countries as we formulate our Nation's communications strategy for the next century.

Mr. President, the United Kingdom truly is a laboratory of telecommunications policy. Through a number of innovative policies designed to stimulate competition while lowering consumer costs, the Government of the United Kingdom has fashioned the single most open telecommunications market in the world.

In 1981, Margaret Thatcher began the process of ending Government ownership of the British national telecommunications system. The Telecommunication Act of 1981 created British Telecom [BT] out of the old Government Post Office. Today over 50 percent of British Telecom is privately owned. Over the next year, Her Majesty's Government plans to initiate the sale of an additional 25 percent of BT.

The liberalization of the United Kingdom market has allowed a duopoly to form. In fact, a key purpose of the 1981 act was turning the United Kingdom Government monopoly into a duopoly. This was accomplished in 1982 when Mercury Communications was given a license to build and operate a completely separate telecommunications network for 25 years. This voice and data network has allowed Mercury to capture over 6 percent of the United Kingdom market.

The United Kingdom has a regulatory environment quite dissimilar to that of the United States. In 1984, the Office of Telecommunications [OFTEL] was created as the government supervisory and regulatory agency for the United Kingdom telecommunications market. The Director General of OFTEL coordinates the actions of the agency. OFTEL has under 100 employees, many of whom are not in professional positions.

This is a remarkably small number of regulators for the United Kingdom's $6 billion telecommunications market. In the United States the FCC alone has over 1,800 employees. Additionally, there are few consumer protection or consumer interest groups in the United Kingdom, unlike the large number of consumer groups in the United States which follow and influence telecommunications policy.

In the United Kingdom, the Secretary of State for the Department of Trade and Industry is responsible for the coordination of Government telecommunications policy. There is no similar position in the United States.

A number of United States telecommunications companies are taking advantage of the increasingly liberal United Kingdom market. Mainly as the result of the regulatory environment in the United States, two regional Bell companies are investing in the United Kingdom market. NYNEX in particular has committed a major amount of resources in an effort to compete with BT in the provision of local exchange service.

I visited in the community of Portsmouth, Great Britain, a NYNEX facility that is providing local exchange communication services, as well as video services, to over 2,400 homes. From the headend, NYNEX takes a fiber cable to a hub that services all the local homes. For homes that subscribe to NYNEX telecommunications services, another fiber cable extends to a distribution node. When a home is connected, the consumer can choose to receive both cable service and telecommunications service from NYNEX.

NYNEX is in the process of building switches that will give it the capability to carry and switch all local exchange traffic. For long distance within the United Kingdom, NYNEX interconnects with Mercury. NYNEX is prohibited, however, from carrying long distance calls from its own local exchange customers back to the United States.

Current law in the United States prohibits NYNEX from carrying the traffic that originates from its United Kingdom customers back to the United States and passing that traffic off to a domestic carrier.

This law forces an American company to contract for services with a foreign carrier, when providing the same services itself would present no possibility of anticompetitive behavior in the company's home market. If anything, allowing such an activity would only increase the American telecommunications surplus with the United Kingdom, with no detriment to customers in the United States.

ITALY

Italy has a state monopoly in its telecommunications market—and it shows. STET is the Government company that oversees Italy's telecommunications franchises. STET maintains and operates the national long-distance network, all interconnections with other European countries, and provides all local exchange service.

Italy has committed $5 billion to the upgrading of its network infrastructure over the next 5 years. This is much needed.

Currently, the Italian telecommunications infrastructure is completely analog. Compared to other European countries, Italy's electromagnetic switches and aging copper wiring make communications within the country comparatively difficult.

Italy was the last large European country to begin to liberalize its telecommunications equipment market. In the past, the Government-controlled monopoly provided almost all telecommunications products directly to the consumer. Recently this has begun to change. With the Government now allowing customers to purchase telecommunications equipment directly from the suppliers.

The Government franchise, however, generally purchases only from companies directly owned by Italians or from multinational companies with a presence in Italy. One such company is AT&T.

In February 1989, AT&T purchased 20 percent of Itatel, the Italian telecommunications equipment producer. This partnership gives AT&T the presence it needs to provide telecommunications equipment within Europe after 1992. It also gives Italy a crucial partnership with the maker of the world's most advanced telecommunications equipment. The prospects for outside equipment suppliers, however, is not as bright.

The Italian telecommunications standards process is effectively closed to outsiders. The Italian Government systematically uses the facade of minimum network standards to restrict access for companies from outside Italy. When setting standards, STET contacts only those companies with a presence in Italy.

Additionally, the Italian specification process favors European companies over United States companies. The Italian Government uses certification standards and certain tariffs to lock some American firms out of the competition. For American companies that do attempt to compete, it is an extremely difficult proposition.

Mr. President, let me add that the Italian Government uses both tariff and nontariff barriers to keep our companies out, yet we treat their companies much better when they try to do business in our country. It is a trade fairness issue.

They experience unreasonable delays in the approval process, as well as requirements to provide service and parts subject to additional approval by the Italian Government.

Foreign-based telecommunications firms are given considerable freedom to operate within the United States. The U.S. regulatory oversight of these foreign companies only ensures that their monopoly within their own country does not give them an unfair advantage.

In contrast, Italy is similar to most foreign telecommunications services market: closed to potential U.S. suppliers.

I found the Italian market was effectively closed to our companies. Whether this issue is covered under GATT or not, there are still steps taken to keep U.S. companies out, and this is unfair.

In the Uruguay round there are two priorities for United States telecommunications interests. First, we need to ensure open market access for telecommunications service providers in the GATT services negotiations. Second, the United States needs to work for open foreign markets for our telecommunication equipment manufacturers.

FRANCE

Mr. President, a true contrast in quality to the Italian network infrastructure exists in France. France has one of the most advanced, digital, transparent network infrastructures in Europe. French telecommunications are characterized by the ubiquitous Minitel.

The Minitel system established in 1980 launched France into the information age. France Telecom has distributed over 5 million Minitel terminals to French customers. Over 90 percent of these terminals were given away to French consumers as replacements for their old phone directory. The remainder were rented to businesses for about $15 a month. Today, Minitel system consumers can conduct all of their banking transactions, follow stock prices, reserve restaurant reservations, check the airline schedule, or order groceries from their homes. The Minitel user pays for the time spent on the line. The largest utilization, 23 percent of connection hours, is for professional applications, such as personal banking and stock market reports. The second largest area, 22 percent of connection hours, is the message board or chat lines that allow consumers to talk or leave messages anonymously. The third largest usage, 18 percent of connection hours, occurs within the electronic directory service [EDS].

Before the introduction of the EDS, the French consumer could consult only a telephone directory book to find another phone number. If consumers did not have the proper telephone directory, they were forced to go to the post office for the directory. There was no way for a phone customer to conduct a national search for a number without consulting large numbers of directories at their local post office.

EDS has enjoyed great success. No other data base in the world is used more. France Telecom estimates that more than 500 million transactions per year occur on this system. EDS accounts for 40 percent of all connections to the Minitel system.

Mr. President, the success of the Minitel system in France, the efforts of the Italians to upgrade their telecommunications network, and the open communication rules of the United Kingdom provide examples for Congress to watch and learn.

Let me conclude, Mr. President, by saying that I think that as a member of the Communications Subcommittee of the Commerce, Science, and Transportation Committee in the Senate I have been very concerned about telecommunications trade issues. I am concerned about the GATT treaties moving forward.

I have spoken on this floor about the need for Europe to reduce their regular and Airbus subsidies so we can have a GATT treaty. I find, however, in complicated areas such as the telecommunications arena, many countries keep our companies out by using specifications, rules, nontariff barriers, obstacles at the local level, and for example in Italy, our companies simply cannot operate. The same is essentially true in France. In Britain, however, our companies have had some success in getting into their market.

Foreign companies have more of an opportunity in the United States. Our markets are more open. As we compete in the world we have got to insist that we are treated on an equal basis.

Mr. President, we also must look at the great advances France has made in providing information services to all of their consumers through the Minitel

system. Having this equipment in almost every home is a great educational tool, for young people and it is a great service opportunity for all of the people.

It is entirely possible that the United States is lagging behind in this area because of some of the restrictions we have created internally. The lack of decisionmaking has caused Congress to flounder in terms of what we are going to do, what we allow the regional Bell telephone companies to do, what we allow cable TV companies to do, and so forth. We have been paralyzed in indecision while technology has made great advances.

Mr. President, I conclude by saying there is much to learn from the European example and there is also great opportunity for our companies if they are given a fair chance to compete. I hope we all insist that this is done.

IRRESPONSIBLE CONGRESS? HERE IS TODAY'S BOXSCORE

Mr. HELMS. Mr. President, it is time for my daily report which I began sometime back.

Mr. President, the Federal debt run up by Congress stood at $3,845,710,906,224.64, as of the close of business on Tuesday, March 10, 1992.

As anybody familiar with the U.S. Constitution knows, no President can spend a dime that has not first been authorized and appropriated by the Congress of the United States.

During the past fiscal year, it cost the American taxpayers $286,022,000,000 just to pay the interest on spending approved by Congress—over and above what the Federal Government collected in taxes and other income. Averaged out, this amounts to $5.5 billion every week of the year.

The question is obvious. What would America be like today if there had been a Congress that had the courage and the integrity to operate on a balanced budget?

I thank the Chair and I yield the floor.

THE FUTURE OF THE AFRICAN ELEPHANT

Mr. SANFORD. Mr. President, I would like to take a few moments to highlight some recent events of great significance to the future of the African elephant.

As many people know, the 1980's were a period of widespread poaching of the African elephant. Spurred by the market for ivory, poachers were killing 2,000 elephants each week, and its population plummeted from 1.3 million animals in 1979 to only 600,000 in 1989.

Many conservationists then began efforts to protect the elephant by working to stop the destructive ivory trade. The greatest level of protection was achieved when the parties to the Convention on International Trade in Endangered Species [CITES] voted in October 1989 in favor of a complete ban on international trade in ivory and other elephant products.

Since the trade ban took effect just over 2 years ago, it has proven very effective in curtailing the rampant poaching that was threatening the future of the African elephant. The price for ivory has fallen substantially, poaching is almost nonexistent in some areas, and there is now hope that elephant numbers will recover. Unfortunately, all of this program was threatened when several southern African countries put forth proposals to renew limited trade in ivory and other elephant products at the CITES conference currently underway in Kyoto, Japan.

Although I understand and am in many ways sympathetic with the arguments advanced by the southern African nations, I believe they are, at best, premature. As the situation now stands, we do not have a proven system of ivory trade controls; conservation measures for the African elephant have improved, but are still inadequate in many countries; elephant populations have not adequately recovered from years of widespread poaching, which still exists and is actually increasing in some areas; and the framework for illegal ivory trade is still in place.

Therefore, I was very concerned when I learned that the United States might support these efforts to weaken protection of the African elephant. Two years ago, when the original ban on trade in elephant products was debated, the U.S. leadership was crucial to achieving a vote in favor of the ban. I strongly believe that the United States could not and should not abandon its support for the African elephant. This great animal has not yet recovered from the many years of widespread poaching, and we should not contribute to any action that would again place it in jeopardy.

As a result of these concerns, on October 17, 1991, I introduced a resolution (S. Con. Res. 70) calling on the United States to maintain its support for the full protection of the African elephant. I am very pleased to say that this resolution has attracted a bipartisan group of 38 cosponsors and was passed unanimously by the Senate Foreign Relations Committee on March 4, 1992. I also led a group of 33 Senators who wrote to President Bush and urged him to oppose any ivory and elephant product trade proposals at the CITES conference.

I am very pleased that the United States, which had been leaning toward supporting the trade proposals, recently came out against the proposals to relax the trade ban and in favor of continued protection of the African elephant. With the United States firmly in support of the trade ban, the southern African countries withdrew their proposals for renewed trade. Once again, the leadership of the United States has proven crucial to the protection of the African elephant.

I would like to thank all the Senators who joined me in this conservation effort by cosponsoring Senate Concurrent Resolution 70 and by cosigning the letter to President Bush urging him to maintain the full protection of the African elephant. I am also grateful to the Foreign Relations Committee for acting expeditiously on this matter and clearing the resolution for floor action. I also appreciate the support of the minority leader, who is a cosponsor of this resolution. It is unfortunate that an anonymous hold kept this resolution from being passed by the full Senate, but I am pleased with the broad support it has attracted.

I would like to give special thanks to Secretary of State James Baker and Deputy Secretary Lawrence Eagleburger for their interest and involvement in this important matter. Credit also goes to the conservation groups who have worked with us in support of the trade ban.

The African elephant now has 2 more years of protection under the international trade ban on ivory and other elephant products. This is still a critical period, and the decision to maintain the ban will help the elephant continue to recover from the years of widespread poaching that threatened its very existence. These added years of protection will be a great boost to the long-term survival of this great animal.

WE THANK YOU MARK REITER

Mr. BURDICK. Mr. President, I rise today to acknowledge the departure of Mark Reiter from the staff of the Committee on Environment and Public Works after 5 years of dedicated service. Mark's career in public service has been lengthy, and consistently devoted to the protection of the environment. He was a staff member of the National Commission on Clean Water and later worked for our former colleague Representative Bella Abzug of New York. For a number of years he worked for the Environmental Protection Agency prior to joining the staff of the Committee on Environment and Public Works.

While with the committee, Mark's work on Department of Defense environmental issues was particularly noteworthy and important. Mark helped establish a dialogue with the Department of Defense to address environmental issues at Department of Defense facilities. This working relationship enabled the Committee and DOD to agree on key provisions in the Federal Facilities Compliance Act of 1991, which now is in conference with the

other body. Mark deserves credit for his patient but persistent work on environmental issues at Federal facilities.

Mark Reiter was a good teacher while with the committee. A great deal of institutional knowledge about Capitol Hill is unwritten and passed on by word of mouth. Those who know Mark personally know he is a wonderful oral historian. Too often both the Members and staff are too busy to take a few moments every now and then to bring to light some of the unwritten history of an issue before the Congress, or to provide some insight into how and why a particular legislative battle was won or lost. Mark, however, was an exception. He frequently recounted to other staff the lessons and stories from his extensive legislative experience. I know that this was very helpful to the committee staff and it was much appreciated.

On a personal note, several years ago Mark spent a period of time working on a special project in North Dakota. I will always be grateful for his tireless efforts on behalf of the people of North Dakota. I wish Mark well in his new career.

MENACHEM BEGIN

Mr. KERRY. Mr. President, I think it is fitting that we all take a few moments during this busy week to remember and pay our respects to former Prime Minister Menachem Begin, who died this past weekend in Israel.

As David Ignatius noted in Tuesday's Washington Post, Mr. Begin was a man who, in his own words, "survived 10 wars, two world wars, a Soviet concentration camp, 5 years in the underground as a hunted man and 26 years in opposition in the Israeli Parliament. Twenty-six years, never losing faith in a cause."

Menachem Begin's cause was Israel; Israel as a land of perpetual sanctuary and security: Israel as a guarantee that never again would Jews be hunted down and killed merely for being Jews; that never again would there be a holocaust.

As a leader, Mr. Begin possessed the indispensable element of courage. He was a risk-taker. He understood that history is not made by those who sit and wait, paralyzed by every shift in the prevailing political winds. In 1978, he took the risk of peace, joining with Egyptian President Sadat and American President Carter in signing the Camp David Accords. Throughout his career, he spoke strongly for Israel; he was a cantankerous, legalistic, stubborn, brilliant negotiator, and a surprisingly effective political leader. His last years were passed quietly, almost mysteriously, and apparently quite sadly as he mourned the dead of Israel's tragic Lebanon war.

Despite all the war and conflict that marked Menachem Begin's life, I am confident that his most lasting legacy will be as a man of peace. More than a decade later, Camp David remains a symbol of what can be accomplished in the Middle East. All it takes is an American President who will push for peace; an Arab partner with whom Israel can negotiate for peace; and a leader in Israel who—like Menachem Begin—understands that peace is the essential prerequisite to the security of his state and of his people.

CONCLUSION OF MORNING BUSINESS

The PRESIDING OFFICER (Mr. SANFORD). Morning business is closed.

TAX FAIRNESS AND ECONOMIC GROWTH ACT

The PRESIDING OFFICER. Under the previous order the Senate will now resume consideration of H.R. 4210 which the clerk will report.

The bill clerk read as follows:

A bill (H.R. 4210) to amend the Internal Revenue Code of 1986 to provide incentives for increased economic growth and to provide tax relief for families.

The Senate resumed consideration of the bill.

The PRESIDING OFFICER. The Senator from Michigan [Mr. LEVIN] is recognized under the previous order.

Mr. PRESSLER. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. LEVIN. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

The Senator from Michigan is recognized under the previous order.

Mr. LEVIN. Mr. President, the amendment that I will be offering in a few minutes, along with Senator GRAHAM of Florida, Senators DECONCINI, SIMON, and ROBB, would take the new revenues from the tax increase on the wealthiest seven-tenths of 1 percent of the taxpayers—those new revenues that are in the bill before us—and use 75 percent of those revenues for deficit reduction and 25 percent of those new revenues for transportation infrastructure and job training projects that are antirecessionary and highly growth and productivity oriented.

The bulk of the deficit reduction would appear in years 1994, 1995, and 1996, and the spending on job training and transportation infrastructure mainly would be spent in fiscal years 1992 and 1993. But the bottom line is that 75 percent of the new revenues from the tax increase on the wealthiest seven-tenths of 1 percent will be spent by this amendment for deficit reduction and 25 percent of those new revenues from the increased taxes on the wealthy would be spent for transportation infrastructure and job training projects.

The amount varies from year to year during the 5-year period, but the overall total is 75 percent deficit reduction, approximately, and 25 percent for transportation, infrastructure, and job training projects. The amendment would be paid for by striking the $300-per-child tax credit that applies to about 25 percent of the middle-income families and by including, again, all of the tax increases that are in title III of this legislation. The amendment will establish a deficit reduction trust fund and express a sense of the Senate that 25 percent of the new revenues for fiscal years 1992 and 1993 go to deficit reduction and for years 1994 through 1996, the sense of the Senate would be expressed that 100 percent of the revenue that would otherwise fund the $300 tax credit during those years would instead be credited to the deficit reduction trust fund.

The precise numbers are still being revised because the Finance Committee, I understand, is revising its numbers slightly. But the overall impact of the amendment which I will send to the desk shortly is as I have described. The goal of this amendment is to do two things. It is to take most of those new revenues and use them for short-term and long-term economic growth. It is to stimulate confidence that we are trying to get our house in order by using most of the new revenue from the tax increase on the wealthiest seven-tenths of 1 percent and using those new revenues to get our economic house in order by reducing the deficit which plagues this economy. We also spend about 25 percent of those new revenues in important growth items, infrastructure, and job retraining. Senators GRAHAM and SIMON will speak more specifically to those items.

The goal is to encourage investment in human and physical capital that will address not only the current recession but address the need for more economic growth in the future. The future is not some abstract concept. It is the same future of the same children that the committee seeks to assist through the $300 tax credit.

This amendment seeks to take an important step toward removing the albatross of debt that we have tied around the necks of the next generation, an albatross that has been created during the last 10 years and will limit the standard of living of our children and grandchildren unless we begin to remove it. The $300 tax credit might slightly ease the economic squeeze that their parents are experiencing now, but it will do little to expand the opportunities for the children themselves to participate in an expanding economy.

In spite of this difference as to how to allocate the new revenues, I com-

pliment the Finance Committee and its chairman for bringing to the Senate floor a bill that substantially improves the equity in the Tax Code by requiring the wealthiest seven-tenths of 1 percent of the taxpayers to pay a fairer share of the tax burden. The legislation recognizes that the after-tax income of that group almost doubled during the 1980's, while the rest of us got nowhere. The after-tax income during the eighties of that upper seven-tenths of 1 percent increased from $213,000 to $399,000 a year. As a whole, that tiny group of the wealthiest among us saw its share of the national income increase about twice as fast as its share of the tax burden. Those who oppose the tax increases included in this legislation frequently point to the increase in the share of the tax burden that is paid by that group but ignore the fact that their income, their ability to pay, increased far more and far faster.

The committee bill and our amendment seek to reestablish a better sense of fairness by having the wealthiest seven-tenths of 1 percent pay a fairer share of taxes. It will help restore the public's confidence in the fairness of the Tax Code by raising to 36 percent the maximum marginal tax rate for married couples with incomes over $175,000 and by establishing a 10-percent surcharge for incomes over $1 million.

Again, I commend the Finance Committee for acting in this area. It is long overdue and they have taken an important step toward tax equity.

President Bush has sought to rally opposition to this legislation by saying that it raises taxes on the American people. That is an enormous overstatement. The bill does, in fact, raise $55 billion from the wealthiest seven-tenths of 1 percent of the taxpayers. But the reason the President does not make clear to whom these tax increases are targeted is that, if he did, he would be doing it in the face of public opinion polls that show that almost 80 percent of the American people support increasing taxes on this wealthiest 1 percent.

I also believe the committee is on the right track in other ways by many of its provisions, which will stimulate the economy, including tax credit extension for targeted jobs, tax exclusion for investments in new job-creating business ventures, tax allowance for businesses encouraging speedup in plants and new equipment in plants, tax credits for business R&D. Those are important actions on the part of the Finance Committee, and this amendment does not disturb them in any way.

But as much as I support those steps to stimulate the economy and as much as I support the move toward tax equity that the Finance Committee has taken by raising the tax rates on the wealthiest seven-tenths of 1 percent, I cannot support that provision in the bill which takes about half of the new revenues to pay for $300 tax cuts for about 25 percent of middle-income families. I believe that tax credit provision represents a missed opportunity to reduce the Federal budget deficit and that reducing the Federal budget deficit is more important to the future of our children than is the $300 tax credit. I do not diminish the importance of that tax credit to the families that will be receiving it. There are other commentators, and some commentators have. I do not. That $300 tax credit will be significant to many families of those that receive it. But using that money instead for deficit reduction will be far more significant to those very same children who would be getting the $300 tax credit.

In a profession that is more noted for its disagreements than its consensus, most economists agree the huge budget deficits mean slower economic growth in the future, a less prosperous economy, less investment by business, fewer houses built, fewer cars sold. In short, fewer good paying jobs.

To quote from a recent article by Isabel Sawhill of the Urban Institute:

> We have an opportunity to use a modest peace dividend and any new revenues for two worthy objectives: Deficit reduction and productivity enhancing public investment including spending on infrastructure, research, training, education and programs for children.

And then her key point:

> If we can raise productivity growth a modest one-half of 1 percent per year, the average family can expect to earn an extra $2,000 more per year by the year 2000 and that makes a $400 tax cut today seem small.

The Congressional Budget Office spoke to the need for deficit reduction in the economic and budget outlook, fiscal years 1993 through 1997, and this is what the Congressional Budget Office said:

> The deficit should return to the top of the political agenda in 1993. Excluding deposit insurance, the deficit is likely to exceed $200 billion for the foreseeable future and more toward the end of the 1990's. Deficits of these magnitudes cripple economic growth by reducing national saving and capital formation.

Those are the chilling words that each of us has to struggle with as we decide the best way to spend those new revenues. There are some in this body who do not want to raise taxes on the wealthiest seven-tenths of 1 percent and they do not face this challenge, but those of us who feel that tax equity requires that the upper seven-tenths of 1 percent who doubled their income in the eighties should pay a higher tax rate then must decide what we feel is best for this economy, for our children, for growth relative to the use of those new revenues.

The words of the CBO are the words that I believe are the most powerful in that regard, that deficits of those magnitudes cripple economic growth by reducing national saving and capital formation.

The Finance Committee bill is deficit neutral. I understand that and that is a lot better than some alternatives which have been offered which, when stripped of accounting gimmicks, actually add to the deficit. But deficit neutrality is not good enough when we are $4 trillion in debt and when we are continuing to add about $200 billion a year to that debt, even excluding the savings and loan bailout costs.

We are in the hole. We are deep in the hole. Playing your opponent even once you are already far behind is not the way to win a ball game or to get the deficit under control. Deficit neutrality is a lot better than adding to the deficit. It is not nearly as good as reducing the deficit.

So, in my view, a $30 billion tax cut for about 25 percent of middle-income families is not the best policy choice. It should not again be diminished as not being important to those families. It is of significance to the families receiving it. The question is: Would reducing the deficit, getting our own economic house in order, taking that albatross that is around our neck and beginning in the relatively small but important step to remove it from the necks of our children, is that even more important to middle-class families than that $300 tax credit? I believe the American people agree that deficit reduction, getting our economic house in order is even more important than that tax cut.

When faced not with the open ended question, do you support a tax cut, but when instead asked the question of what is the best policy choice, the public does not put the highest priority on tax cuts from some middle-income families but on deficit reduction and on getting this economy going.

Here is how the American people in a polling question asked by Opinion Research of Princeton, NJ, responded to the following question: How should the revenue raised from increased taxes on people making more than $100,000 a year be used?

Here was the answer from a national poll: 44 percent said increase spending on domestic needs such as health and education; 27 percent said reduce the deficit; 22 percent said give a $400 tax cut to middle-income families.

So that is a critically important point. More responded cut the deficit than said provide the $400 tax cut. Investing in our future and getting our economic house in order are higher priorities among the public than a tax cut.

Mr. President, polls should not and must not govern our action. The long-term interest of a great Nation that intends to stay great should be which guides our decisions on competing policy alternatives, but at a minimum, we should avoid the folly of taking actions

assuming that they are popular if the public sentiment is, in fact, to the contrary.

So I hope that our colleagues will consider this amendment. It agrees with and reiterates the committee's recommendation about what is necessary to make the wealthiest taxpayers pay their fair share, and it leaves intact the committee's efforts to stimulate the economy. But where it differs is on how best to improve the quality of life of middle-income taxpayers, and the way it will do this is by substituting economic recovery and growth through deficit reduction for the tax cuts which 25 percent of middle-income families would receive under the committee version.

Mr. President, I yield the floor.

Several Senators addressed the Chair.

The PRESIDING OFFICER. The Senator from Maryland.

Ms. MIKULSKI. Mr. President, I rise in opposition to the Levin amendment. I not only oppose the Levin amendment, I am an unabashed and enthusiastic supporter of the middle-income tax cut. Not only am I a supporter of the middle-income tax cut in this legislation, I support the $5,000 tax credit for home ownership, the flexible IRA and the 100-percent deduction we will give the self-employed for their health insurance. For the first time in a long while, we will help ordinary people be able to help themselves.

Much has been said in this forum about the deficit. I want to acknowledge that the deficit is a real problem, but the most crucial deficit we are facing right now is the leadership deficit in order to get our country moving for the future.

People are angry. They are apprehensive. They feel that we are treading water or our country is in decline.

Families are scared not only not to buy a car or a home because they worry about their job, but they wonder if they can afford their health insurance. People are withdrawing their money from their retirement funds just to pay last month's bills. People are telling me that they want something from Washington, and they want it now.

About a year and a half ago, I stood up on this floor and said the middle class had no more to give; that they are either tuition poor or mortgage poor. Once they pay their health insurance and their property tax, they are tapped out, they are maxed out, and that is why I am going to support the middle-class tax cut.

This is not a new idea. It is a new approach to restoring to the middle-class money that we have taken from them in previous tax bills. There is no doubt that the 1986 tax bill hurt the middle class, and this is the first step to restoring tax equity.

There are those who say $300, $600, or $900 is not very important. That is a Capitol Hill mentality. Parents tell me what a few hundred dollars will buy. It will buy new shoes for the kids, a downpayment on a car, or it will actually pay for their health insurance premium. One mother told me she would use that money to go back to community college to get herself retrained to enter the labor market.

This tax break is important and our working families deserve it. I am going to cast my vote to help middle-class families buy that first home and many other things. That is why I support the tax credit for home ownership. That is why I support the health insurance deduction premium for small business.

Mr. President, I also support programs in this bill to help business. The investment and capital gains and the extension of the research and development tax credit are absolutely crucial.

I know the Senator from New Hampshire is waiting to speak, but I wanted to have the opportunity to oppose this amendment which I believe is well-intentioned; the direction of reducing the deficit is absolutely a splendid idea, but those are long range, macroeconomic ideas.

Right now we need to give relief to the middle class, and we need to give specific and immediate and realizable tax benefits to businesses to get them moving again. I believe if we do that we will overcome the biggest deficit of all, the leadership deficit. I am happy to cast my vote for the tax bill as reported by the Finance Committee.

Mr. President, I yield the floor.

The PRESIDING OFFICER. The Senator from New Hampshire.

Mr. RUDMAN. I thank the Chair.

Mr. President, although these remarks are not precisely on point to the discussion of the Senator from Michigan, I have some understanding of the amendment I believe he is going to offer and they do in some way relate to that.

Mr. President, I rise today in opposition to the pending tax package put together by the Democratic members of the Senate Finance Committee. I also oppose, and opposed last evening, the economic growth tax package endorsed by the administration.

Almost a decade ago, Mr. President—in fact, it is a decade ago—along with many others on this floor, having just arrived here in the Senate, I began to warn that the Federal Government was embarking on a path of record budget deficits which represented a threat to the economic future of America. Annual, record Federal budget deficits would, I stated at that time, ensure high interest rates and a drain on our Nation's wealth as foreign loans increasingly financed United States Government obligations.

The combination, I said at that time, of higher interest rates and a low savings rate would hamper American industry, with resulting damage to our economy. Furthermore, as the Federal Government became increasingly burdened with economically useless payments on our national debt, economically harmful with respect to foreign-owned debt, it would be increasingly unable to respond to the needs and the crises which would develop in the future.

It was for this reason that I coauthored the Gramm-Rudman-Hollings balanced budget law in 1985. This law worked well for its first few years, but its impact diminished as time went on. The first full year following the passage of G-R-H saw the single largest 1-year drop in the Federal budget deficit, from $221 billion in fiscal year 1986 to $150 billion in fiscal year 1987. The deficit hovered around $150 billion the next 2 years, still too high, but much lower than it would have been without Gramm-Rudman-Hollings. Unfortunately, the fiscal year 1990 deficit—for the budget passed in 1989—rose to $220 billion and it has been downhill ever since.

For the current fiscal year, the projected deficit is $400 billion. We say numbers here very quickly and very glibly, but I want to repeat it. The deficit for this year, is about $400 billion.

Mr. President, the future that many of us predicted many years ago is now the present. Much of the country is hard hit by an ongoing recession, possibly no State harder than New Hampshire. Signs of the recession in my State include an increase in the State's unemployment rate from 3.5 to nearly 8 percent in the last 3 years, a 53-percent reduction in construction employment, the collapse of the real estate market, a tripling in the number of bankruptcy filings, and a doubling in the number of AFDC recipients.

One can always point to more than one contributing factor for the downturn in the economy as big as ours; but there can be no doubt that sustained record budget deficits, high real interest rates, and the devotion of an increasing portion of the economy to pay interest on the skyrocketing national debt is the primary factor. And, there can also be no doubt that the blame for this lies with the Congress and the President, with Democrats and Republicans alike, most all of whom have been unwilling to make the hard choices or to explain to the American people that there is no such thing as a free lunch.

The same people who have brought us this deficit, I regret to say, now propose to solve our economic problems by bringing us more of the same. Increase the deficit now to solve our immediate problem, and we will promise to cut the deficit in the future. Yet, in further mortgaging the future for the present, we exacerbate the very problems that got us into this mess and hamper the prospects of any real long-term recovery.

The heart of the Democratic tax package pending before this body is modest $300 per child tax credit for some families with incomes under $40,000—it had been $50,000 but the Democrats cut it back last night—paid for by a substantial increase for those earning more than $130,000.

There are two basic problems with this proposal. First, it repudiates the 1986 Tax Act in which upper-income individuals were promised lower marginal tax rates in exchange for the elimination of a variety of tax deductions and credits and substantially higher overall taxes. Those are the facts. If you look at them, no matter what people want to say, the facts are clear as to what that did at that time.

By the way, have we all forgotten that the revenue received from that change was used to eliminate millions of poor people from the tax rolls completely and reduce taxes for 85 percent of all Americans? It was a fairly successful bipartisan piece of legislation. Now, in a classic bait and switch tactic, this legislation proposes to increase the marginal tax rate without restoring the deductions and credits which were eliminated.

Second, the 85 cents per day tax credit will hardly be noticed by those employed middle-class families fortunate enough to receive it. And it will provide minimal economic benefits. Many will not benefit from the credit at all.

The Office of Management and Budget estimates that at least 40 percent of all American families with children will receive no benefit from the tax credit. Obviously, the unemployed get nothing from it. As Paul Tsongas, one of the leading Democratic Presidential candidates has noted, this is "Twinkie economics." It is a purely political proposal, the only purpose of which, I believe, is to try to accentuate class divisions, and portray Republicans who oppose it for sound economic reasons as being the party of the rich.

The Democratic package also contains a variety of tax breaks which are designed to appeal to special interests, but which do nothing for the economy. For example, one of the great successes of the 1986 Tax Act was the creation of a strong alternative minimum tax which ensured that all wealthy Americans paid their fair share of taxes no matter what deductions they might be entitled to.

At a cost of $800 million in the next 5 years alone, the Democratic bill would grant relief from this alternative tax to one group of people—oil and natural gas drillers. There is a new credit for restaurant owners, a provision to allow universities to issue more tax-exempt bonds, and provisions for fishing fleets, the Federal Express pilots pension plan, and the securities industry.

Some of these might even be meritorious. However, they have absolutely nothing to do with stimulating the economy which I thought was why we were here.

Finally, the Democratic tax package would increase the Federal budget deficit. The deficit neutrality claimed by its sponsors is achieved by two gimmicks: First, they claim a $3 billion surplus from previously enacted legislation.

While the pay-go provisions of the 1990 budget agreement permit taking credit for previously enacted measures which raise taxes or reduce entitlement spending, I believe I am correct in saying that Congress already took credit for this money when it extended unemployment compensation benefits earlier this year. In effect, the majority is trying to spend the same money a second time.

Second, the bill would create a new special individual retirement account. While contributions to this special IRA would not be tax deductible, all income built up within the account and all withdrawals would be tax free after 5 years. This proposal is scored as a revenue raiser in the short run because it is expected that people will pay the tax and penalty and withdraw money from their existing IRA's to create the new one.

The committee is calling the paper-shuffling flowing from this tax break a revenue raiser, and using it to justify additional tax credits. It does this at tremendous long-term revenue loss to the Federal Government thus further hampering any prospect for long-term economic recovery.

Moreover, to the extent this special IRA promotes additional savings now, it will serve to depress, not stimulate, the economy in the short run. This special IRA is symptomatic of Government fiscal policy for the last decade—mortgage the future for the present and ignore the consequences.

In fairness to the Democrats, I regret to note that an almost identical proposal appears in the President's fiscal year 1993 budget request.

By contrast, the administration has developed an economic growth package in which the tax cuts are more carefully targeted and which has some prospect for stimulating the economy.

However, the administration's proposal loses all beneficial value by their refusal to pay for it.

The administration's statement that their economic growth package does not add to the deficit fails to stand up to even cursory examination.

The administration has proposed banking and pension legislation which, under normal Government cash accounting, they estimate would save $18.3 billion through fiscal year 1997. That estimate is itself questionable and, in any event, I believe that most Americans would be surprised to find that permanent deregulation of the Nation's largest banks is an integral part of their short-term economic growth package.

The administration then resorts to an accounting gimmick which increases the estimated savings by $19.7 billion over the 6 years by $13.7 billion in fiscal years 1992 and 1993 alone. These fictitious savings are then used to justify all sorts of tax breaks, many of which I concede are justifiable when viewed in isolation.

Mr. President, this is sheer unadulterated nonsense. Because of objections from myself and others, this gimmickry was dropped from the administration's package when it was offered last evening in the Senate. But, rather than use real revenues as a replacement, my colleagues, I am sad to say, proposed $1.1 billion annually over the next 5 years from the defense stockpile.

There are three problems with this.

First, the use of one-time asset sales to pay for permanent tax cuts would make the deficit worse in the long run.

Second, over half the savings proposed from this change are already incorporated in the President's defense budget. I guess what is good for the goose is good for the gander.

The Democrats, one, want to use the $3 billion twice; the administration wants to use the asset sale twice. We are sharing irresponsibility, I guess.

Using the asset sales here would force additional reductions in defense budget beyond those already planned.

Third, as I note in more detail below, defense savings should be used to reduce the budget deficit and nothing else.

The administration's tax package also relies on the same special IRA's included in the Democratic bill, and relies on significant short-term savings projected from their proposed capital gains cut. While I support capital gains rate reduction, I am reluctant to use a capital gains tax cut to justify additional tax breaks.

At the same time, in order to prove that Republicans also support the middle class as if that is somehow needed proof, some of my colleagues on this side of the aisle plan to offer a separate amendment to provide a middle-class tax cut paid for with savings in the defense budget.

I would be amenable to that idea if this country were not facing $400 billion annual budget deficits. Under these circumstances, the only appropriate use of defense savings is to cut the budget deficit. Instead of pandering to the people of this country with broad-based tax cuts that we cannot afford, we should give them and their children a break by taking real steps to cut the growing mountain of Federal debt.

There are some things that this Congress and this President should be able to agree on to help stimulate the economy out of the recession.

The real estate and construction industry needs some relief from some of the excessively onerous provisions in-

cluded in the 1986 Tax Reform law, especially in the area of passive loss rules.

I believe the $5,000 tax credit proposed by the President for first-time home buyers would help stimulate the economy and assist millions of Americans in realizing their dream of buying a home. Accelerated depreciation for businesses which proceed now with investments in new equipment would certainly help get the economy going, as would a properly targeted capital gains cut.

A limited tax package with provisions designed to stimulate the economy is worth enacting, and it is worth paying for with real tax increases, even tax increases on the wealthy.

Instead, we have before us a Democratic package which uses real tax increases and some gimmicks to pay for a scattershot of tax breaks providing little or no economic benefit, and an administration proposal of somewhat more carefully targeted tax breaks paid for almost entirely with gimmicks.

I considered combining the better elements of the two and offering an economic growth package which is truly deficit neutral. I have decided not to do so because it would be lucky to get five votes in the current political climate, and I am not interested in wasting the time of the U.S. Senate.

The two pending proposals are, in my view, worse than doing nothing. If we do nothing, economic experts agree that the economy will, albeit slowly, work itself out of the recession. Doing nothing, at least, has the virtue of not making things worse in an effort to score political points and show the American people that we care.

Rather than consuming the time of this body on proposals to add to the deficit, we should be explaining to the American people how serious the Federal fiscal situation is and developing a bipartisan plan to deal with it. One of the first votes that I cast on coming to the Senate in 1981 was on whether to raise the national debt ceiling to over $1 trillion. That was the debt accumulated from the time of the forming of the Republic until 1981. The deficit for fiscal year 1992 alone will approach $400 billion. And the national debt will rise to over $4 trillion.

Mr. President, here are some figures that I hope all of my colleagues will indelibly keep in mind, because they tell the story of an economic disaster facing America, unless we address it. Gross interest on the national debt will, this year, for the first time, exceed the amount spent on Social Security benefits. That is an incredible figure. Gross interest will only be about $1 billion less than Defense Department outlays, and next year, it will be higher. Net interest on the national debt, the amount paid to non-Government holders of Federal notes, has risen from $53 billion, or 9 percent of the budget in 1980 to $199 billion or 14 percent of the budget today.

Many complain about wasteful projects and foreign aid. But, if we eliminate all domestic discretionary spending—not the wasteful parts, but all of it—and all foreign aid in this fiscal year, we would still be left with a deficit of over $150 billion, an amount considered inconceivable a short 10 years ago when I came to the Senate.

Meanwhile, in what I regret to call a conspiracy of silence among all of the Presidential candidates and most Members of Congress, few of us are willing to talk about the real problem. Why? Because of the fear that, if you address the issues honestly, you will lose votes and possibly the election. The annual rate of growth in the Medicare program over the last 10 years has exceeded 15 percent. For Medicaid, it was over 10 percent alone last year. Other entitlement programs also grew by amounts exceeding the inflation rate and the growth in Federal revenues.

In the next five years, entitlement programs are projected to grow by 8.1 percent annually for a 5-year cumulative increase of $800 billion. I repeat, $800 billion. but there has been little discussion of this problem. Instead, the public debate has been about whether, in this same period, to cut defense by $50 or $100 billion and to figure out how to spend those savings five times over.

I wonder, Mr. President, if anyone in this Chamber is stopping to think of what we are doing to America. Forty percent of that projected growth in entitlements is above what can be attributed to inflation and population growth. As a result, the share of the Federal budget consumed by direct payment to individuals—Social Security, Medicare, Federal and veterans pensions, and so forth—will increase from 49 percent to over 60 percent in 1997.

It is time to be honest with the American people. We either take steps to cut the growth in these programs, raise the taxes to pay for them, or do a combination of the two. There is no easy way to address the budget deficit, but the future of this country depends on it.

In the interim, Mr. President, I will not vote to make the deficit worse. Accordingly, I oppose the Democratic plan, and I voted against the administration's package last night. As I expect the Democratic package to pass, I will vote to sustain the President's veto when the time comes.

Mr. President, I want to continue here for a minute with some personal thoughts. I have been here now for over 10 years and, with all due respect to the castigating and the pummeling that the Congress generally takes, I would have to say that I have never in my life, served with so many extraordinary people as I serve with in this body. There is almost no one here—in fact, there is no one here in whom I do not find some element of redeeming value. Some more than others. But the fact is that we are unable, institutionally, to do what has to be done. We are literally not watching the fiddler fiddle while Rome burns; we are watching the entire orchestra. How is it that in the early spring or late winter of 1992, with a Federal budget deficit reaching $400 billion, with a country in economic disarray; how can we responsibly stand on this floor and talk about doing anything that has even the slightest chance of adding, not a dime, but a penny to a budget deficit?

I think I have the answer. I think I have finally figured it out after 11 years. And that is that we are afraid to level with the American people, because they have been lied to for so long. Maybe "lie" is a strong word, Mr. President. Maybe we have simply not told them the whole truth. Look at the 1980 Presidential campaign, the 1984 campaign, the 1988 campaign, and look at the Republican loss of the U.S. Senate in the 1986 elections, following people on this side of the aisle being willing to stand up tall for a proposal offered by the then chairman of the Budget Committee, Senator DOMENICI, which, had it become law, this country would not be in recession today. We would not have these record deficits, and the Gramm-Rudman-Hollings law would never have been necessary to think of. But what happened, of course, was that there were screams from people in the other body, from both sides. The then Speaker and the then President sat down under an oak tree, or some sort of a tree down at White House, and they made a deal and they just cut the legs out from under those here on both sides who supported some rather draconian measures to address the issue.

Since that time, with the exception of the Gramm-Rudman-Hollings law, there has been no serious effort to address this deficit. Both Democrats and Republicans are to blame. Congress is to blame. We are all to blame.

We are here for a blink of time. No matter how lofty we think our positions are, and how well we are thought of, most of us will be long forgotten 2 years after we leave here, or maybe less than that.

And 10 years from now as we are in the early part of the new century, most of us who are here now will not be here. We will either have retired, been defeated, or passed on to our great reward.

For those of us who are still on this Earth, and we were here during the decade of the eighties and the early nineties, how are we going to feel as we look at what the economic picture of America is at the end of this century; with a national debt, which at that time will equal the gross national prod-

uct ala the Third World, with deficits at $800 billion to $1 trillion and foreign governments sitting there with their hands folded and dictating to America the terms and conditions on which they will loan us money to support our past profligacy. That is really what we are talking about here.

Many of my friends here on both sides of the aisle have asked what I am going to do next year. One of the things I have truly enjoyed about this body is that it is a place where you truly can have friendships and alliances on your own side of the aisle and on the other. I had many of my Democratic friends and most of my Republican colleagues ask me, what are you going to do this year? You have not announced your intention; you have a reasonably good rating in your State. Are you going to run for reelection? And people tie it to all sorts of things, maybe lots of money and having more free time, and all of that is important, but it is really unimportant.

I did not plan to say this this morning but I am going to. The thing that has really been troubling me for the last 3 or 4 months, to try to determine whether to spend another 6 years of my life in this place with so many fine and wonderful people, is it worth it? Can you do anything? Can you accomplish anything? Can you make the country better? Are you part of a solution rather than part of the problem?

Mr. President, I believe that the American people are ready for straight talk. I greatly admire my former Senate colleague, Paul Tsongas. He is not doing terribly well, probably because he is telling the truth. That is not a good formulation for winning elections in America, because people have been misled for so long by this Government. They truly believe that what is really wrong is waste and mismanagement, when the fact is what is wrong is the transfer payments are eating us up alive.

But he has had at least the guts to say some hard things and he will probably lose.

I wonder whether there is enough will in this place in the next week or 10 days for people to come to the realization that individual political careers make no difference in terms of the security of America. If we were at war, I have no doubt that people would believe that, and people would rise to the height of patriotism. I look at the people in this Chamber, look at the occupant of the chair, and the Senator from Texas, the chairman of the Finance Committee; in time of war no one could give more or did. And yet, in a time when we are at war economically, when the security of America is being drained drop by drop, we cannot seem to get it together.

Is it not possible, with the extraordinary leadership that we have in this Chamber, with the Democratic leader, my friend from Maine, with the Republican leader, my friend from Kansas, with the distinguished chairmen and ranking members of committees, with the brilliance, with the good will, with the good sense, could we not all come together and say it is time to do something for America and stop this politics as usual, which is tearing the country apart and ruining it at the same time?

Mr. President, I have said a lot more than I wanted to say this morning. But it was time to say it. Is it possible in the next month or two—after what happens here is going to happen, we will have a bill passed the President will veto, the Republicans will sustain it, we will be at ground zero—could we possibly get together and address the single most important issue facing America; and that is to finally, finally, together as a group who care about our country and our future, address the deficit which is eating the fabric, the substance the values of a country which all of us hold dear?

I yield the floor.

The PRESIDING OFFICER. The Chair recognizes the Senator from Michigan [Mr. LEVIN].

AMENDMENT NO. 1712

(Purpose: To reduce the Federal budget deficit, and to express the sense of the Senate that additional funds should be directed toward job training and transportation infrastructure improvements)

Mr. LEVIN. Mr. President, I send the amendment to the desk that I referred to before, and I ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report the amendment.

The legislative clerk read as follows:

The Senator from Michigan [Mr. LEVIN], for himself, Mr. GRAHAM, Mr. DECONCINI, Mr. ROBB, and Mr. SIMON, proposes an amendment numbered 1712.

The PRESIDING OFFICER. The Chairman recognizes the majority leader.

Mr. MITCHELL. Mr. President, I ask unanimous consent that the reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it so ordered.

The amendment is as follows:

Strike line 1 on page 958 through line 17 on page 976, and insert in lieu thereof the following:

TITLE III—PAYMENT OF FAIR SHARE BY HIGH-INCOME TAXPAYERS

SUBTITLE A—TREATMENT OF WEALTHY INDIVIDUALS

SEC. 3001. INCREASE IN TOP MARGINAL RATE UNDER SECTION 1.

(a) GENERAL RULE.—Section 1 (relating to tax imposed) is amended by striking subsections (a) through (e) and inserting the following:

"(a) MARRIED INDIVIDUALS FILING JOINT RETURNS AND SURVIVING SPOUSES.—There is hereby imposed on the taxable income of—

"(1) every married individual (as defined in section 7703) who makes a single return jointly with his spouse under section 6013, and

"(2) every surviving spouse (as defined in section 2(a)),

a tax determined in accordance with the following table:

"If taxable income is:	The tax is:
Not over $35,800	15% of taxable income.
Over $35,800 but not over $86,500.	$5,370, plus 28% of the excess over $35,800.
Over $86,500 but not over $175,000.	$19,566, plus 31% of the excess over $86,500.
Over $175,000	$47,001, plus 36% of the excess over $174,000.

"(b) HEADS OF HOUSEHOLDS.—There is hereby imposed on the taxable income of every head of a household (as defined in section 2(b)) a tax determined in accordance with the following table:

"If taxable income is:	The tax is:
Not over $28,750	15% of taxable income.
Over $28,750 but not over $74,150.	$4,312.50, plus 28% of the excess over $28,750.
Over $71,150 but not over $162,500.	$17,024.50, plus 31% of the excess over $74,150.
Over $162,500	$44,413, plus 36% of the excess over $161,500.

"(c) UNMARRIED INDIVIDUALS (OTHER THAN SURVIVING SPOUSES AND HEADS OF HOUSEHOLDS).—There is hereby imposed on the taxable income of every individual (other than a surviving spouse as defined in section 2(a) or the head of a household as defined in section 2(b)) who is not a married individual (as defined in section 7703) a tax determined in accordance with the following table:

"If taxable income is:	The tax is:
Not over $21,450	15% of taxable income.
Over $21,450 but not over $51,900.	$3,217.50, plus 28% of the excess over $21,450.
Over $51,900 but not over $150,000.	$11,743.50, plus 31% of the excess over $51,900.
Over $150,000	$42,154.50, plus 36% of the excess over $150,000.

"(d) MARRIED INDIVIDUALS FILING SEPARATE RETURNS.—There is hereby imposed on the taxable income of every married individual (as defined in section 7703) who does not make a single return jointly with his spouse under section 6013, a tax determined in accordance with the following table:

"If taxable income is:	The tax is:
Not over $17,900	15% of taxable income.
Over $17,900 but not over $43,250.	$2,685, plus 28% of the excess over $17,900.
Over $43,250 but not over $87,500.	$9,783, plus 31% of the excess over $43,250.
Over $87,500	$23,500.50, plus 36% of the excess over $87,500.

"(e) ESTATES AND TRUSTS.—There is hereby imposed on the taxable income of—

"(1) every estate, and

"(2) every trust,

taxable under this subsection a tax determined in accordance with the following table:

"If taxable income is:	The tax is:
Not over $3,500	15% of taxable income.
Over $3,500	$525, plus 36% of the excess over $3,500."

(b) CONFORMING AMENDMENTS.—

(1) Section 541 is amended by striking "28 percent" and inserting "36 percent".

(2)(A) Subsection (f) of section 1 is amended—

(i) by striking "1990" in paragraph (1) and inserting "1992", and

(ii) by striking "1989" in paragraph (3)(B) and inserting "1991".

(B) Subparagraph (B) of section 32(i)(1) is amended by striking "1989" and inserting "1991".

(C) Subparagraph (C) of section 41(e)(5) is amended by striking "1989" each place it appears and inserting "1991".

(D) Subparagraph (B) of section 63(c)(4) is amended by striking "1989" and inserting "1991".

(E) Subparagraph (B) of section 68(b)(2) is amended by striking "1989" and inserting "1991".

(F) Subparagraphs (A)(ii) and (B)(ii) of section 151(d)(4) are each amended by striking "1989" and inserting "1991".

(G) Clause (ii) of section 513(h)(2)(C) is amended by striking "1989" and inserting "1991".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 1991.

SEC. 3002. SURTAX ON INDIVIDUALS WITH INCOMES OVER $1,000,000.

(a) GENERAL RULE.—Subchapter A of chapter 1 (relating to determination of tax liability) is amended by adding at the end thereof the following new part:

"PART VIII—SURTAX ON INDIVIDUALS WITH INCOMES OVER $1,000,000

"Sec. 59B. Surtax on section 1 tax.
"Sec. 59C. Surtax on minimum tax.
"Sec. 59D. Special rules.

"SEC. 59B. SURTAX ON SECTION 1 TAX.

"In the case of an individual who has taxable income for the taxable year in excess of $1,000,000, the amount of the tax imposed under section 1 for such taxable year shall be increased by 10 percent of the amount which bears the same ratio to the tax imposed under section 1 (determined without regard to this section) as—

"(1) the amount by which the taxable income of such individual for such taxable year exceeds $1,000,000, bears to

"(2) the total amount of such individual's taxable income for such taxable year.

"SEC. 59C. SURTAX ON MINIMUM TAX.

"In the case of an individual who has alternative minimum taxable income for the taxable year in excess of $1,000,000, the amount of tentative minimum tax determined under section 55 for such taxable year shall be increased by 2.4 percent of the amount by which the alternative minimum taxable income of such taxpayer for the taxable year exceeds $1,000,000.

"SEC. 59D. SPECIAL RULES.

"(a) TREATMENT OF MARRIED INDIVIDUALS FILING SEPARATE RETURNS.—In the case of a married individual (within the meaning of section 7703) filing a separate return for the taxable year, sections 59B and 59C shall be applied by substituting '$500,000' for '$1,000,000'.

"(b) COORDINATION WITH OTHER PROVISIONS.—The provisions of this part—

"(1) shall be applied after the application of subsections (h) and (i) of section 1, but

"(2) before the application of any other provision of this title which refers to the amount of tax imposed by section 1 or 55, as the case may be."

(b) CLERICAL AMENDMENT.—The table for parts for subchapter A of chapter 1 is amended by adding at the end the following new item:

"Part VIII. Surtax on individuals with incomes over $1,000,000."

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 1991.

SEC. 3003. EXTENSION OF OVERALL LIMITATION ON ITEMIZED DEDUCTIONS FOR HIGH-INCOME TAXPAYERS.

Section 68 (relating to overall limitation on itemized deductions) is amended by striking subsection (f).

SEC. 3004. EXTENSION OF PHASEOUT OF PERSONAL EXEMPTION OF HIGH-INCOME TAXPAYERS.

Section 151(d)(3) (relating to phaseout of personal exemption) is amended by striking subparagraph (E).

SEC. 3005. MARK TO MARKET INVENTORY METHODS FOR SECURITIES DEALERS.

(a) GENERAL RULE.—Subpart D of part II of subchapter E of chapter 1 (relating to inventories) is amended by adding at the end thereof the following new section:

"SEC. 475. MARK TO MARKET INVENTORY METHOD FOR DEALERS IN SECURITIES.

"(a) GENERAL RULE.—Notwithstanding any other provision of this subpart, the following rules shall apply to securities held by a dealer in securities:

"(1) Any security which is inventory in the hands of the dealer shall be included in inventory at market value.

"(2) In the case of any security which is not inventory in the hands of the dealer and which is held at the close of any taxable year—

"(A) the dealer shall recognize gain or loss as if such security were sold on the last business day of such taxable year, and

"(B) any gain or loss shall be taken into account for such taxable year.

Proper adjustment shall be made in the amount of any gain or loss subsequently realized for gain or loss taken into account under the preceding sentence. The Secretary may provide by regulations for the application of this paragraph at times other than the times provided in this paragraph.

"(b) EXCEPTIONS.—

"(1) IN GENERAL.—Subsection (a) shall not apply to—

"(A) any security held for investment,

"(B) any security described in subsection (c)(2)(C) which is originated or acquired by the taxpayer in the ordinary course of a trade or business of the taxpayer and which is not held for sale, and

"(C) any hedge with respect to—

"(i) a security to which subsection (a) does not apply, or

"(ii) a position or a liability which is not a security in the hands of the taxpayer.

"(2) IDENTIFICATION REQUIRED.—Any security shall not be treated as described in subparagraph (A), (B), or (C) of paragraph (1), as the case may be, unless such security is clearly identified in the dealer's records as being described in such subparagraph before the close of the day on which it was acquired, originated, or entered into (or such other time as the Secretary may by regulations prescribe).

"(3) SECURITIES SUBSEQUENTLY HELD FOR SALE.—If, at any time after the close of the day on which any security described in paragraph (1) was acquired, originated, or entered into (or such other time as the Secretary may by regulations prescribe)—

"(A) such security is held for sale to customers in the ordinary course of a taxpayer's trade or business, or

"(B) such security is held as a hedge of a security to which subsection (a) applies,

such security shall not be treated as described in such paragraph as of such time.

"(4) SPECIAL RULE FOR PROPERTY HELD FOR INVESTMENT.—To the extent provided in regulations, subparagraph (A) of paragraph (1) shall not apply to any security described in subparagraph (D) or (E) of subsection (c)(2) which is held by a dealer in such securities.

"(c) DEFINITIONS.—For purposes of this section—

"(1) DEALER IN SECURITIES DEFINED.—The term 'dealer in securities' means a taxpayer who—

"(A) regularly purchases securities from or sells securities to customers in the ordinary course of a trade or business; or

"(B) regularly offers to enter into, assume, offset, assign or otherwise terminate positions in securities with customers in the ordinary course of a trade or business.

"(2) SECURITY DEFINED.—The term 'security' means any—

"(A) share of stock in a corporation;

"(B) partnership or beneficial ownership interest in a widely held or publicly traded partnership or trust;

"(C) note, bond, debenture, or other evidence of indebtedness;

"(D) notional principal contract, including any interest rate or currency swap, but not including any other commodity-linked notional principal contract;

"(E) evidence of an interest in, or a derivative financial instrument in, any security described in subparagraph (A), (B), (C), or (D), including any option, forward contract, short position, and any similar financial instrument in such a security (but not including any contract to which section 1256(a) applies); and

"(F) position which—

"(i) is not a security described in sub-paragraph (A), (B), (C), (D), or (E),

"(ii) is a hedge with respect to such a security, and

"(iii) is clearly identified in the dealer's record as being described in this sub-paragraph before the close of the day on which it was acquired or entered into (or such other time as the Secretary may by regulations prescribe).

"(3) HEDGE.—The term 'hedge' includes any position which reduces the dealer's risk from interest rate or price changes, or currency fluctuations.

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

"(1) CERTAIN RULES NOT TO APPLY.—The rules of sections 263(g) and 263A shall not apply to securities to which subsection (a) applies.

"(2) IMPROPER IDENTIFICATION.—If, under subsection (b)(2) or (c)(2)(F)(iii), a taxpayer at any time—

"(A) identifies any security or position as being described in such subsection and such security or position is not so described as of such time, or

"(B) a taxpayer fails to identify a security or position which is so described at the time such identification is required,

the provisions of subsection (a) shall apply to such security, except that only gain shall be taken into account for any taxable year.

"(e) REGULATORY AUTHORITY.—The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of this section, including rules to prevent the use of year-end transfers, related parties, or other arrangements to avoid the provisions of this section."

(b) CLERICAL ADMENDMENT.—The table of sections for subpart D of part II of subchapter E of chapter 1 is amended by adding at the end thereof the following new item:

"Sec. 475 Mark to market inventory method for dealers in securities.".

(c) EFFECTIVE DATE.—

(1) IN GENERAL.—The amendments made by this section shall apply to all taxable years ending on or after December 31, 1993.

(2) CHANGE IN METHOD OF ACCOUNTING.—In the case of any taxpayer required by this section to change its method of accounting for any taxable year—

(A) such change shall be treated an initiated by the taxpayer,

(B) such change shall be treated as made with the consent of the Secretary, and

(C) the net amount of the adjustments required to be taken into account by the taxpayer under section 481 of the Internal Reve-

nue Code of 1986 shall be taken into account ratably over the 10-taxable year period beginning with the first taxable year ending on or after December 31, 1993.

SEC. 3006. DISALLOWANCE OF DEDUCTION FOR CERTAIN EMPLOYEE REMUNERATION IN EXCESS OF $1,000,000.

(a) GENERAL RULE.—Section 162 (relating to trade or business expenses) is amended by redesignating subsection (m) as subsection (n) and by inserting after subsection (l) the following new subsection:.

"(m) CERTAIN EXCESSIVE EMPLOYEE REMUNERATION.—

"(1) IN GENERAL.—No deduction shall be allowed under this chapter for employee remuneration with respect to any covered employee to the extent that the amount of such remuneration for the taxable year with respect to such employee exceeds $1,000,000.

"(2) COVERED EMPLOYEE.—For purposes of this subsection—

"(A) IN GENERAL.—Except as otherwise provided in this paragraph, the term 'covered employee' means any employee of the taxpayer who is an officer of the taxpayer.

"(B) EXCEPTION FOR EMPLOYEE-OWNERS OF PERSONAL SERVICE CORPORATIONS.—The term 'covered employee' shall not include any employee-owner (as defined in section 269A(b)) of a personal service corporation (as defined in section 269A(b)).

"(C) FORMER EMPLOYEES.—The term 'covered employee' includes any former employee who had been a covered employee at any time while performing services for the taxpayer.

"(3) EMPLOYEE REMUNERATION.—For purposes of this subsection—

"(A) IN GENERAL.—The term 'employee remuneration' means, with respect to any covered employee for any taxable year, the aggregate amount allowable as a deduction under this chapter for such taxable year (determined without regard to this subsection) for remuneration for services performed by such employee (whether or not during the taxable year).

"(B) REMUNERATION.—For purposes of subparagraph (A), the term 'remuneration' includes any remuneration (including benefits) in any medium other than cash, but shall not include—

"(i) any payment referred to in so much of section 3121(a)(5) as precedes subparagraph (E) thereof,

"(ii) amounts referred to in section 3121(a)(19), and

"(iii) any benefit provided to or on behalf of an employee if at the time such benefit is provided it is reasonable to believe that the employee will be able to exclude such benefit from gross income under section 132.

"(4) TREATMENT OF CERTAIN EMPLOYERS.—

"(A) IN GENERAL.—All employers treated as a single employer under subsection (a) or (b) of section 52 or subsection (m) or (n) of section 414 shall be treated as a single employer for purposes of this subsection.

"(B) CLARIFICATION OF OFFICER DEFINITION.—Any officer of any of the employers treated as a single employer under subparagraph (A) shall be treated as an officer of such single employer."

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to taxable years beginning after December 31, 1991.

"SEC. . DEFICIT REDUCTION TRUST FUND.

"(a) IN GENERAL.—Subchapter I of chapter 31 of title 31, United States Code, is amended by adding at the end thereof the following new section:

"Sec. 3114. Certain proceeds from increase in certain income taxes to reduce public debt.

"(a) There is established in the Treasury of the United States a trust fund to be known as the "Deficit Reduction Trust Fund".

"(b) The Secretary of the Treasury shall use the money in the Deficit Reduction Trust Fund solely to—

"(1) pay at maturity, or redeem or buy before maturity, an obligation of the Government included in public debt, and

"(2) pay for administrative costs in operating the Deficit Reduction Trust Fund.

"(c) Any obligation of the Government which is paid, redeemed, or bought with money from the Deficit Reduction Trust Fund shall be canceled and retired and may not be reissued.

"(d) CONFORMING AMENDMENT.—The table of sections for subchapter I of chapter 31 of title 31, United States Code, is amended by adding at the end thereof the following new item:

"Sec. 3114. Proceeds from increase in certain income taxes to reduce public debt".

"SEC. . SENSE OF THE SENATE ON REVENUE CREDITED TO THE DEFICIT REDUCTION TRUST FUND.

"(a) The Senate finds that:

"(1) Since the Federal budget deficit is projected still to be in the $200 billion range by 1997,

"(2) Since such deficits will hamper economic growth by reducing national saving, capital formation and well-paying job opportunities,

"(b) Be it resolved that it is the sense of the Senate that:

"(1) 25 percent of the revenue raised through title III (Payment of Fair Share by High-Income Taxpayers) that would otherwise offset revenue expended in title I, Section 1001 (Tax Credit for Children) should be credited to the Deficit Reduction Trust Fund both in fiscal year 1992 and in fiscal year 1993.

"(2) 100 percent of the revenue raised through title III (Payment of Fair Share by High-Income Taxpayers) that would otherwise offset revenue expended in title I, section 1001 (Tax Credit for Children) should be credited to the Deficit Reduction Trust Fund in fiscal year 1994 through fiscal year 1996."

"SEC. . SENSE OF THE SENATE ON SPENDING FOR JOB TRAINING AND TRANSPORTATION INFRASTRUCTURE.

"(a) The Senate finds that:

"(1) Since job training programs are key to improving the skills of the American work force;

"(2) Since job training programs are particularly important and timely in light of the transition in the manufacturing base as a result of the ending of the cold war;

"(3) Since the recession has resulted in large scale layoffs on workers who have been employed for many years in jobs requiring skills that may be different from the skills required in areas of likely new employment opportunities; and

"(4) Since additional spending on transportation infrastructure can provide economic stimulus in the current recession and assist in improving our national productivity.

"(b) Be it resolved that it is the sense of the Senate that:

"(1) 75 percent of the revenue raised through title III (Payment of Fair Share by High-Income Taxpayers) that would otherwise offset revenue expended in Title I, Section 1001 (Tax Credit for Children) should be used for job training programs in fiscal year 1992.

"(2) 75 percent of the revenue raised through title III (Payment of Share by High-Income Taxpayers) that would otherwise offset revenue expended in title I, section 1001 (Tax Credit for Children) should be used for job training programs and transportation infrastructure improvements in fiscal year 1993, with $500 million of that amount being directed toward job training."

Notwithstanding any other provision of this Act section 1001 regarding Tax Credit for Children is null and void.

AMENDMENT NO. 1713 TO AMENDMENT NO. 1712

Mr. MITCHELL. Mr. President, in behalf of Senator GRAHAM I offer a second-degree amendment.

The PRESIDING OFFICER. The clerk will report the second-degree amendment.

The legislative clerk read as follows:

The Senator from Maine [Mr. MITCHELL], for Mr. GRAHAM, for himself, Mr. LEVIN, Mr. DECONCINI, Mr. ROBB, and Mr. SIMON, proposes an amendment numbered 1713 to amendment No. 1712.

Mr. MITCHELL. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

In the amendment strike all after the first word and insert the following:

III—PAYMENT OF FAIR SHARE BY HIGH-INCOME TAXPAYERS

SUBTITLE A—TREATMENT OF WEALTHY INDIVIDUALS

SEC. 3001. INCREASE IN TOP MARGINAL RATE UNDER SECTION 1.

(a) GENERAL RULE.—Section 1 (relating to tax imposed) is amended by striking subsections (a) through (e) and inserting the following:

"(a) MARRIED INDIVIDUALS FILING JOINT RETURNS AND SURVIVING SPOUSES.—There is hereby imposed on the taxable income of—

"(1) every married individual (as defined in section 7703) who makes a single return jointly with his spouse under section 6013, and

"(2) every surviving spouse (as defined in section 2(a)),

a tax determined in accordance with the following table:

"If taxable income is:	The tax is:
Not over $35,800	15% of taxable income.
Over $35,800 but not over $86,500.	$5,370, plus 28% of the excess over $35,800.
Over $86,500 but not over $175,000.	$19,566, plus 31% of the excess over $86,500.
Over $175,000	$47,001, plus 36% of the excess over $173,000.

"(b) HEADS OF HOUSEHOLDS.—There is hereby imposed on the taxable income of every head of a household (as defined in section 2(b)) a tax determined in accordance with the following table:

"If taxable income is:	The tax is:
Not over $28,750	15% of taxable income.
Over $28,750 but not over $74,150.	$4,312.50, plus 28% of the excess over $28,750.
Over $74,150 but not over $162,500.	$17,024.50, plus 31% of the excess over $74,150.
Over $162,500	$44,413, plus 36% of the excess over $161,500.

"(c) UNMARRIED INDIVIDUALS (OTHER THAN SURVIVING SPOUSES AND HEADS OF HOUSEHOLDS).—There is hereby imposed on the taxable income of every individual (other than a surviving spouse as defined in section 2(a) or the head of a household as defined in section 2(b)) who is not a married individual (as defined in section 7703) a tax determined in accordance with the following table:

"If taxable income is:	The tax is:
Not over $21,450	15% of taxable income.
Over $21,450 but not over $51,900.	$3,217.50, plus 28% of the excess over $21,450.
Over $51,900 but not over $150,000.	$11,743.50, plus 31% of the excess over $51,900.
Over $150,000	$42,154.50, plus 36% of the excess over $150,000.

"(d) MARRIED INDIVIDUALS FILING SEPARATE RETURNS.—There is hereby imposed on the taxable income of every married individual (as defined in section 7703) who does not make a single return jointly with his spouse under section 6013, a tax determined in accordance with the following table:

"If taxable income is:	The tax is:
Not over $17,900	15% of taxable income.
Over $17,900 but not over $43,250.	$2,685, plus 28% of the excess over $17,900.
Over $43,250 but not over $87,500.	$9,783, plus 31% of the excess over $43,250.
Over $87,500	$23,500.50, plus 36% of the excess over $87,500.

"(e) ESTATES AND TRUSTS.—There is hereby imposed on the taxable income of—

"(1) every estate, and

"(2) every trust,

taxable under this subsection a tax determined in accordance with the following table:

"If taxable income is:	The tax is:
Not over $3,500	15% of taxable income.
Over $3,500	$525, plus 36% of the excess over $3,500."

(b) CONFORMING AMENDMENTS.—

(1) Section 541 is amended by striking "28 percent" and inserting "36 percent".

(2)(A) Subsection (f) of section 1 is amended—

(i) by striking "1990" in paragraph (1) and inserting "1992", and

(ii) by striking "1989" in paragraph (3)(B) and inserting "1991".

(B) Subparagraph (B) of section 32(i)(1) is amended by striking "1989" and inserting "1991".

(C) Subparagraph (C) of section 41(e)(5) is amended by striking "1989" each place it appears and inserting "1991".

(D) Subparagraph (B) of section 63(c)(4) is amended by striking "1989" and inserting "1991".

(E) Subparagraph (B) of section 68(b)(2) is amended by striking "1989" and inserting "1991".

(F) Subparagraphs (A)(ii) and (B)(ii) of section 151(d)(4) are each amended by striking "1989" and inserting "1991".

(G) Clause (ii) of section 513(h)(2)(C) is amended by striking "1989" and inserting "1991".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 1991.

SEC. 3002. SURTAX ON INDIVIDUALS WITH INCOMES OVER $1,000,000.

(A) GENERAL RULE.—Subchapter A of chapter 1 (relating to determination of tax liability) is amended by adding at the end thereof the following new part:

"PART VIII—SURTAX ON INDIVIDUALS WITH INCOMES OVER $1,000,000

"Sec. 59B. Surtax on section 1 tax.

"Sec. 59C. Surtax on minimum tax.

"Sec. 59D. Special rules.

"SEC. 59B. SURTAX ON SECTION 1 TAX.

"In the case of an individual who has taxable income for the taxable year in excess of $1,000,000, the amount of the tax imposed under section 1 for such taxable year shall be increased by 10 percent of the amount which bears the same ratio to the tax imposed under section 1 (determined without regard to this section) as—

"(1) the amount by which the taxable income of such individual for such taxable year exceeds $1,000,000, bears to

"(2) the total amount of such individual's taxable income for such taxable year.

"SEC. 59C. SURTAX ON MINIMUM TAX.

"In the case of an individual who has alternative minimum taxable income for the taxable year in excess of $1,000,000, the amount of the tentative minimum tax determined under section 55 for such taxable year shall be increased by 2.4 percent of the amount by which the alternative minimum taxable income of such taxpayer for the taxable years exceeds $1,000,000.

"SEC. 59D. SPECIAL RULES.

"(a) TREATMENT OF MARRIED INDIVIDUALS FILING SEPARATE RETURNS.—In the case of a married individual (within the meaning of section 7703) filing a separate return for the taxable year, sections 59B and 59C shall be applied by substituting '$500,000' for '$1,000,000'.

"(b) COORDINATION WITH OTHER PROVISIONS.—The provisions of this part—

"(1) shall be applied after the application of subsections (h) and (i) of section 1, but

"(2) before the application of any other provision of this title which refers to the amount of tax imposed by section 1 or 55, as the case may be."

(b) CLERICAL AMENDMENT.—The table of parts for subchapter A of chapter 1 is amended by adding at the end the following new item:

"Part VIII. Surtax on individuals with incomes over $1,000,000."

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 1991.

SEC. 3003. EXTENSION OF OVERALL LIMITATION ON ITEMIZED DEDUCTIONS FOR HIGH-INCOME TAXPAYERS.

Section 68 (relating to overall limitation on itemized deductions) is amended by striking subsection (f).

SEC. 3004. EXTENSION OF PHASEOUT OF PERSONAL EXEMPTION OF HIGH-INCOME TAXPAYERS.

Section 151(d)(3) (relating to phaseout of personal exemption) is amended by striking subparagraph (E).

SEC. 3005. MARK TO MARKET INVENTORY METHOD FOR SECURITIES DEALERS.

(A) GENERAL RULE.—Subpart D of part II of subchapter E of chapter 1 (relating to inventories) is amended by adding at the end thereof the following new section:

"SEC. 475. MARK TO MARKET INVENTORY METHOD FOR DEALERS IN SECURITIES.

"(a) GENERAL RULE.—Notwithstanding any other provision of this subpart, the following rules shall apply to securities held by a dealer in securities:

"(1) Any security which is inventory in the hands of the dealer shall be included in inventory at market value.

"(2) In the case of any security which is not inventory in the hands of the dealer and which is held at the close of any taxable year—

"(A) the dealer shall recognize gain or loss as if such security were sold on the last business day of such taxable year, and

"(B) any gain or loss shall be taken into account for such taxable year.

Proper adjustment shall be in the amount of any gain or loss subsequently realized for gain or loss taken into account under the preceding sentence. The Secretary may provide by regulations for the application of this paragraph at times other than the times provided in this paragraph.

"(a) EXCEPTIONS.—

"(1) IN GENERAL.—Subsection (a) shall not apply to—

"(A) any security held for investment,

"(B) any security described in subsection (c)(2)(C) which is originated or acquired by the taxpayer in the ordinary course of a trade or business of the taxpayer and which is not held for sale, and

"(C) any hedge with respect to—

"(i) a security to which subsection (a) does not apply, or

"(ii) a position or a liability which is not a security in the hands of the taxpayer.

"(2) IDENTIFICATION REQUIRED.—Any security shall not be treated as described in subparagraph (A), (B), and (C) of paragraph (1), as the case may be, unless such security is clearly identified in the dealer's records as being described in such subparagraph before the close of the day on which it was acquired, originated, or entered into (or such other time as the Secretary may by regulations prescribe).

"(3) SECURITIES SUBSEQUENTLY HELD FOR SALE.—If, at any time after the close of the day on which any security described in paragraph (1) was acquired, originated, or entered into (or such other time as the Secretary may by regulations prescribe)—

"(A) such security is held for sale to customers in the ordinary course of a taxpayer's trade or business, or

"(B) such security is held as a hedge of a security to which subsection (a) applies,

such security shall not be treated as described in such paragraph as of such time.

"(4) SPECIAL RULE FOR PROPERTY HELD FOR INVESTMENT.—To the extent provided in regulations, subparagraph (A) of paragraph (1) shall not apply to any security described in subparagraph (D) or (E) of subsection (c)(2) which is held by a dealer in such securities.

"(c) DEFINITIONS.—For purposes of this section—

"(1) DEALER IN SECURITIES DEFINED.—The term 'dealer in securities' means a taxpayer who—

"(A) regularly purchases securities from or sells securities to customers in the ordinary course of a trade or business; or

"(B) regularly offers to enter into, assume, offset, assign or otherwise terminate positions in securities with customers in the ordinary course of a trade or business.

"(2) SECURITY DEFINED.—The term 'security' means any—

"(A) share of stock in a corporation;

"(B) partnership or beneficial ownership interest in a widely held or publicly traded partnership or trust;

"(C) note, bond, debenture, or other evidence of indebtedness;

"(D) notional principal contract, including any interest rate or currency swap, but not including any other commodity-linked notional principal contract;

"(E) evidence of an interest in, or a derivative financial instrument in, any security described in subparagraph (A), (B), (C), or (D), including any option, forward contract, short position, and any similar financial instrument in such a security (but not including any contract to which section 1256(a) applies); and

"(F) position which—

"(i) is not a security described in subparagraph (A), (B), (C), (D), or (E).

"(ii) is a hedge with respect to such a security, and

"(iii) is clearly identified in the dealer's record as being described in this subparagraph before the close of the day on which it was acquired or entered into (or such other

time as the Secretary may by regulations prescribe).

"(3) HEDGE.—The term 'hedge' includes any position which reduces the dealer's risk from interest rate or price changes, or currency fluctuations.

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

"(1) CERTAIN RULES NOT TO APPLY.—The rules of sections 263(g) and 263A shall not apply to securities to which subsection (a) applies.

"(2) IMPROPER IDENTIFICATION.—If, under subsection (b)(2) or (c)(2)(F)(iii), a taxpayer at any time—

"(A) identifies any security or position as being described in such subsection and such security or position is not so described as of such time, or

"(B) a taxpayer fails to identify a security or position which is so described at the time such identification is required,

the provisions of subsection (a) shall apply to such security, except that only gain shall be taken into account for any taxable year.

"(e) REGULATORY AUTHORITY.—The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of this section, including rules to prevent the use of year-end transfers, related parties, or other arrangements to avoid the provisions of this section."

(b) CLERICAL AMENDMENT.—The table of sections for subpart D of part II of subchapter E of chapter 1 is amended by adding at the end thereof the following new item:

"Sec. 475. Mark to market inventory method for dealers in securities.".

(c) EFFECTIVE DATE—

(1) IN GENERAL.—The amendments made by this section shall apply to all taxable years ending on or after December 31, 1993.

(2) CHANGE IN METHOD OF ACCOUNTING.—In the case of any taxpayer required by this section to change its method of accounting for any taxable year—

(A) such change shall be treated as initiated by the taxpayer,

(B) such change shall be treated as made with the consent of the Secretary, and

(C) the net amount of the adjustments required to be taken into account by the taxpayer under section 481 of the Internal Revenue Code of 1986 shall be taken into account ratably over the 10-taxable year period beginning with the first taxable year ending on or after December 31, 1993.

SEC. 3006. DISALLOWANCE OF DEDUCTION FOR CERTAIN EMPLOYEE REMUNERATION IN EXCESS OF $1,000,000.

(a) GENERAL RULE.—Section 162 (relating to trade or business expenses) is amended by redesignating subsection (m) as subsection (n) and by inserting after subsection (l) the following new subsection:

"(m) CERTAIN EXCESSIVE EMPLOYEE REMUNERATION—

"(1) IN GENERAL.—No deduction shall be allowed under this chapter for employee remuneration with respect to any covered employee to the extent that the amount of such remuneration for the taxable year with respect to such employee exceeds $1,000,000.

"(2) COVERED EMPLOYEE.—For purposes of this subsection—

"(A) IN GENERAL.—Except as otherwise provided in this paragraph, the term 'covered employee' means any employee of the taxpayer who is an officer of the taxpayer.

"(B) EXCEPTION FOR EMPLOYEE-OWNERS OF PERSONAL SERVICE CORPORATIONS.—The term 'covered employee' shall not include any employee-owner (as defined in section 269A(b)) of a personal service corporation (as defined in section 269A(b)).

"(C) FORMER EMPLOYEES.—The term 'covered employee' includes any former employee who had been a covered employee at any time while performing services for the taxpayer.

"(3) EMPLOYEE REMUNERATION.—For purposes of this subsection—

"(A) IN GENERAL.—The term 'employee remuneration' means, with respect to any covered employee for any taxable year, the aggregate amount allowable as a deduction under this chapter for such taxable year (determined without regard to this subsection) for remuneration for services performed by such employee (whether or not during the taxable year).

"(B) REMUNERATION.—For purposes of subparagraph (A), the term 'remuneration' includes any remuneration (including benefits) in any medium other than cash, but shall not include—

"(i) any payment referred to in so much of section 3121(a)(5) as precedes subparagraph (E) thereof,

"(ii) amounts referred to in section 3121(a)(19), and

"(iii) any benefit provided to or on behalf of an employee if at the time such benefit is provided it is reasonable to believe that the employee will be able to exclude such benefit from gross income under section 132.

"(4) TREATMENT OF CERTAIN EMPLOYERS—

"(A) IN GENERAL.—All employers treated as a single employer under subsection (a) or (b) of section 52 or subsection (m) or (n) of section 414 shall be treated as a single employer for purposes of this subsection.

"(B) CLARIFICATION OF OFFICER DEFINITION.—Any officer of any of the employers treated as a single employer under subparagraph (A) shall be treated as an officer of such single employer."

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to taxable years beginning after December 31, 1991.

"SEC. . DEFICIT REDUCTION TRUST FUND.

"(a) IN GENERAL.—Subchapter I of chapter 31 of title 31, United States Code, is amended by adding at the end thereof the following new section:

"Sec. 3114. Certain proceeds from increase in certain income taxes to reduce public debt.

"(a) There is established in the Treasury of the United States a trust fund to be known as the 'Deficit Reduction Trust Fund'.

"(b) The Secretary of the Treasury shall use the money in the Deficit Reduction Trust Fund solely to—

"(1) pay at maturity, or redeem or buy before maturity, an obligation of the Government included in public debt, and

"(2) pay for any administrative costs in operating the Deficit Reduction Trust Fund.

"(c) Any obligation of the Government which is paid, redeemed, or bought with money from the Deficit Reduction Trust Fund shall be canceled and retired and may not be reissued.

"(d) CONFORMING AMENDMENT.—The table of sections for subchapter I of chapter 31 of title 31, United States Code, is amended by adding at the end thereof the following new item:

"Sec. 3114. Proceeds from increase in certain income taxes to reduce public debt".

"SEC. . SENSE OF THE SENATE ON REVENUE CREDITED TO THE DEFICIT REDUCTION TRUST FUND.

"(a) The Senate finds that:

"(1) Since the Federal budget deficit is projected still to be in the $200 billion range by 1997,

"(2) Since such deficits will hamper economic growth by reducing national saving, capital formation and well-paying job opportunities,

"(b) Be it resolved that it is the sense of the Senate that:

"(1) 25 percent of the revenue raised through title III (Payment of Fair Share by High-Income Taxpayers) that would otherwise offset revenue expended in title I, section 1001 (Tax Credit for Children) should be credited to the Deficit Reduction Trust Fund both in fiscal year 1992 and in fiscal year 1993.

"(2) 100 percent of the revenue raised through title III (Payment of Fair Share by High-Income Taxpayers) that would otherwise offset revenue expended in title I, section 1001 (Tax Credit for Children) should be credited to the Deficit Reduction Trust Fund in fiscal 1994 through fiscal year 1996."

"SEC. . SENSE OF THE SENATE ON SPENDING FOR JOB TRAINING AND TRANSPORTATION INFRASTRUCTURE.

"(a) The Senate finds that:

"(1) Since job training programs are key to improving the skills of the American workforce,

"(2) Since job training programs are particularly important and timely in light of the transition in the manufacturing base as a result of the ending of the Cold War,

"(3) Since the recession has resulted in large scale layoffs on workers who have been employed for many years in jobs requiring skills that may be different from the skills required in areas of likely new employment opportunities, and

"(4) Since additional spending on transportation infrastructure can provide economic stimulus in the current recession and assist in improving our national productivity.

"(b) Be it resolved that it is the sense of the Senate that:

"(1) 75 percent of the revenue raised through title III (Payment of Fair Share by High-Income Taxpayers) that would otherwise offset revenue expended in title I, section 1001 (Tax Credit for Children) should be used for job training programs in fiscal year 1992.

"(2) 75 percent of the revenue raised through title III (Payment of Fair Share by High-Income Taxpayers) that would otherwise offset revenue expended in title I, section 1001 (Tax Credit for Children) should be used for job training programs and transportation infrastructure improvements in fiscal year 1993, with $600 million of that amount being directed toward job training."

Notwithstanding any other provision of this Act section 1001 regarding tax credit for children is null and void.

The PRESIDING OFFICER. Who seeks recognition?

Mr. LEVIN. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The absence of a quorum has been suggested. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. ROBB. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER (Mr. LEVIN). Without objection, it is so ordered.

Mr. ROBB. Mr. President, I rise in support of the amendment offered by the distinguished Senator from Michigan, the current occupant of the chair,

and I would like to comment, if I may, just briefly on the eloquent remarks that were just delivered by the distinguished Senator from New Hampshire [Mr. RUDMAN]. I would confess that I have long admired the Senator's commitment to principle, and his ability to eloquently state what is important and to try to separate the wheat from the chaff.

Mr. President, I would say at this point that I plan to support the measure that the distinguished chairman of the Finance Committee has prepared and ultimately brought to the floor. It is an extraordinarily difficult task with virtually 100 Members having 100 different priorities in terms of how to solve a very difficult question that is facing the country. I think, under the circumstances, that the bill—given all of the compromises that are necessary—is basically a good bill and I think it is important that we provide a vehicle that, in conference with the House, we can send to the President and give this body an opportunity ultimately to act its will and the President to act his will. I think it is important for the country. I think it is important to this institution that we have a bill and that we be perceived—and, in fact, we do—something important.

With respect to the specific amendment offered by my friend from Michigan, let me say that my own priority is very much along the lines just expressed by the distinguished Senator from New Hampshire. I would like to see us address the question of deficit reduction. Fiscal responsibility is our first and foremost task.

I happen to believe that there is no more serious overall problem facing the Nation today than our inability or unwillingness to deal with the deficit. We are always willing to talk about good and worthwhile spending programs, and we do so frequently. Indeed, the number of needs in this country are great, and virtually all of the proposals to spend taxpayer money are well-intentioned and will bring about some good result.

But ultimately it is never time to address the question of whether or not we are going to pay for what we spend. Almost any time can be seen as the wrong time.

I believe that the amendment that has been offered by my friend from Michigan at least moves us in the right direction. It takes the money, which is going to be freed up by a more equitable distribution of the tax burden in this country which would be imposed on the very top income earners in this country, and it uses the money to create some jobs—which I know is very important and certainly important to other Members who worked with the author of this amendment on this particular proposal.

If we are going to spend money, it seems to me that spending money in the areas that have been identified in this amendment—and which is very much supported, I know, by the Senator from Florida, who will speak on it and offer another amendment along these same lines in due course—it seems to me, as noted by the distinguished Senator from Michigan, and certainly elaborated upon by the distinguished Senator from New Hampshire, that there are even more important ways. If we are going to spend money at this point, a reduction in the deficit and some model expenditures to bring about an immediate job creation is the right thing to do.

In a period of time when our deficit is currently exceeding $400 billion per year, with very little prospect in sight for any significant reduction, this is a modest contribution to that effort. For that reason, I very much support the efforts of the distinguished Senator from Michigan. I appreciate the comments, and would assume from his comments that the distinguished Senator from New Hampshire would also find this an appropriate opportunity to at least begin to move in that direction.

Although again I suggest that, if it is the will of this body to spend money in terms of stimulating the economy and to provide some sort of a targeted credit, the credit that has been identified by the Finance Committee is clearly the most important of those priorities.

With that in mind, Mr. President, I thank you personally for your leadership in this area and for giving me an opportunity to say a few words on behalf of this amendment, and for relieving me in the Chair.

With that, Mr. President, I yield the floor.

Mr. GRAHAM addressed the Chair.

The PRESIDING OFFICER. The Senator from Florida.

(Mr. ROBB assumed the chair.)

Mr. GRAHAM. Mr. President, I share in the comments that have just been made by our colleague from Virginia relevant to the eloquent remarks of the Senator from New Hampshire. I hope that those remarks and the debate that we are having here today will help us to come to a new sense of the seriousness of what we are about the challenge us to meet this as Americans; not as Democrats or Republicans, not as elected Members of the Congress or the President, but a challenge that faces this Nation that should cause us to rise to a new level of statesmanship.

I support the amendment that has been offered by our friend from Michigan. I will also describe in a moment some steps that I would suggest we might take in the event that his proposal is improvidently not accepted by this body.

I start with the question: Why are we here today? Why on the 12th of March 1992 are we having a debate on the tax bill?

The answer to that is quite clear. The answer to that could be seen in virtually every community in America where people are in pain.

Mr. President, I suggest that the pain is being understated if we focus totally on the unemployment statistics. Let me give a real but unnamed citizen of my State that I met recently. This man, in his mid-forties had worked for the better part of 20 years for a major national airline. He had worked himself up into a position that he was earning $16 an hour. That airline is now bankrupt and liquidated.

For a year and a half, he was out of work. During the course of that year and a half of unemployment, he was divorced, he lost his house, and he lost most of his savings.

He got a job, finally, after 18 months, working for a rental car agency, driving cars from the lot to the airport. He was earning minimum wage at 25 hours a week. The significance of the 25 hours a week, Mr. President, was that meant he was not eligible for any of the benefits of his new employer, specifically health care, which meant that his continuing obligations to his two young children and his now divorced wife could not be met in terms of providing them with basic insurance for their health needs.

The man now has gotten a second job doing quite similar work to what he had done in his previous employment, working for an airline. Again he is working 25 hours a week, thus not eligible for his new employer's health benefits or other fringe benefits, earning slightly above minimum wage. He is working 50 hours a week, earning 40 percent of the weekly income that he had previously derived without most of the benefits that he had.

Now that man does not show up in the unemployment statistics, Mr. President. He is an employed person. In fact, he is a superemployed person, working 50 hours a week.

He is an example, Mr. President, of why we are here today, because our Nation, our citizens are in pain. They sense that this is not just an immediate problem that this man has gone from a $16-an-hour job for 40 hours a week to a minimum-wage job at 50 hours a week, but rather that this is a symptom of fundamental changes that have occurred in the American economy, that something different is going on than just the normal business cycle.

The American people are turning to their leaders for a sense of hope, vision, and direction. That is what we are about today, not a confrontation between politicians, among politicians, and between political parties.

What response should we make to this current situation that we are in today? I suggest that there ought to be some fundamental principles of that response. One is the admonition that is given to every young physician: do not

harm. If you cannot do any good for the patient, at least do not hurt the patient. We should be cautious to do no harm.

Second, we should be aware that we have two issues to deal with.

One is a short-term issue: What are the tools available to us to try to move this economy out of its immediate recession? And second: What are the longer term things that we should be looking at for the next 10 or 20 years to rebuild a competitive American economy?

Mr. President, we recently received a report from a group that was established by Congress called the Competitiveness Policy Council. And on the first question of what could be done now in order to assist in moving the country out of its current recession, this is what the Competitiveness Policy Council, in its report dated March 1 of this year, had to say:

As the Council submits its report in early 1992, concerns over fundamental aspects of the Nation's competitiveness fuse with the need for the earliest possible recovery from recession. The positive aspects of this fusion is that the difficulties of the present reinforce awareness of our more basic problems. The risk is that efforts to boost growth in the short term could ignore, even exacerbate, the basic difficulties. The Council believes that the right strategy at present is to devise a program to address the underlying weaknesses in the economy in ways that could also promote short-term recovery. For example, an acceleration of government spending on needed infrastructure projects would have desirable effects, both immediately and over time.

Thus, I believe our short-term approach within the concern about doing no harm should focus on those things that would create jobs in the next 6 to 18 months, while contributing to the longer range economic strength of America.

In the long term, we must rebuild a partnership of the private enterprise sector and Government so we can reinvigorate our economy, unleash the entrepreneurial spirit that has created the greatest economy in the history of the world. Those basic qualities are still in place. They need to be reignited.

What is the Federal Government's role?

I think the Federal Government's role includes, one, getting our own fiscal house in order. It is outrageous that we went from George Washington to Jimmy Carter and had a national debt of $900 billion, having fought a succession of wars around the world, defended democracy, contributed to the building of this great Nation and had done so over a period of almost 200 years and had a national debt in excess of $900 billion.

Since 1981, we have increased that deficit to verge on $4 trillion. Not only is that outrageous in terms of what it is saddling ourselves and our future generations with, but it has set a model of activity which unfortunately many of our citizens are taking for their own personal action. The fact that the escalation in debt at the Federal Government level has been paralleled by an escalation of debt in the business and private economies of individual Americans is not unexpected. We are setting a standard of profligate behavior that is permeating our culture. We must get our national financial house in order.

Second, we need to encourage long-term thinking in terms of what is in the interest of America. We need to move away from the era which looked at what is in our best interest 90 days from now or 6 months from now and ask the question what is going to be in our best interests 10 or 20 years from now; encourage the long-range view of investment.

Finally, we must invest in America, in our people, in education, in job training, and in rebuilding the fundamental public systems that support a strong, long-term economy.

Those are some of the things the Federal Government must do.

Mr. President, we are doing something that is not going to be very popular. We are suggesting there should be eliminated from this bill a tax credit for 25 percent of the middle class of America. Of course, giving tax relief is always popular and sometimes desirable. It is attractive.

Why are we saying no? We are saying no because we are making the statement that we are now in a time of no easy choices. We do not have a cornucopia of funds that we can say will adequately deal with education, will adequately deal with transportation, will adequately deal with reducing our deficit, will provide tax cuts. Those were the prescriptions of just a decade ago. They did not work then. They are not going to work today.

We have to make some difficult choices. Fairness in the tax system, which is the hallmark of support for the middle-class tax credit, is of course a goal we should always set. I assume in 1990 when the budget agreement was reached, an agreement which was supposed to be intact for 5 years, that fairness was a key factor in that. And the reason we are looking at modifying that 1990 agreement is because of the recession in which we currently find ourselves.

This bill, with the amendment as suggested, would still have substantial elements of increased fairness in our tax system. We would be raising the taxes on those who have benefited the most by the burgeoning, profligate activities of the 1980's. We would be making it easier for these same middle-American families to buy a home, to be able to secure health-care financing, and the education of those children. This bill has important benefits to the American family beyond that which is represented by the middle-class tax credit.

We need also, Mr. President, to ask, will this middle-class tax credit have the kind of economic stimulation that in the past we have associated with efforts of this ilk? It has been traditional, particularly traditional Democratic Party economic policy, that in a time of recession you try to place money in the hands of those Americans who would be most likely to spend it. They would, in fact, spend it. It would create a circle of expanding economic activities.

The retailer would have to refill inventory because of the sales that had been made. That would create orders back at the plant, and that would result in the employment of people who would be producing those goods. They, in turn, would create the jobs of the support industries.

One of the difficulties with that economic strategy, a strategy of the 1930's applied to the 1990's, can be seen when you go to the retail stores where Americans are most likely to be spending their middle-class tax credit. In the 1930's they would have been spending it on products with names like Emerson and General Electric and Westinghouse. Today they are most likely to be spending it on products that have names like Panasonic, and Sony, and Toshiba. The efficiency of the middle-class tax credit as an economic stimulator is substantially reduced because we are in a different economic circumstance than we had been in the past.

For those reasons I believe this is not the time to spend half of the proceeds that will be raised in this bill on the middle-class tax credit but, rather, to think what are the patterns of expenditure that would contribute to the two goals of stimulating job creation immediately and contributing to a stronger, long-term American economy?

In the event the wise proposal of Senator LEVIN is not adopted I will be proposing a similar but slightly expanded proposal which would have these elements, many of which are incorporated in Senator LEVIN'S proposal.

First, to focus for the next 18 months on three items: Admittedly modest deficit reduction; second, a substantial expenditure on job retraining in order to help those Americans like the Floridian I mentioned earlier to have retraining so they do not have to go from $16 an hour to minimum wage because they do not have the skills to get a job commensurate with that which they previously held and which no longer exists; and to put a substantial amount of funds into infrastructure.

I will be proposing we do this in two manners: One, by diverting some of the new revenue that will come as a result of the tax proposals and, also, by restructuring the 1991 Surface Transpor-

tation Act in such a way as to move funds from the end of the 6-year cycle into fiscal years 1993 and 1994 in order to create jobs when we need them now.

My assessment is that this program would result in the creation, in 1993, of over a half a million jobs of Americans, working in America, helping to strengthen America by building highways, enhancing our public transit system, enhancing our aviation system. That would be a significant, immediate contribution to moving us out of this recession while doing things that we would all agree are fundamental to our long-term economic well-being.

But most of the funds will be, as Senator LEVIN has proposed, committed to deficit reduction. I will propose that deficit reduction be used to buy down the current indebtedness which the General Treasury has to the Social Security trust fund. As Senator MOYNIHAN has said on so many occasions, we are engaged in either thievery or—as our dear, departed colleague, Senator HEINZ, described it—embezzlement, from the Social Security fund. This would begin a process of reversing and maybe making penitence and compensation for that thievery and embezzlement we have engaged in in the past.

Those are suggestions of what I hope will not come because Senator LEVIN'S wise amendment will be adopted and will make it unnecessary.

Mr. President, in conclusion, I have a dear friend who is also a close friend of our colleague from Wyoming, Senator SIMPSON, distinguished American historian, David McCullough. Mr. McCullough has asked this question: Where were they when important moral issues were before their society? Where were the Americans in the region of the country represented by the Presiding Officer and myself in the period prior to the Civil War as we saw the ravages of slavery? Where were good people who should have been standing up to that institution? Where were Americans, where was the world in the 1930's when we were aware of what was happening in Nazi Germany?

I suggest that our grandchildren are going to be asking the same questions of us and that is, where were we in the 1980's and the 1990's as we saw this great America move from being not only the military and political leader of the world, but a leader by example in terms of its economic policies, and was able to provide to each generation the hope and the reality that they would have a better life than all the generations of Americans who had preceded them?

How will we answer the question of our grandchildren when they ask: "Grandfather, where were you; what were you doing when you had the opportunity to influence the kind of life that I am going to live?"

Mr. President, I want to be able to answer that question that when I had the chance to do so, I made a contribution to dealing with the immediate pain, but I want to particularly be able to tell to my granddaughters that I was prepared to make a hard choice and to make a contribution to the long-term strengthening of America so that she could realize that American dream of constantly expanding opportunities.

I think that is the level of seriousness of the debate that we are having over these next few days. I recognize that what is probably going to happen is that this will be a small paragraph, maybe not even deserving of a paragraph in the history of our times because our actions will be dismissed by the President and we will not be able to overcome that rejection.

In a few days, we are going to be back at this business. The problems will not be easier; they will be more difficult because delay is adding to the cost, delay is exacerbating the pain of the American people. I hope that we will, as the Senator from new Hampshire has suggested, come together after this process with a new spirit of our responsibilities as Americans to provide for the well-being to the extent that the Federal Government is an important partner is providing hope and providing that cultural reality and dream of America that each generation will have a greater opportunity at personal growth and prosperity.

Thank you, Mr. President.

Several Senators addressed the Chair.

The PRESIDING OFFICER. The Senator from Texas [Mr. BENTSEN].

MODIFICATION OF COMMITTEE SUBSTITUTE

Mr. BENSTEN. Mr. President, on behalf of the committee, I modify the committee substitute with changes which I now send to the desk.

The PRESIDING OFFICER. The Senator has that right. The committee amendment is so modified.

The modification of the committee substitute amendment is as follows:

I. First change (to section 1001):

On page 641, line 14, strike "40,000" and insert "47,500".

On page 642, line 1, strike "40,000" and insert "47,500".

On page 642, line 2, strike "10,000" and insert "12,500".

II. Second change:

On page 910, line 17, change "1994" to "1993".

Mr. BENSTEN. Mr. President, I would like to make a couple of points. I listened to the distinguished Senator from New Hampshire, an eloquent, articulate man for whom I have a very high regard. I think he made some very salient points. But there are a couple of points I would like to make.

I keep hearing the administration talking about this bill as a tax increase, but what we have done is revenue neutral. We have matched the tax increases with tax cuts. I cannot help but recall back in 1986 when the administration was pushing their tax bill which increased taxes for some, and lowered others. They did not call it a tax increase bill then.

I also recalled the words of Lincoln referred to by some of my colleagues. No one here is talking about bashing the rich. Not at all. We are talking about the responsibility of all citizens to bear their fair share of the burden. Indeed, Ronald Reagan asked this very body to enact a bill which would have imposed a 35-percent rate for people making $70,000. That was his proposal.

By contrast, our bill would impose only a slight higher rate of 36 percent for individuals making over $175,000. A much smaller group of people than would have been their tax increased under the Reagan proposal. And then under our proposal only the top seven-tenths of 1 percent of people would face the higher rate. And even for those people, the rate would be lower than rates in countries that we compete against—West Germans, Japanese, or the United Kingdom.

What this bill addresses is sharing the responsibility for our Government. To do that, we have focused on those people who we think have taken the biggest hit in the 1980's. These are the people who read the supermarket ads and clip coupons before buying the families' groceries.

Those same people who when they have a child who starts running a fever and they have to take that child to a doctor or to a hospital, they realize that they are making not just a medical decision but they are making a financial decision at the same time.

These same people who if they have children old enough to go to college the first thing those parents do is reach financial aid information before the academic standards information.

The bill would provide a 25-percent tax cut for an average family of four. If they start putting the $300 a year aside for the child from the time he was born, compounded at 8 percent, they would have about $15,000 by the time that child is ready to go to college. Will that be enough? No, but it is a contribution and a significant one. With a family with two or three children the tax cut will even have a bigger impact on that family's future.

So we ought to keep these facts in mind as we address this significant piece of legislation. I will have more to say at a later time about the offer of my friend from Michigan. I understand his objectives. I am interested in those objectives. I share in those objectives. But this bill will accomplish deficit reduction of $9.5 billion. In the meantime, we are going to take care of some of the significant problems for middle-income people.

Mr. COHEN addressed the Chair.

The PRESIDING OFFICER. The Senator from Maine [Mr. COHEN].

Mr. COHEN. Mr. President, I have been in the Senate a bit longer than

the Senator from New Hampshire, but I must say his speech on the floor today was one of the most passionate, powerful, and compelling statements ever delivered on the Senate floor. He is not one who is known for dissembling or understatement, to say the least. I know he is going through a personally agonizing time on trying to determine whether he is going to return to this institution or not, and I truly hope that he will choose not to leave.

I think he is correct when he says that our presence here is fleeting; it is evanescent. But I do think while we are here, whatever contributions we make do, in fact, make a difference, for better or for ill.

Without in any way diminishing the significance of the contributions that have been made by many of my colleagues, I would have to say that during Senator RUDMAN'S limited tenure in this institution, he has had as great an impact on as many different issues that could possibly come before this institution as any individual who has served here for a much longer time.

So I truly hope that he will, as he agonizes over whether or not he is going to return, be persuaded that this institution does, in fact, intend to measure up to its responsibilities.

Last night, after we closed the Senate for the evening, I went home and did what many of us do almost automatically and that is to turn on C-Span. As if one could not get enough of politics during the day, one should even digest more during the late hours of the evening. I watched a speech given by former President Richard Nixon regarding global security. Mr. Nixon said, in so many words—and they were very eloquent words—that unless the United States acts quickly and substantially to help Boris Yeltsin as he tries to lift his people out of the ash heap of communism, then we are likely to see Boris Yeltsin fail quite soon; that we are likely to see a return to an authoritarian dictatorship within the commonwealth of independent states, with competition among the individual states; that we are likely to see a re-emergence of a type of threat that we have been dealing with for the past 30 or 40 years, and that ultimately we will end up by forcing ourselves to re-arm, to increase rather than decrease defense expenditures; all to the detriment of our children and grandchildren.

And so, even though it is unpopular and even though President Bush is currently being pressed by a Republican rival, President Nixon suggested, indeed he called our for leadership in the field of foreign policy. And there are quite a few within this Chamber—I know of Senators LUGAR, NUNN, KASSEBAUM, BRADLEY, and others—who share the conviction that we have to make a substantial contribution to the former Soviet Union, in order to at least try to avoid what would otherwise be a catastrophic result.

Mr. Nixon, of course, was talking about the long term, suggesting that short-term politics can be very bad. No one wants to be seen as giving away money or contributing to another country's economic resuscitation at a time when our own country is in such deep economic stagnation. But I think we have to accept the challenge of helping Boris Yeltsin.

We have another challenge before us and that is how to lift America out of its economic stagnation and how to rescue our children from the ball and chain—Senator LEVIN called it the albatross—that we have hung around the necks of our children and grandchildren in the form of annual deficits now in the range of $400 billion. These deficits are scheduled to go down in the near term but, ultimately, toward the end of the decade, to go even higher, $700 billion, $800 billion, perhaps even approaching $1 trillion. Unfortunately we have lost the desire and the ability to discipline ourselves, and that blame is collective. It is bipartisan. As Senator RUDMAN pointed out, Democratic and Republican Congresses and administrations alike are at fault.

I remember when Jimmy Carter was President the deficit, as I recall the deficit was between $40 and $60 billion, and we on this side of the aisle were shaking our fingers in horror saying, "Imagine. Look what this man has done to this country's fiscal integrity—$50 billion. It is outrageous. Let us remove him from office."

Then we had Ronald Reagan. The deficit went up to $200 billion and many still said that it was not a problem. As a percentage of the gross national product, they said, the deficit was not something about which we should be concerned.

I spent a good part of yesterday rereading David Stockman's book, "The Triumph of Politics." It is very discouraging reading. What he said was that triumph of politics essentially amounted to the fact that we blocked spending cuts and we blocked revenue increases all the while preaching that the deficit really did not matter.

Back in 1985, when Senator DOMENICI, Senator DOLE, and others tried to put a Republican package together that called for some politically unpopular cuts, we were able to pass that with the help of now Gov. Pete Wilson by one vote. He was taken out of the hospital, wheeled on to the Senate floor, and in a very dramatic moment cast his vote in favor of the Republican alternative. But, before the echo of his vote had even faded from this Chamber, the vote was disavowed by President Reagan because it included Social Security.

I was here that evening and the next day in this room back here discussing this matter with Senators RUDMAN, GRAMM, and others. And we said, "What do we do now? What in the world do we do now?" This was, we felt, our best hope for getting control over a $200 billion deficit at that time. I remember one of us, quoting Thomas Jefferson, who said that, "Whenever one generation spends money and taxes another to pay for it, we are squandering futurity on a massive scale." That is precisely what we were doing back in 1985, and we have managed to even expand that squandering in the 1990's.

That night gave birth to Gramm-Rudman-Hollings. We said we have to do something. Senator RUDMAN said it was a bad idea whose time had come, and there were many who simply disavowed it, saying it was a meat ax; it was irresponsible; it usurped Congress' responsibility to make decisions and priorities. And we said, you are right, but we have run out of excuses; we have run out of mechanisms; we have run out of the ability to discipline ourselves, and so we will hold the guillotine above our heads and say, if we do not do our job, the blade will come down automatically.

Mr. President, the people in this country are angry. They are angry because they have not been led. They have actually been misled. They have been told over the years—and all of us must share the collective blame—that they could simultaneously have tax cuts and entitlements and a strong national defense. We swallowed rigged OMB numbers, while we prayed at the altar of a god that proved to be false. And we stood here and we cursed the tenacity and the longevity of the welfare state even as we nourished it. We promised the American people they could have more while paying less, and now they are angry as they see the results.

We have a stagnant economy. Jobs that are being lost. Factories that are being closed. Charges are being made that we are no longer competitive with the Japanese or West Europeans. So the American people are angry, and justifiably so, because we had the opportunity to lead and we chose not to.

One political philosopher, in talking about another age, said, "If you teach a people for 10 years that the character of its government is not greatly important, that political success is for those who equivocate and evade, if you tell them that acquisitiveness is the ideal, that things are what matter, that Mammon is God, you must not be astonished at the confusion in Washington. You cannot set up false gods to confuse the people and not pay the penalty."

We are paying the penalty. Those words, written by Walter Lippmann, at a time and in a different context about what we had done between 1920 and 1940, and he wrote,

For myself, I like to think these days of the words of Washington when Governeur

Morris reported, words spoken when the Constitutional Convention in Philadelphia seemed about to fail. * * * and Washington said, "If to please the people we offer what we ourselves disapprove, how can we afterward defend our work? Let us raise the standard to which the wise and the honest can repair."

What was the standard to which Washington was referring? He said:

It is written, you took the good things for granted, and now you must earn them again. It is written, for every right that you cherish, you have a duty you must fulfill. For every hope that you entertain, you have a task you must perform. And for every good that you wish to preserve, you will have to sacrifice your comfort and your ease. There is nothing for nothing any longer.

Mr. President, I think we have reached that point in our political history when we have to come before the American people and tell them there is nothing for nothing any longer. I do not support the measure that has been brought forth by the Senate Finance Committee notwithstanding a number of provisions within it that individually I could support. The fact is, however, that it will do very little to stimulate this economy, to create jobs, or to reduce the deficit.

I am certainly not opposed to tax fairness. I am not opposed to raising taxes on the wealthy, provided that those tax increases go to reduce the deficit. I know that is a view not widely shared on this side of the aisle. But, that is not the reason I will oppose the finance committee's legislation.

I believe the single most important thing we can do for the long-term benefit of this country is to reduce the deficit. Every single economist coming before the committees has said two things: Do not look for quick fixes, and reduce the deficit. That will do more to help the future of this country than anything else you can possibly do. We have chosen, for the time being, to ignore that advice.

While I support Senator LEVIN's amendment, I would prefer to see 100 percent of any tax increase go for the deficit reduction. At least the 75 percent number that Senator LEVIN has called for is a significant contribution to doing what we should have been doing all along.

For that reason I intend to support the amendment of the Senator from Michigan.

I would like to also offer a few comments on the underlying bill.

Mr. President, these are difficult times for many Americans, especially the unemployed. I have met with many constituents in Maine who have given me first-hand accounts of how difficult the past 2 years have been for them.

Maine, like the rest of New England, enjoyed tremendous economic growth in the 1980's. This growth, however, came to a crashing halt in 1989. Since then the unemployment rate in Maine has more than doubled. On a national scale, it is clear that not everyone benefited from the economic growth of the 1980's. Indeed, for some segments of the population, wages have been stagnant for two decades.

Throughout the 1950's and 1960's, the annual rate of productivity growth averaged over 2.5 percent. This meant that each year the average worker became 2.5 percent more productive. At this rate, our standard of living will double every 15 years. When the economy was enjoying a 2.5-percent increase in productivity, we could safely expect our children to enjoy a better standard of living. In recent years, however, many fear that their children will not do as well. The reason for this relates to the fact that since 1973 the annual rate of productivity growth has dropped to about 1 percent. This has had a dramatic effect on our standards of living. If productivity had continued to grow at its pre-1973 rate, the average family income today would be $47,000 rather than $35,000.

The task for Congress is to understand why there was such a dramatic drop in productivity growth in 1973. Economists have been struggling with this question for two decades now. While some explanations have been offered, including the oil shocks of the early seventies, a decrease in the amount of public investment in infrastructure, increased competition from abroad, the cost of government regulation, there is still no consensus among economists as to the real causes.

Even if we do not fully understand the causes of the productivity slowdown, we certainly know the results, lower wages. In the face of lower wages, however, consumption was not reduced. Rather, we tried to find ways to accommodate for these lower wages.

First, we borrowed. Credit cards and other forms of debt increased significantly in the 1980's. Debt allowed us to maintain a higher standard of living but only for so long. By the end of the 1980's, the burden of an ever-increasing debt had become intolerable. One of the reasons the current recession has been so persistent is that consumers finally reached the point where they decided it was time to pay down their debt. I think some of the lack of consumer confidence we keep hearing about simply reflects an unwillingness by many Americans to go further into debt. It's an unwillingness that makes a lot of sense. It's regrettable that Congress does not have a similar aversion to debt.

Another way we tried to compensate for the decline in the growth of wages was to send another family member into the work force. In most families, both parents now work. Adding another income to a family obviously raises family income. But, like debt, it is not a cure-all for the underlying economic problem. Just as we have run out of credit cards, we have run out of spouses to send to the workplace.

So where does this leave us? Is there anything that can be done to improve the economic future? Yes.

The best remedy for our short-term problem—the recession—is through monetary, rather than fiscal, policy. Lower interest rates will spur the economy more effectively and more quickly than changes in the tax code. Fiscal policy is slow in its effects. By the time these effects would be felt, the recession would be behind us.

The best remedy for our long-term problem—economic growth and competitiveness—includes reducing the deficit and improving the skills of our workers.

Unfortunately, the bill before us does little in either respect.

It confounds logic that, in the face of a $400 billion deficit this year, we would implement a $31 billion tax cut. It is hard to believe that only 18 months ago we were struggling to raise taxes and cut spending in order to get a handle on the runaway Federal deficit.

The deficit is the single most damaging problem in our economy today. Our economy suffers from a lack of savings and a lack of investment. Both deficiencies are caused by excessive public borrowing. We seem completely unable to come to terms with this deficit. We all lament it and make speeches about it but we seem unwilling to do much about it.

Last week. Robert J. Samuelson, writing in the Washington Post offered the following insights:

The larger task of politics—to help society deal with difficult choices and conflicts, has been all but lost. The massive apparatus of political persuasion is turned increasingly to mislead people. Our leaders won't discuss the limits of government, the excessive promises of the past or the inadequacies of present programs. Politics has become an unending advertising campaign in which symbols substitute for substance.

This criticism certainly applies to the bill before us. The bill has all the right symbols. The title includes redoubtable words like "fairness" and "economic growth." But the bill is likely to produce votes more than it will jobs.

On the fairness issue, let me say that it is misleading to suggest that the wage stagnation that many Americans experienced in the 1980's was due to an unfairness in the Tax Code. Perhaps, a new top rate is warranted. My complaint is not necessarily with a tax increase. My complaint is that unfairness in the Tax Code is being offered as a cause and a remedy for the wage stagnation that many experienced in the 1980's. Let's be clear: Eighty-three cents a day will not reverse the fortunes of American families. Suggesting that it will is a disservice insofar as it offers false hope to struggling Americans.

If we want to offer some real hope for American families, we should invest

more in them—in education and in job-training. The National Center on Education and the Economy published a report in 1990 entitled, "America's Choice: High Skills or Low Wages." This report reached the same conclusion that many others have reached, namely that for America to continue to compete internationally and maintain the standard of living we would like, we must raise the skills level of our work force. I have no doubt that every Member of the Senate shares this goal. We must make the decisions today to make this a reality.

I think the American public knows that we cannot change the long-term economic prospects of this country around overnight. I think there is a willingness to face up to some difficult realities. Certainly, the recent poll showing that only 22 percent of the public give Congress a favorable rating should tell us that the American people are hungry for leadership.

Unfortunately, the bill before us will not lead us out of the valley of economic stagnation.

Despite its title, there is little in the bill that will promote economic growth. For the past 2 months we have called every respectable economist we know before one or another congressional committee. With few exceptions, most offered two suggestions. One, don't try to find a quick fix to the recession. And, two, if you really want to help the long-term economic growth of the economy, cut the deficit.

The advice has been conveniently ignored. Deficit reduction will wait for another year.

I do not criticize those who believe that a new top rate is warranted. My criticism lies with how these new revenues would be used. In the face of our looming Federal deficit, it would seem that any new revenues—if justified—should go to deficit reduction. Raising taxes for the sole purpose of reducing the deficit would do a lot more for long-term economic growth than using these revenues to fund a meager tax relief for the middle class.

So, Mr. President, I would encourage my colleagues to reject this tax bill and to resist broad-based and costly tax cuts that will provide little short-term stimulus to the economy and runs the risk of undermining our long-term economic growth.

Mr. DECONCINI addressed the Chair.

The PRESIDING OFFICER (Mr. KOHL). The Senator from Arizona.

Mr. DECONCINI. Mr. President, I wholeheartedly support the amendment before us by the Senator from Michigan, and compliment him, along with the Senator from Florida and others who have worked in this area.

This is really a fairness amendment because it is really fair to everyone. It is fair to the wealthy because they are only going to pay a fair share of their income. It is fair to the Americans who need work because it understands the problems that we are facing today in this country, the need for job training, and investment in job programs. It is fair to our children and our grandchildren whose future we must stop mortgaging.

That is the underlying fairness of all the fairnesses that are so perfectly stated in this amendment. It is fair to the middle-income Americans who are more frightened of the deficit than are their political leaders, I am afraid.

Wealthy Americans: Nothing is finer than for the capability of someone to inherit wealth in the United States and you can pass some of it on, to your children. But over the last 15 years the wealthiest 1 percent of taxpayers have seen their income increase dramatically and their tax rates decrease dramatically.

The wealthiest 1 percent of the taxpayers have had their incomes increase by 113 percent between 1977 and 1992, which is reflected on this chart. One percent of our population from 1977 to 1992 have seen their income increase by over 100 percent.

That is nice if you fall into that category. I understand that. Who would not want to be in that category.

In the same period of time from 1977 to 1992, that same 1 percent of the population has seen their Federal taxes plummet over 17 percent; Over a 17-percent tax decrease.

The poorest have had some tax decrease too, 8 percent, which is nothing to shake your head at, and not insignificant. And we have seen some slight increases in the middle-income areas. But the richest people in this country have had a 17.6-percent decrease in taxes.

That is what the distinguished Senator from Texas has attempted to demonstrate and explain time and time again on this floor, that it is time that we reverse this long period of inequity that we felt was going to bring us economic prosperity, and indeed has not.

This is just literally not fair. It is not wrong. It is not illegal. But it does not mean that we are not being fair in our tax system.

This amendment that is before us by the Senator from Michigan retains all of the increased taxes on the very wealthy in our society. Like the underlying bill, the top seven-tenths of 1 percent of Americans will see the tax increase, none other—just seven-tenths of 1 percent.

Who are the wealthiest seven-tenths of 1 percent in this country? Couples who are filing jointly with taxable income of $175,000. It is estimated that the gross income will be in the neighborhood of $225,000. Those are the wealthiest people in this country.

Single filers with taxable income of $150,000. It is estimated that their average gross income of $150,000. It is estimated that their average gross income would be $200,000. These are the individuals who, through hard work and because of our system of free enterprise, have profited by living in the freest nation in the world. It is a system that rewards hard work and rightfully so. They should be willing to equalize this, I think, without a howl or a scream, particularly when the underlying bill offers some incentives for jobs, and particularly more so with the underlying amendment that is before us today by the Senator from Michigan.

Among the Americans who need work today are those unemployed people, those untrained people. Our unemployment stands at 7.3 percent, the highest in more than 6 years. Over 9 million fellow Americans, people that we know in our communities, are unemployed in this country. They cannot find a job. In Arizona, the State jobless rate is 9.3 percent, the highest since 1983. The numbers are continuing to rise.

Between the end of November and the beginning of February, New York's unemployment claims increased by more than 26 percent.

As my friend from Florida knows. In Florida, it is more than double during that period of time.

Later during this debate on this bill, I will offer an amendment to partially address these unemployment problems. This amendment seeks to put people back to work. It will alleviate some of the pain.

My amendment will allow individuals who are receiving unemployment benefits for 12 weeks or longer to withdraw funds from their IRA accounts with no penalty. I am hopeful that the distinguished chairman might accept that amendment.

I feel so strongly, having experienced in Arizona a number of people who lost their jobs through bank mergers and S&L failures, competent, hard-working, capable people, who had savings and could not find employment; one of them for over a year; withdrew that savings to live on and had to pay the penalty. That is wrong. I will address that later.

This amendment before us today, by the Senator from Michigan, will help unemployed Americans in the following ways: It provides job training. Nothing is more fundamental than to have a work force that is prepared and capable of meeting the demands.

In fiscal year 1993, $5.3 billion for infrastructure projects including $2.3 billion for highway construction and maintenance, $1 billion for transit spending in that area, $2 billion for airport improvement programs.

Somehow in the debate here and in the President's State of the Union Address, interest in deficit reduction has disappeared. There are many of us who have stood on this floor for years talking about deficit reduction. We have voted for deficit reduction. That is what this amendment is all about—true deficit reductions.

We were all very concerned when the deficit, as the Senator from Maine pointed out a few minutes ago, was $30 or $40 or $50 billion during the Carter administration. My God, how can we tolerate this? When it reached $70 and $150 billion, and even $200 billion, we all pointed the finger at the administration, Congress, or somebody for letting this deficit get out of control.

We enacted this supposedly great discipline, Gramm-Rudman-Hollings, which turned out to be a joke, because we were not prepared to let the sequester come upon us. I understand the significance had that occurred, but nevertheless we dodged it when the time came.

And $399 billion deficit is the largest number we have ever had, and that is what we face today. Here are trivia questions for your kids regarding $399 billion, which is a lot of money. If counted in seconds, it is over 12,000 years. In dollar bills it is 38.5 million miles of dollar bills. It is astronomical; it is out of control. Something has to be done. Most of the $399 billion is money that our children and our grandchildren will have to pay, as it adds on and on to the multitrillion-dollar deficit, $3.7 trillion that we have incurred.

Since 1980, the Federal debt has increased over 400 percent. That is a big increase in 12 years. In 1980 the national debt was $900 billion. In 1992 it is over $3.7 trillion. By 1995, if we continue on this path that the Bush administration set out in the State of the Union Address in and its budget, it will be over $5 trillion.

The President glossed over the deficit of $399 billion in his State of the Union Address. He did not offer any deficit reduction. Since 1975 the amount spent on interest has doubled. In 1970, 7 percent of outlays went to interest on the debt, $14 billion. In 1990, 14.7 percent of outlays went to interest for the national debt, for a total of over $184 billion.

What can we do about the deficit? What are we going to do about stopping it? That is what the amendment of the Senator from Michigan is all about. In this amendment, 75 percent of the money, by eliminating the middle-income tax credit, goes to deficit reduction. No ifs, ands, or buts.

You will hear arguments saying you cannot really apply it to the deficit. Somebody will come in and offer an amendment that is a sweetheart, and everybody will spend the money.

I say that I do not think so. I think if this amendment is adopted, it will put this body on clear record that we want deficit reduction. We think that is just as important as jobs or anything else we can do in order to move the economy.

Everybody tells us what the middle class wants, and that they want a tax cut. That is what we hear. They want a tax cut.

I go to my State almost every weekend, and that is not what I hear—give me a tax cut.

I hear: "Why do not you get your act together in Washington and reduce the deficit?"

"By the way, Senator, you have been talking about it for a long time." I have to explain what I have done about it.

"So what are you going to do when the economic program comes before you? Are you going to support the President? He does not do anything to deficit reduction, or does he, Senator?"

I say, quite the contrary. As a matter of fact, last evening we turned down the President's proposal, because it adds $24 billion-plus to the deficit.

If there is anything that we do not want to send out of this body, it is that we do not care, we will just add it to the deficit. The President has the gall, a few blocks away, to criticize the Democratic Congress when he is willing to pile on $24 billion more of deficit.

This Senator, the Senator from Michigan, the Senator from Florida, the Senator from Illinois, and others who have joined in this amendment, want to apply that money—some $21 billion or more—to deficit reduction, direct deficit reduction.

An opinion poll done by Opinion Research Corporation, as Senator LEVIN has quoted here and inserted in the RECORD, needs to be restated. The question is really more important than even the question of this amendment, because the amendment does not touch anybody's taxable income until it reaches $150,000 or $175,000.

But the question is—and I wrote it down when the Senator read it to our caucus: "If taxes were raised on individuals with incomes of $100,000 or more, which of the following would be the best way for the Government to use the additional money?" And 44 percent said they believed it should be used to increase spending on domestic needs.

That is in the Senator's amendment. It is in the chairman's bill to do something about domestic needs. That is why this bill has a lot of good in it, even though it does not go to deficit reduction.

No. 2 is: 27 percent said it should be used to reduce the deficit. That is exactly what the Senator from Michigan has addressed in this amendment. And only 22 percent recommended a middle-income tax cut.

I am not suggesting that a $300 tax credit is insignificant. To someone making $35,000 with two children, getting a $600 tax credit, that is significant. But it is not what this country needs, nor is it what the country is calling for.

I do not think we can afford it today. With the imbalance of our tax system today as to 1 percent of our population, we have to do something to reverse that. Senator BENTSEN has found a combination that makes sense of how to invest some of the money that is going to be raised by equalizing the taxes on that 1 percent, things that I know he has worked on for a long time, such as capital gains, and increased savings, and passive losses in a restricted area—things that I have supported in the capital gains area for years—I am sure sometimes to his exasperation.

But he has molded a bill to include this, so that Senators like myself and others can proudly support such legislation. The only failure is that it does not apply enough to the deficit until the sixth year.

I compliment the distinguished chairman for trying his darnedest to balance this with an income tax credit. And I have talked to him over the years, and I know he is as committed to deficit reduction as anybody in this body. Nobody will convince this Senator otherwise.

The issue is fairness. We have to do something that equalizes it. The Finance Committee bill does that. We have to do something to reduce the deficit. The amendment of the Senator from Michigan speaks so clearly to that. I hope people will support this amendment across the board, Democrats and Republicans. It is not the death knell. It is not going to defeat this bill. It is going to make it stronger.

I would love to see a bill go to the President, because I think he has the capability of changing his mind again when it comes to deficit reduction. He changed his mind on the agreement of 2 years ago, the budget agreement, and he said he made a mistake. He can say he made a mistake now that he will go for fairness and deficit reduction. Is that political? Perhaps. But it is good for this country and for the people of this country to know that this Senate, this body, is prepared to reduce the deficit and do it today. I thank the Chair.

The PRESIDING OFFICER. The Chair recognizes the Senator from Indiana.

Mr. COATS. Mr. President, I want to begin by acknowledging the sincere efforts of the Senator from Michigan and those who have joined him in offering this amendment relative to their concern about the growing deficit, and their attempt to address that concern, at least in this small way, by modifying the current bill to acknowledge that there needs to be serious focus on the alarming increase in both our annual deficit and our national debt.

For those of us who for years on the Republican side like to label our colleagues across the aisle as the tax-and-spend party, it is heartening to see a number of them discuss, as I think we all should be discussing, the shocking

increase in our national debt and the implications that that has not only for our near-term economic future but particularly for the long-term future of this country and the burden that it is placing on future generations.

So, I, in one sense, am encouraged by what I hear and see coming from the other side of the aisle relative to that acknowledgement and hope that this is the beginning of a serious effort by this Senate body and this Congress in addressing what I think is perhaps our No. 1 domestic concern.

What I am concerned about, however, in this particular amendment, is that it attempts to free money for deficit reduction by striking perhaps one of the most important fairness provisions incorporated in the legislation before us. For years it is the American family struggling to raise their children and pay the bills, the mortgage, and send their kids to school, meet transportation needs, and so forth, that have been at an extreme disadvantage within the Tax Code relative to the percentage of income that they pay as opposed to others.

So the elimination of the $300 credit as part of a way of achieving a pool of money to be used for deficit reduction I think is exactly the opposite way to go.

Most Members know that in 1948 the Congress, recognizing the fact that the American family needed help in support of raising children, instituted the personal exemption—setting that figure at $600 per year. By any measure, if you look at the increase in cost of living or the cost of raising a family, that exemption should be substantially higher than that.

Over the years, between 1948 and 1986, that exemption was gradually raised to the $1,000 level, and I was proud to be part of the effort in the Congress in 1986 to double the exemption in the 1986 Tax Reform Act. However, even with that doubling of the personal exemption, by any measure, it was at least two and some say four times less than what it ought to be if it had kept pace with the value or the earning power of that personal exemption in 1948.

While it may have only cost $600 per year to raise a child in 1948, the Family Economics Review estimates that the cost of raising a child born in 1989 and raising that child to the age of 17 in a medium-income family will average out to $8,452 per year. I expect for many families given their geographical location and special needs, annual expenses would be even higher than that.

So when we are looking at a situation in which a very modest attempt to recognize that disparity and address that element of unfairness is brought to this floor, even that is used as a basis for achieving another purpose.

So I think my reservation here relative to this amendment is the fact that while it seeks to achieve a very desirable end all, it does so on the backs of the very element and entity in our society that is most hard pressed. The American family is struggling today—we all know that. We know that more and more members of the family are working just in order to stay even.

According to the Economic Policy Institute, declining wages, increased work hours, and fewer vacations have created the overworked American of the 1990's.

The amount of time parents spend with their children has dropped roughly 40 percent since 1965. According to a recent poll, Americans believe parents having less time to spend with their families as a result of economic pressures is the single most important reason for the decline in the family in our society.

I think there are many reasons for the decline of family. There are many cultural, societal, and moral influences that are at work in our society that have contributed to this. But certainly one that we are directly charged with addressing.

Between 1969 and 1989, the annual time worked by an average American rose by 158 hours, adding nearly 1 month of work to a year. The upward trend in work hours has been most pronounced for women who have entered the work force in increasing numbers in the past two decades. Young parents are putting in even more hours at work since 1969—241 more hours per year for mothers and 189 more hours per year for fathers. The total work force for single, fully employed parents rose by 222 hours or 5.5 weeks per year between 1969 and 1989.

We have now more middle-income families with both parents working than the entire cumulative history of our Nation. And giving these trends, I believe it is time for Congress to find ways to better protect the family in our Tax Code. It is time to reassess our priorities, particularly our priorities in terms of how we provide fairness for families.

The current child-care tax credit of $300 which we are debating today is a small amount. I think many recognize that. It is limited by the resources that we have available to address this need at this particular time. It is a small step that we can take to help families in today's difficult economic climate.

I for one who have introduced a number of pieces of legislation in terms of increasing the personal exemption or dealing with this problem feel that the $300 tax credit is the very least that we ought to do. Yet here we are faced with an amendment that strikes that provision in its entirety, and takes away even that small step of helping bring some element of fairness to families.

Yes, it is a desirable goal. Yes, we need to focus on the deficit, but let us not do it on the back of those people who were treated most unfairly within the Tax Code.

While we are on this issue, I would like to also express in my strongest terms my concern over language in this bill which eliminates the supplemental young-child credit portion of the earned-income tax credit. This supplemental tax credit was an integral part of the child-care compromise that was included in the 1990 budget agreement.

What it provided for was taxpayers with incomes under $22,370 a year with children under the age of 1 can either claim the dependent-care tax credit if they are both working, or the supplemental young-child tax credit if one parent opts to stay home with the newborn child.

While those who endorse this repeal claim it is necessary to expand the earned-income tax credit, this action to strike is a tax on parents who want to stay home and play a greater role in the early development of their child.

Having served on the Children and Family Committee in the House, and serving on the Children and Family Committee in the Senate, if there is one message that has come through to use loud and clear from child care experts across the spectrum of ideology, it is that those first early months in particular are absolutely critical in terms of a parent relating and bonding to a child. Bonding takes place over a lifetime. We should not presume that simply 3 or 12 months or even 36 months is all that is needed by parents in order to form those critical relationships that are critical to the development of that child.

But, at the very least, we recognized under the supplemental tax credit the importance of a mother staying at home for at least the first 12 months, trying to provide some incentive for her to do that. Yet with this bill we are now taking away that opportunity.

If the young-child tax credit should be separated altogether from the earned-income tax credit, I think that is an approach we may want to take. Legislation introduced by Senator GRASSLEY of Iowa, which I have cosponsored, would do just that. It would also expand eligibility for the credit to families with earnings up to $50,000 for children under 5.

There are scores of programs like the earned-income tax credit designed specifically to help impoverished families, as there should be. This commitment is consent and important. But we must not forget that it is middle-income families who have not only been forgotten, but given extra financial burdens. It is time to target this group for additional help as we have done in the past for others.

Mr. President, our families are our future. I believe that very strongly. As we discuss methods by which we can improve our way of life through a strengthening of our national economy, let us keep in mind the impor-

tance of strengthening the family economy.

For decades, the family has contributed to the massive expansion of our Government. They have paid the bills. They have shouldered not only their share but more than their share. It is time that we acknowledge this contribution. It is time that we acknowledge the growing hardships and pressures on family life in America. It is time, I believe, to more fairly represent the family in our Tax Code.

Thus, while acknowledging the efforts of my colleagues to address the very serious question of the impact of our deficit on the family and children and future generations, I do not believe that the solution to the problem is to take away now this one modest attempt to bring about some equity and some fairness through the Tax Code in terms of how we treat the American family. That is not the way to deal with our deficit problem.

I hope that we will defeat this attempt. But I also hope that this discussion, yesterday and today, will prompt a continued, serious discussion about the impact of our deficit on our families, on our economy, and on our future as a Nation, and that we can step to the plate and make some serious efforts at dealing with what I consider a very serious problem.

Mr. President, I thank the Chair and I yield back my time.

Mr. BRADLEY addressed the Chair.

The PRESIDING OFFICER. The Chair recognize the Senator from New Jersey.

Mr. BRADLEY. Mr. President, the bill before us is not perfect, but the amendment before us is seriously flawed. I rise to oppose the amendment of the Senator from Michigan. I think the Senator from Michigan is correct in aiming at deficit reduction and investment in infrastructure and education. But I think he goes about it the wrong way. In other words, his goal is correct but his mechanism is wrong. He leaves in the loopholes that are in the bill, but strikes the already limited relief for families which is in the bill.

You might say, well, the children's credit is not perfect. That is probably right, but it is better than no relief for children and for families. And I hope that any credit that would emerge from conference would be more inclusive by being refundable, among other things.

Mr. President, I support raising taxes on the rich. I introduced a bill to levy a millionaire's surtax and use the money to help families send their children to college.

I believe if Senator LEVIN had proposed an amendment that would have struck not the limited relief to middle-income families, but instead struck the loopholes that are in this bill, he would have had my support. It is one thing to take out the relief for middle-income families, but it is another thing to leave in the tax breaks for upper-income families. And that is precisely what this amendment does.

It makes the distributional effect of the bill worse, not better. It eliminates the tax credit for families earning from $15,000 to $47,500, and it leaves in the passive losses, capital gains, and IRA restoration. In my opinion, he should have proposed striking those loopholes. That is not what he did.

Mr. President, I believe that if he had done that, he would have been on the right track—because I think that these provisions are not in our country's long-term interest.

For example, we are supposed to pass a 10-percent investment tax allowance. This is a little bit of "do it today, pay for it tomorrow." You spend $2.7 billion in order to convince manufacturers to invest today instead of tomorrow. The biggest problem with the proposal is that it unjustifiably favors certain industries over others. And it makes taxpayers pick up the tab.

In 1986, when we did the tax reform legislation, the idea was to get Government out of the game of picking winners and losers. We wanted to set low rates, and let the market decide where the capital should flow, the most efficient allocation of resources. Yet, the proposal for the investment tax allowance favors capital-intensive industries over other industries; it favors companies which invest in new equipment over those that invest in retraining their workers; it favors manufacturing companies over service companies; it favors companies who can adjust their plans and shift their investments up to a current year over companies which have a steady rate of investment over time; and, finally, it favors existing companies over new, entrepreneurial companies.

Mr. President, I just do not think that temporary, quick-fix measures like a 1-year break for equipment purchases are the best way to get out of the current recession. Creating a window like the one this provision would create simply encourages a flurry of short-term activity. What we have to do is increase our long-term investment rates, and the best way to do that is to lower the cost of capital by reducing the deficit and increasing private savings. We should not ask the American taxpayers to send out $2.7 billion in checks to large corporations simply to make our economy look better in the next 9 months.

Then, Mr. President, there is the passive loss provision. Many claim that the passive loss change in this bill will help solve the crisis in real estate, the crisis caused by the 1986 Tax Reform Act. Well, Mr. President, let us be open and honest. The crisis faced by real estate in America today did not stem from 1986; it stemmed from the 1981 tax bill, which threw money and tax breaks at the industry and created a market divorced from economic fundamentals.

The 1981 tax bill allowed a taxpayer to depreciate a building in 15 years, no matter if it lasted 40 years. The 1981 tax bill allowed S&L companies, that were even then incurring big losses, to deduct those losses against their income in the previous 10 years, thereby postponing the day of reckoning for the S&L's, and encouraging profligate lending. So let us not mistake what the cause of the present problems in real estate was. It was the 1981 tax bill, not the 1986 tax bill.

And what happened after 1981? Well, we built more commercial real estate in the 1980's in America than was standing in America in 1979. Let me repeat that: Because of the incredibly generous tax benefit in the 1981 tax bill that essentially had the taxpayers pouring money into the coffers of the real estate industry, there were more commercial office buildings built in the 1980's than existed in total in America in 1979.

The problem in the real estate industry is not that the developers do not get to deduct their passive losses; it is a 20-percent vacancy rate and a 10-year supply of office space already out there. That is the problem. The drop in real estate prices has less to do with the Tax Code than with the lack of tenants.

And, to illustrate my point, the sale of Rockefeller Center might be the best sale ever made. There is not a chance that it could be sold today for what it was purchased for. And, who knows, probably an American will buy it back at a reduced price.

The fact of the matter is that the problems in real estate date back a decade to the original sin of the period, the 1981 tax bill. But we are supposed to pass a provision that sends $1.9 billion to wealthy investors—that is what the passive loss provision does. Note that many of these investors invested after 1986, meaning they made their investment with full knowledge that there were no passive losses to be had.

A number of times, I have encountered people coming in, lobbyists, saying "We need passive losses, we need passive losses."

I say, "When did you make your investment?"

"1988."

"Well, there were no passive losses in the law. So you made your investment with the full knowledge you were not going to get it?"

"Yes. But we still need them."

It only illustrates the point.

Mr. President, I want to help business, American business, but I do not think that ideally one industry should be favored over another industry. Note we already have a $25,000 exclusion for developers earning less than $100,000 a year. So that means the vast majority of this $1.9 billion is going to go to the

wealthiest in our society. We are supposed to pass a bill where someone can spend 500 hours managing a real estate property, rental property—500 hours, that is all—and receive a large tax shelter. But every time that we do this sort of thing, cater to the narrow interests, America suffers longer term losses. It would be a fundamental mistake to try to solve a short-term recession by doing long-term damage to our structural needs and to our massive budget deficits. The best thing we can do for real estate, in my view, is to keep interest rates low and to return to fiscal responsibility, thereby freeing capital for private investment.

But this amendment does not strike the 10-percent investment tax allowance. This amendment does not strike the $1.9 billion that is going to a few real estate developers, mostly wealthy.

This amendment also does not strike the IRA restoration. I know it is a very popular political thing to go into a hall and say, "I want to restore your IRA." The fact of the matter is that 73 percent of all Americans today have a full and complete IRA. But, under this bill we are supposed to spend $5 billion to give full and complete IRA's to wealthy Americans.

I support the goal of increasing the private savings rate. I just do not think this measure is going to do it. Every American already has access to a tax-favored IRA—every American. What does that mean? That means you can take your money and you can go down to the bank; you can put it in the bank and interest is going to accrue and you do not pay a tax on that interest as it builds up. When you take the money out you pay tax.

Now, roughly 75 percent of all Americans can also go down to their bank, put the money in the bank and get the deduction for putting it in the bank. We just will not be able to get much leverage over our national savings rate by giving fully deductible IRA's to the top 25 percent of the American population.

It does not make sense to me, as well, to, on one side of the tax bill, raise taxes on the rich—we are all for raising those rates on the rich—and then on the other side give it right back to the rich in the form of the passive losses and the IRA exclusion. Most of this IRA is going to go to the top 10 percent of earners in the country. So, on the one hand we are telling people we are really taxing the rich, but there we are, giving it back with the other hand.

I also have some concerns about the IRA provisions long-term deficit costs. It includes a back-loaded IRA, which means you can put money into your IRA, you do not get the deduction now, and the interest will accrue over time. Then, in 10, 15 or 20 years, you can take money out of the IRA and pay no tax at all. Of course, when you take money out of the IRA and you pay no tax at all, that means there will be no money coming into the Federal Government. You will have had an interest-free buildup for 15 or 20 years. CBO has estimated that the eventual cost of this IRA proposal over future 5-year periods could be eight times its original cost. By the turn of the century, the provision could cost an additional $10 billion a year in deficits.

This amendment does not do anything about that. This amendment wants to cut deficits. That is why we are removing the middle-income tax cut. But it does not do anything about the 10-percent investment tax allowance. It does not do anything about passive loans. It does not do anything about IRA restoration.

Finally, the amendment does not do anything to eliminate the alternative minimum tax provisions, $2.2 billion. It is important to remember why we have an alternative minimum tax. We wanted to make sure, in 1986, that corporations could not zero out their tax liability by taking advantage of loopholes in the code. Take the loopholes, you avoid the tax; but if you manage to do that, here is an alternative net that will catch you and you will have to pay taxes, because everybody in America—all Americans, all corporations—should have to pay taxes. It worked pretty well. The number of corporations that got away with paying no tax dropped from about 50 in America prior to 1986 to about seven, latest count. It worked pretty well.

What does this do? Among the loopholes that were included in the alternative minimum tax to be counted toward tax liability were accelerated depreciation under ACRS. Also included was percentage depletion and expensing of intangible drilling costs. While I continue to think the best solution is not to put in the loopholes in the first place, we should not get in the practice of selectively taking these preferences, out of the alternative minimum tax. And, of course, that is what this provision does for depreciation and for intangible drilling costs.

But this amendment does not eliminate that provision of this bill. This amendment does not do anything about moving depreciation out of the alternative minimum tax. It does nothing about moving intangible drilling costs out of the alternative minimum tax. That would pick up $2.2 billion in deficit reduction.

Then, of course, there is the capital gains provision. We are asked to reinstate the preference. I think the Committee was creative in the way we put the capital gains preference back in. It is not the one we had to deal with from the Republicans last night, which was a $15 billion measure. This is a more creative measure; it only costs about $7.7 billion. But the fact remains that the average break for a filer making $200,000 will be $1,414 and the break for the average filer making $30,000 will be about $207.

The point is less whether we should have an across-the-boards capital gains or a skewed capital gains—the so-called progressive capital gains—but whether there should be a differential at all. All the economists that came into the Finance Committee said capital gains will do little, if anything, to increase our savings or investment rates. Yet there it is. The investment we need is in plant and equipment, research and development, training, and health care, but we end up with creative capital gains. I do not want to see us return to the days where tax lawyers made their living recharacterizing income as capital gains when it was really ordinary income.

Maybe the biggest simplification we have had was equating the income that you earn from the sweat of your brow as a farmer in the fields of North Dakota or as a worker in the orange groves of Florida or in the factories of Wisconsin—that the dollar you earned from that should be taxed the same as the dollar somebody earns because they had the advantage of having enough capital to invest in some stock and sell the stock. That is what the principle was: All income treated equally.

So, while this is a creative way to get back to capital gains, it still reinstates the exclusion, still eliminates that parity. But this amendment does not do anything about capital gains. That is $7.7 billion. This amendment does not strike capital gains, just as it did not strike the exclusions from the alternative minimum tax, just as it did not strike the passive losses, and just as it did not strike the 10-percent investment tax allowance.

Then, of course, there are the extenders. Our failure to deal with extenders in a real way—up or down, keep them or get rid of them—is one of the regrettable developments of the last several years because, in effect, we are just going to keep passing them along. We extend them for 6 months, for 12 months, for 18 months. We say if we extend them for 12 months, then it only costs $4 or $3 billion, but if we extend them permanently, it would cost $10 or $12 billion. Then we come back.

That creates a problem. On two levels. On one level it creates the illusion that the cost of this bill is what is actually said. It is not, because when you extend these provisions, the cost is going to be greater. The other problem is maybe if we just made them permanent or if we just eliminated them, we could save enough in lobbying costs over the next 5 years to pay for the extenders. At least that merits consideration instead of extending and extending and extending and extending.

But, once again, this amendment does not do anything about the extend-

ers. No, Mr. President, the amendment does nothing about the loopholes that are in the bill that benefit primarily the wealthy and the corporations. It does nothing. No, this amendment knocks out the limited middle-income relief and people then say, "We are for deficit reduction." If you are deficit reduction, then you have to eliminate the $20 to $25 billion that is in the bill that is essentially the extension or continuation or creation of new or old loopholes.

So, Mr. President, in summary, I do not think it makes sense to raise taxes on the rich and turn around and give the benefits back through narrow provisions in the code. At the very least, this package should do no harm to our economy, but to me that means we have to pay for it fully. Increasing the long-term deficit, I think, would be a disservice.

So I agree with Senator LEVIN that deficit reduction should be a priority of this Congress. I also agree with him that the richest people in this country, the people who did the best over the past decade, should pay more for their share of the common good. I agree this country needs to make long-term investments in our future with public spending for education, roads, bridges, high-speed rail, but with all these areas of agreement, the amendment clearly has a major flaw.

What this amendment does in simplest terms is knock out the remnants of the middle class tax cut that still exist in the bill, and when we do that, yes, we are raising taxes on the rich but, as I said, we are giving a lot of that money right back to them in the form of tax breaks.

I ask myself from time to time, why do we not just keep things the way they are instead of going through the charade of taking money with one hand and returning it with the other? If the Senator from Michigan wanted to come back to the floor and do that, it would be a tough amendment to vote against. But why are we protecting the few narrow interests at the same time we are eliminating the very narrow tax relief that is in the bill for middle-income taxpayers?

Deficit reduction, I believe, has to be the agenda, but when we do deficit reduction, we should not be favoring the wealthy and the corporations over middle-class taxpayers, and that is what this amendment does. It says, middle class, sorry, we are taking yours; we want deficit reduction, but, real estate, capital intensive industry, oil and gas, IRA's, banks, whatever, no, no, no, we do not touch you; you get $20 or $25 billion in this bill, almost as much as the whole middle-income relief package.

So, Mr. President, I urge we defeat this amendment, and I hope that we will have the votes to do that.

Several Senators addressed the Chair.

The PRESIDING OFFICER. The Chair recognizes the Senator from Texas.

Mr. BENSTEN. Mr. President, I listened to my friend from New Jersey make very spirited defense of the 1986 Tax Code and I think it accomplished a lot. But I think it went overboard in some ways to the detriment of the economy. For example, in 1985, I could see the see-through buildings in Houston and Dallas and other parts around the country. To combat the oversupply of buildings, I thought, as a result of accelerated depreciation, we should extend the depreciation period for those buildings, as we are doing in the bill. But in 1985 the lobbyists came down on me like a ton of bricks and they defeated me.

In 1986, however, I objected to retroactively imposing the passive losses rules. I said then that that will be a disaster, because limited partners—the doctors, lawyers, bankers—have no personal liability. As a result of the retroactive passive loss rules, they drop the investment. It will then go right back to the general partners. What happens to the general partner? He goes broke. And then what happens? The investment reverts to the S&L and as a result they are in deep trouble. I prophesied exactly what would happen when the rules were imposal retroactively, and we are paying for that now.

With respect to IRA's you have to have a carrot to get people to save in this country. The IRA provides that. The 1986 reduced the IRA's coverage substantially. What happened to savings, personal savings? In 1987, the year after the IRA's were limited in scope, there was a 30-percent plunge in savings. What happened during this time in Canada? Canada expanded their IRA and doubled their savings rate. Prior to 1986, it had been relatively constant with the United States and their savings rate has been maintained at twice our rate.

Now with respect to who would benefit from a universal IRA. According to two familiar IRA researchers who updated the work for the National Bureau of Economic Research Venti and Wise, 60 percent of IRA accounts and 50 percent of the assets were held by households in 1986 with incomes less than $50,000. Those are the realities.

There are two ways to increase savings. One of them is to get the deficit down, and I can sympathize with that view on the part of my colleagues, but another way is to increase savings so we can have the kind of capital and the interest rates where we can build the new plants, where we can complete with 10-year average age industrial plants in Japan compared to 17 years in this country. That is why the IRA proposal is in the bill.

But in trying to balance out these objectives, we felt it was very important to help those people who have been hit the worst in the last decade. And that means targeting moderate-income families with children.

My colleague from Michigan wants to strike the middle income tax cut, use the revenue to increase domestic spending on infrastructure, job training, and reducing the deficit. Those are certainly goals I agree with. But this bill accomplishes many of these goals.

(Mr. BREAUX assumed the chair.)

Mr. BENTSEN. We could reduce the deficit in the 5-year budget under the incredible arcane budget rules that are such that there is no way we could isolate the reduction and protect it. We could not build a wall around it. There would be a honey pot waiting for anyone who wanted to come up with his amendment, and I promise you many would be rushing to the floor to tell us how to spend it. We would never get to deficit reduction.

But when we talk about a $300 credit for a child, for the average family of four with two children—and the average income in this country is $35,000 a year for a family—those families would get a 25-percent tax cut and that is meaningful. That is why it is important that we oppose this amendment.

In talking about protecting the money for deficit reduction, you have to work within the reconciliation rules. Without reconciliation protection, any excess revenue is a grab bag for others to spend and that is limited only by the imagination of the Members and their staffs. And if their imaginations are not creative enough, there are a lot of lobbyists out there who can give them other suggestions.

Moreover, this amendment would convert a revenue-neutral bill into a tax hike, and whether the tax increases go to additional spending or deficit reduction, we would be passing a tax increase bill.

The Finance Committee bill represents a very serious effort on our part to reconcile different points of views within the Senate, particularly with respect to the deficit. We have a number of Senators who strongly disagree with the idea of reducing the deficit at a time like this. They say the economy is bad. We have people out of work. This is the time to increase the deficit and create jobs. Never mind the budget agreement. And on the other side we have those who say let us cut the deficit.

What you have seen is the finance Committee working with those different points of view and bringing what we think is a balanced answer to the different concerns. I responded to the concerns of many by paying for tax cuts within tax increases. Originally I thought we could pay for the tax cuts with the peace dividend, and there are others who thought that. But I changed my position when I discovered that this wasn't enough of a dividend to be used for current domestic spending.

In addition, I share the desire of many to channel defense spending into domestic needs like infrastructure and education. So when Rob Reischauer from CBO testified that we will need $133 billion to maintain real domestic discretionary spending at the 1992 level, I decided to focus on tax increases as the only viable alternative to pay for tax cuts.

Mr. President, we cut the size of the middle-income tax cut to respond to the concerns raised, we cut the cost of the original in half—to approximately $30 billion. The original proposal would have cost $60 billion over 5 years.

I must stress that this bill provides for $9,9 billion in deficit reduction over 6 years. The Finance Committee bill is revenue neutral over 5 years. However, the bill reduces the deficit $9.9 billion over 6 years. That compares rather favorably with the House bill which has $13.9 in deficit reduction in a much larger bill.

The question is whether we should do more. I agree that the deficit is a problem, but it is not the only problem. We have to get the economy moving again, and a contractionary fiscal policy could stifle economic growth when we need it now in the middle of a long recession.

I have joined with those who worked hard over the years to achieve meaningful deficit reduction. I worked with them in the 1990 budget agreement, which I now see the President turn his back on, and I strongly disagree with him on that. I am proud I participated in that. It is the only discipline I see in trying to cut back on spending.

We should demonstrate our concern about the deficit by continuing to adhere to that budget agreement. I know there are a number of economists, those I respect, like Roger Brenner, Lester Thurow, who certainly agree with us the deficit should be reduced but that they think the first priority should be engineering a strong recovery. I think that should be Congress' near-term priority, too. And then we can deal with the long-term problem when the economy is strong and this election season is behind us.

I take second place to no one in recognizing the neglect of the 1980's. A decade that has left America with many unmet needs, including a deteriorating infrastructure. But I believe that working Americans are a very major component of that infrastructure and they took a big hit in the 1980's.

A major component of the committee's bill consists of proposals to provide fair treatment of working families. We are all familiar with the recent numbers documenting in very stark terms the decline of American working families. They are working longer hours. The latest numbers show that they are working a solid month longer than they did 15 years ago, they are working harder than their counterparts in any major European country, earning lower wages, and paying higher taxes.

One of the most disturbing facts is that the middle class is shrinking. According to the Census Bureau, the middle class fell from 71.2 percent of the population in 1969 to 63 percent in 1989.

A recent study shows that during the 1980's, America went from eighth to dead last among all advanced countries in equality of income distribution.

Well, this bill, to a modest degree, will help reverse that disturbing trend, by providing a permanent tax credit for each child for families of middle income.

Under the Finance Committee bill, a family would be entitled to a $300 credit for each child under the age of 16. This is a partial response to what has happened to them over the last decade.

With respect to some of the figures cited, CBO projects that even with a recovery this year, the real after-tax income of the top 1 percent of families will more than double between 1980 and 1992, rising by $243,000 apiece. In contrast, the real after-tax income of the typical middle-income family will be $747 lower in 1992 than in 1980.

Once again, some people say that we are really harming the top-income people. We ought to keep that in perspective. We are talking about a rate of 36 percent for families making over $175,000 a year in taxable income. That figure would rise considerably if we looked at gross income deductibles—$175,000.

If you examine the individual who is making $1 million a year, how tough have we been on him? The bill would impose about 39 percent. What do you think the top rate is on people in competing countries like West Germany and Japan and the United Kingdom—over 50 percent on those people.

What do you think the difference is in the rate in this country today between a person making $35,000 a year and one making $1 million a year? The difference in the rate—3 percent. That is it.

This bill concerns sharing responsibility of government by trying to restore some fairness in the tax system.

To make matters worse for these middle-income families, the cost of necessities has risen faster than general prices. The $1,600 fall in families' real incomes during the 1980's understates the financial hardships they confront because the cost of necessities has risen far faster than general inflation.

Last year, housing required 44 percent of the average family's income compared with 28 percent in 1970. No wonder home ownership fell for the first time since World War II during the 1980's. Families must now work 30 weeks to buy the average priced new auto—up from 23 weeks in 1980.

I think poor wage growth and soaring housing costs may also account for the 30-percent leap between 1980 and 1990 in young adults moving back in with their parents. More and more young couples have gone to live with mom and pop who really would rather be out on their own. Mom and pop thinking that is a pretty good idea, too.

This bill addresses these problems by expanding the IRA, letting people withdraw funds penalty free to buy that first home.

Will the bill produce a booming economy overnight for us? Of course not. We did not get into this kind of a situation overnight. It has been happening over the last decade, and it is going to take strength and time and courage on the part of the leadership of this country to turn it around. This is a modest first step in that direction.

For example, the bill contains educational assistance.

I was looking at the Senator presiding over us today, the distinguished Senator from Louisiana. We have his proposal in this bill providing for tax incentives for youth skills training, and educational programs.

My friend from New Jersey, contributed to this also with his self-reliance loan proposal; a deduction for student loan interest in the bill here; extension of the exclusion for employer-provided educational assistance and targeted jobs tax credit.

Sure, I would like to do more for job training and education. But we have the constraints of the budget. But we have the constraints of the budget. But we have taken some big steps in the right direction.

A vote for this underlying piece of legislation is one for tax fairness.

But a vote for this amendment, I think, bypasses our concern for middle-income Americans and their children. I would strongly urge my colleagues to vote against it.

UNANIMOUS-CONSENT AGREEMENT

Mr. President, I ask unanimous consent that the time until 2 p.m. today be the time remaining for debate on the pending amendments 1712 and 1713, with the time equally divided and controlled in the usual form; that at 2 p.m., without intervening action or debate, that Senator BENTSEN be recognized to move to table the Levin amendment; that should the tabling motion fail, there be no limitation on debate on the pending amendments, provided no points of order are waived by this agreement; that upon disposition of these amendments, Senator HELMS be recognized to offer an amendment.

The PRESIDING OFFICER. Is there objection?

Mr. EXON. Reserving the right to object, and I shall not object, but I think this is the most appropriate time for the Senator from Nebraska to review and urge once again the moving ahead with some form of expediency on the matter that is before us.

I have no objection to any Senator calling up any particular amendment that they think is absolutely essential by which they want to make a point on reducing the deficit, and this Senator has been working on that for 13-plus years here in the U.S. Senate.

I would simply say that taking as much time as we are taking on all of these amendments with the clock ticking away, 8 days remain from the magic March 20 date. For reasons that are obvious to all we should finish our work on this, regardless of what comes out, whether amendments are adopted or whether they are not. My best guess is that none will be adopted.

I think and hope that we would get to the merits of the case without over-debating and overdelaying a decision on this very important matter that is before the U.S. Senate. So I will not object, certainly, to the very reasonable proposal offered by the chairman of the committee of jurisdiction.

I only add that from 10 o'clock this morning until 1:20 now, and 2-something, when this will come up, or whenever, under the unanimous consent agreement that was just offered, is too long a time, in the view of this Senator. We have already wasted enough time on this. Even though I am not saying it is not a worthy subject for discussion, I think few, if any, votes are going to be changed one way or the other on this.

I made a statement yesterday that because I thought it was wise that we proceed in an expeditious fashion, that the amendments should be left to a minimum. There are amendments that this Senator and others feel very strongly about that could appropriately be brought up on this bill. But trying to practice what I am preaching, I have urged restraint in those matters, and I certainly say that I have no criticism at all of the unanimous consent agreement that has been offered, except to say that I hope that similar unanimous consent agreements would be offered posthaste, or immediately after, or as soon thereafter as possible, for any future amendments that Members of the Senate feel obliged to bring forth.

I do not object.

The PRESIDING OFFICER. Is there objection to the unanimous-consent agreement?

Mr. CONRAD. Mr. President, reserving the right to object.

Mr. President, I understand the desire to move expeditiously. I just say that it is one of the most important debates of the year. I have been here waiting 2 hours to have a chance to speak, and I do not begrudge my colleagues expressing themselves. I want to make certain I have a chance to express myself. I feel deeply about this subject, and I know the Senator from Illinois, who is a cosponsor, wants time to speak, and I assume that the mover of this amendment wants a chance to speak. I want to make certain that I have 10 minutes, or a close approximation thereto, to express myself.

So if we can work that out among those who are here, I would be happy not to object.

Mr. SIMON. Mr. President, if my colleague will yield, if it is part of the unanimous-consent agreement that we can get 10 minutes for the Senator from North Dakota and 10 minutes for the Senator from Illinois, I have no objection.

Mr. BENTSEN. Let us understand where the Senators are coming from, which side of the amendment.

Mr. SIMON. I am supporting the amendment.

Mr. CONRAD. I am supporting the amendment.

Mr. BENTSEN. Then it is up to my friend.

Mr. LEVIN. We need 24 minutes. So you want to go to 8 minutes.

Mr. PACKWOOD. Mr. President, reserving the right to object, Senator DOMENICI would like 10 minutes.

The PRESIDING OFFICER. Does the Senator from Texas modify his unanimous-consent request?

Mr. BENTSEN. I have a problem as far as having cleared it on that side; that is my concern.

Mr. PACKWOOD. We are clear.

Mr. BENTSEN. Mr. President, I ask unanimous consent that we have the vote at 2:15.

Mr. PACKWOOD. Can Senator DOMENICI have 10 minutes?

Mr. BENTSEN. With Senator DOMENICI having 10 minutes and the Senator from North Dakota having 10 minutes and the Senator from Illinois having 10 minutes. Those will be charged to the appropriate sides, of course.

The PRESIDING OFFICER. Is there objection to the request as stated? Hearing none, it is so ordered.

Under the regular order, the Senator from Michigan will control time in support of the amendment, and the manager of the bill will control the time in opposition.

Who yields time?

Mr. LEVIN. I yield to the Senator from Illinois 10 minutes.

Mr. SIMON. Mr. President, I want to express my high regard for the chairman of the Senate Finance Committee, who has worked very, very hard in an area that is complicated. It is easy for those of us who have been part of this negotiation to be on the sidelines and say that we think we can do better. If the Levin amendment is defeated, the Graham amendment, in moving more rapidly on the deficit, is moving in the direction in which we ought to be moving.

We are talking about how we can help middle-class America. The best way we can help middle-class, middle-income America is to get our industrial base going, to create jobs, to assure people of jobs. And that is not going to happen unless we pay more attention to the deficit than we now are paying.

Just one little set of statistics. This next fiscal year, the estimate is that the gross interest expenditure will be $316 billion. This next fiscal year, for the first time in the Nation's history, the No. 1 expenditure of the Federal Government will be interest rather than defense or some other area.

We just cannot continue that indefinitely. I heard the other day our colleague from New York, Senator MOYNIHAN, say we are going down the road toward monetizing the debt. I do not think there is any question about that.

We are heavily dependent right now on Social Security retirement funds. Starting about the year 2010, those numbers are really going to start going up dramatically. At that point, whoever is in Congress, whoever is President, has one of three choices to make. You can dramatically cut back on Social Security benefits, and you can guess how popular that would be; or you could dramatically increase taxes, and you could guess how popular that would be. Or the third option is to print more money. That is the politically easy way out, and it is the most dangerous of all three options, but that is the direction that we are headed in if we do not do something about it.

I asked the Congressional Budget Office and the Congressional Research Service what part of the trade deficit—we hear a lot about that here—is caused by the budget deficit. They came up with a series of studies, and 37 to 55 percent of the trade deficit is caused by the budget deficit. It means that every time we increase the deficit, we are taking away jobs from middle-income America. We just cannot continue that.

I like to be popular as much as anybody else. I would love to vote for a tax cut for people. But I believe that if you ask the people in this gallery or ask the people back home: If you have a choice of a tax cut in an election year—frankly, that has all the earmarks of we-know-what—or should we start reducing that deficit and provide our children and our grandchildren a better future? I know what the answer is going to be. They want a better future.

This amendment moves in that direction. I heard my friend from New Jersey, Senator BRADLEY, criticize this amendment because it did not go far enough here or there, and I agree with some of those criticisms. But there is the old Shakespeare line that "the best is the enemy of the good." If we wait for that perfect amendment, it is not going to be here.

Yes, there are inequities. I voted against the 1981 tax bill. Senator CARL LEVIN and I were two of three Members on the floor of the Senate who voted against the 1986 tax bill. We have re-

duced the tax on the wealthiest Americans since 1981 from 70 percent to 28 percent, believe it or not. Hard to believe.

We have to do something about it. We have to get moving on the deficit. I recognize the chances are slim that the Levin amendment or the Graham amendment will carry. But I hope enough of us will stand up and say we have to do better, we have to be looking long term, and that is what his amendment does.

Let me just describe briefly one part of the long term, and that is to put more money into training. We are going to have to train people. Economists do not agree on very much, but one thing they agree on, you are going to compete with the rest of the world either through higher skills or lower wages, and we are going down the lower wage route. What this amendment does, among other things, is it takes $500 million and puts it into job training programs, and $100 million of that goes into title II, a JTP program which is for the economically disadvantaged. Do you know what percentage of those who need training and retraining we are reaching right now in that particular part of the program? Five percent. And yet every study shows it pays off. That is one thing it does.

No. 2, $100 million for the summer youth program. I do not think I need to tell anybody here why that is necessary.

There is $150 million for the general retraining program for dislocated workers. What happens to these General Motors workers when they are out of work? We cannot just keep them on welfare for the rest of their life. They do not want that, and the Nation does not want that.

And, finally, $150 million for the Job Corps Program. The Job Corps Program takes at-risk youth and trains them. It is very interesting. These young people, who are right on the edge of getting into trouble, 84 percent of them learn trades, get jobs, and instead of ending up in prison and having all kinds of difficulties, causing difficulties for society, contribute a great deal.

The Levin amendment, it seems to me, moves in the right direction. I am pleased to be a cosponsor of it. I respect my colleagues who are on the other side on this. We should provide more tax fairness, but jobs and providing for the basic needs of our society, I think, have to be the top priority.

Mr. President, I yield whatever time I may have remaining to Senator LEVIN.

The PRESIDING OFFICER. The Senator yields back 2 minutes. Who yields time? The Senator from Michigan.

Mr. LEVIN. Mr. President, I ask unanimous consent that the Senator from North Dakota be listed as a cosponsor.

I yield him 10 minutes.

The PRESIDING OFFICER. The Senator is recognized for 10 minutes.

Mr. CONRAD. I thank the Senator from Michigan, and I thank the chairman.

Mr. President, I believe we are engaged in the most important debate we are going to have this year. I believe this debate going on right now is critical to the future of the country.

Mr. President, our Nation is in trouble. What could be more clear? This country is in trouble. The economy is dead in the water, and the prospects for economic growth over the next 5 years are bleak. It is the time to act, and to act boldly. It is the time to act bravely. It is the time to make a departure from the past.

The President has sent us an economic growth plan. When the Director of the Office of Management and Budget, Mr. Darman, came before the Budget Committee, I asked him: What will happen according to your projections, if every one of the President's proposals is adopted? How much will it increase economic growth?

Mr. President, the answer, from the President's own budget, is that if we adopt every single one of his recommendations, economic growth will increase only one-half of 1 percent per year. Most economists say it will not do that. That is not good enough, one-half of 1 percent a year of increased economic growth, when this country is dead in the water. We have to do better.

One of the biggest reasons we will see only very weak economic growth is that we are buried in debt. This year we are going to run a $400 billion budget deficit. The President has sent us a 5-year budget plan that proposes adding another $2 trillion to a national debt which is now $4 trillion.

This must be stopped. This Congress and this President have to take control of the economy, and we have to show the courage of conviction to put this country on a different course. What could be more clear?

Mr. President, we have an opportunity this afternoon to begin this task. We have an opportunity right now to turn this country in a different direction.

We heard this morning from the Senator from New Hampshire, who spoke passionately about the opportunity we have. He fears we will miss this opportunity. He fears that none of us can alter the course upon which we have embarked. I hope he is wrong. I hope that somehow, in the next few moments, my colleagues will come to this Chamber and cast a vote that will demonstrate real courage and that will send a message to America that we are ready to move in a different direction.

What difference does it make if we keep adding debt to debt? The difference it makes is this dead weight of debt is holding this country back. What could be more clear? We have very low rates of growth in this country because we are not investing enough. Our competitors, Japan and Germany, are investing twice as much in new plant and equipment as we are, twice as much. The average age of plant and equipment in Japan and Germany is half as old as the plant and equipment in our country. Unfortunately, that means their plant is more efficient, more productive, and more competitive, and that is why America is losing position in this world economy, and we have to do something about it.

Mr. President, we are not investing enough because we do not have sufficient savings in this country. Japan and Germany are saving two and three times as much as we are. The Federal Government is a major culprit because the deficits we reduce the pool of societal savings that are available for investment. That is why this debate is so important.

The middle class deserves a tax reduction, absolutely. But the highest priority right now, the highest need for the middle class right now, the highest need for every class right now is a stronger economy, and the best way to assure a stronger economy is to reduce this dead weight of debt. We have a chance to do it by voting for the Levin amendment.

What the people of our country really need is an economy that is more competitive, more productive, and that provides a secure job for those who want to work. That is what this debate is all about. We have a chance, in just a very few minutes, to turn in a different direction, to show real courage and real leadership.

Mr. President, I brought this chart that shows what has happened to the gross Federal debt from 1980 and what it is projected to be in 1996. This chart tells it all. The debt is headed straight up, and that dead weight of debt is going to hold back this economy, to reduce the competitiveness of America, and to reduce jobs and living standards for Americans. There is only one answer, and that is to start making the tough choices in this Chamber, in the other Chamber, and at the other end of Pennsylvania Avenue that will send us in a different direction.

I support the Levin amendment, and I applaud the Senator from Michigan for his courage. This amendment is a good place to start, turning this country on a different course. We ought to support it.

I thank the Chair and I yield the floor.

The PRESIDING OFFICER. The Senator from Michigan controls approximately 9 minutes. Who yields time?

The Senator from New Jersey controls 26 minutes.

Mr. BRADLEY. Mr. President, the Senator from New Mexico [Mr. DOMEN-

ICI] has requested 10 minutes of time. I see him on the floor now and I yield to the Senator from New Mexico.

The PRESIDING OFFICER. The Senator from New Mexico is recognized.

Mr. BRADLEY. If I can inquire, which side will the Senator be speaking on behalf?

Mr. DOMENICI. I say to the Senator, I am not in favor of either this or the underlying bill, so perhaps I will speak against the amendment, though I will not go into a lot of details about it.

The PRESIDING OFFICER. The Senator is recognized for 10 minutes.

Mr. DOMENICI. Mr. President, I rise today first to call attention to the Senate and to those who are interested in our proceedings that we have another bit of good news. I am not so sure the way things are developing in our country, by way of how our people get information about the status of the economy, that they will find out about it, but essentially, consumers appear to be on their way back.

We now have another report with reference to retail sales. They rose 1.3 percent in February and 2.1 percent in January. That means the January figure that was estimated before, has been revised upward for a more modest sixtenths of a percent. These two increases are the strongest 2 months since 1985. I think that bodes good news for the recovery of the American economy.

But I choose today to speak on a second point, with reference to where the debt of this country is really going, and to compliment the distinguished Senator from New Hampshire, Senator RUDMAN, who spoke this morning. And I hope he spoke as much to the American people as to the Senators because essentially he shared with us the true status of America's fiscal policy; how we are running the business of handling our people's tax dollars and their money.

Frankly, he did not underestimate it one bit when he said, if we do not do something in this country to alter, amend, change, cap, or do something to stop the dramatic rise in the entitlement programs, sometimes referred to as mandatory programs, sometimes referred to, as they were this morning by the distinguished Senator from New Hampshire, as the exchange of income directly to the American people by the American Government, transfer payments. I will put it this way, we are now at about 66⅔ percent on automatic pilot.

Listen, Americans: The U.S. Congress acts like it has a lot to do with your tax dollars. We sound off like we do. But we have put your tax dollars and the Social Security trust fund and all the other revenues on two-thirds automatic pilot. We choose to have hands off as it pertains to that 66⅔ percent, part of it being the interest payments which we have to pay.

But essentially we sit, we rise, we speak, we talk, we make amendments as if we are really impacting the future of the United States of America. And we do nothing about the future. We do nothing to stop the enormous, enormous drag on the current economy and debt that the American people will pay later—almost nothing. And until we decide to do something about these transfer payments, we will indeed accomplish little here on the floor of the Senate.

I want to support what Senator RUDMAN said this morning and say to you, if we stay on the path we are on, with or without any of these bills that are being discussed—do them if you like; if you do not do them, it does not matter much—we will have annual deficits in about 7 years—7 years not 70 years—annual deficits will not come down, they will approach $700 billion a year. And by the year 2000 or 2002, which is not so long—my children will be alive; so will yours, I say to my friend from Florida—at that point in time, the debt of our country will equal the gross national product, almost one for one.

We have only done that one time in our lives, and that was in the enormous emergency to win a war, the Second World War.

Now, having said that, I submit that it is time for a number of us from both sides of the aisle to meet and talk about this problem, and to join arms and put some realistic caps on the entitlement programs of this Nation, put some caps on that are binding, that will give the committees that are supposed to have jurisdiction an opportunity to change those programs that are going to bankrupt America and leave nothing for our children. And if they do not do it, that we have some automatic cut mechanism in place similar to the sequester.

Now, having said that, let me suggest that it really does not matter much which bill passes here today, although it seems that the amendment at least purports to say, if you are going to raise taxes, put some of it on deficit reduction. And the reason I say "purports to say" is because I do not know if there is any way by a bill—and I have not seen it in this one—that you can actually take the taxes and make sure that the deficit is reduced. That is strange to say, but I think I know what I am talking about.

Having said that, the underlying bill, the so-called Democratic package, is nothing more than what we have had in the past. I have not said this yet with the bill, but it is clearly tax and spend. And let me take a moment to tell you why.

Tax and spend was the policy for years and years and it remains the policy of this bill. Anyone that would care to ask the clerk of the Senate to tell them how many Senators are now supporting a bill to tear down the defense wall, that is the military wall, tear it down and spend the money—how many are on that? Forty-seven Senators are on that. Of that 47, I believe 1 is a Republican, the rest are from the other side of the aisle. Tear the wall down and spend the money.

And then here is this bill, we tax the American people somewhere between $60 and $65 billion, and we spend the money. But this time we say we spend it to give some tax credits. So it seems to me the combination of that policy which is attempting to be kind of churned up here on the floor with this bill, and the one that will take away the protection for our defense expenditures from being put in one big pot and spent on everything and anything that anyone can imagine, you add those together and we have nothing more than again using the resources which we should be applying elsewhere, like getting the deficits of the country down, changing the policies that underlie that deficit, like capping entitlements.

We are busy spending more money, or at least planning to spend more money, raising more taxes, and then saying we are justified in spending those to give some other group a tax break when what we all need is a real break from the ongoing inevitable policies of $600, $700, or $800 billion deficits in a few years.

As my friend from New Hampshire said this morning, we will, if not already, soon be at the mercy of those who lend us money from far away countries. If they choose not to lend us money or we do not meet their conditions some years out, this great America that should be leading the world will be led by others.

I yield the floor, and I yield whatever time I have remaining.

The PRESIDING OFFICER. Who yields time? The Senator in opposition controls 17½ minutes. The proponents of the amendment control approximately 9 minutes.

Mr. BRADLEY. Mr. President, I wonder if the distinguished Senator from Michigan would respond to several questions.

Mr. LEVIN. I would be happy to try. Would this be on your time?

Mr. BRADLEY. This is on my time.

The amendment of the Senator, as I understand it, deletes the children's tax credit. Is that correct?

Mr. LEVIN. That is correct.

Mr. BRADLEY. The Senator's amendment, however, keeps in place the increased taxes; is that not correct? The increased taxes on income, in terms of keeping the 36-percent rate on incomes over $150,000? You keep the phaseout of the exemption? You keep the millionaires surtax? Is that correct?

Mr. LEVIN. The amendment I have offered retains the tax increase on seven-tenths of 1 percent of the wealthiest Americans that is already

in the bill, but uses it in a different way.

Mr. BRADLEY. So that a vote for your amendment would be a vote for those increased taxes?

Mr. LEVIN. On the wealthiest seven-tenths of 1 percent of Americans. The Senator is correct. It does not touch a number of areas that the Senator from New Jersey apparently would like to touch and of course he is free to offer an amendment that would strike those areas. But it does not reiterate those areas the Senator objects to and I think his objection is to the underlying bill in that respect, not to my amendment, because my amendment is silent.

Mr. BRADLEY. I was interested to just obtain that information because I think there are probably some Senators who think they are voting simply to cut the middle-income tax cut. But they are not doing that. They are also voting when they vote for your amendment, for the increased taxes?

Mr. LEVIN. In order to be very clear on what the purpose is, it restates the committee action on the wealthiest seven-tenths of 1 percent, and then says, however, we would use that more for deficit reduction than for middle-income tax cuts. The Senator is correct.

Mr. BRADLEY. Mr. President, I suggest the absence of a quorum. I ask time be charged to both sides.

The PRESIDING OFFICER. Without objection, it is so ordered. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. GORE. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered. Who yields time?

Mr. BRADLEY. Mr. President, how much time remains?

The PRESIDING OFFICER. The Senator controls 10 minutes in opposition.

Mr. BRADLEY. I yield 7 minutes to the distinguished Senator from Tennessee.

Mr. GORE. I appreciate the generosity of the manager.

Mr. President, I want to urge my colleagues to support the bill and oppose the pending amendments. I want to compliment the chairman and the committee for coming up with this bill.

I have some disagreements with the bill, let me be candid in saying. I feel very strongly that the child tax credit should be refundable in order to ensure that those who are at the lower end of the income ladder benefit sufficiently from this change. However, in spite of the fact that the committee chose not to include refundability, I retain some hope that coming out of the conference committee it might yet be added.

There is some sign of progress on that score, and even without it, I wish to enthusiastically support this bill. I feel very strongly about the principle of refundability, and I will continue to fight for it untiringly. But given the choice between this bill and the alternatives that are presented here, or the alternative of doing nothing, this bill is a major step forward, and I enthusiastically endorse it and support it.

I would like to show some graphs, Mr. President. Let me just point out that for the last 12 years, we have seen a major shift in the burden of taxation from those toward the upper part of the income ladder toward middle-income families and lower-income families. This bill helps to correct some of that injustice.

The fact that our Nation is in recession is partly due to the fact that we have had this major change in the distribution of the burden of taxation in this country.

Let me call the attention of my colleagues to this first chart which shows the percentage change in the share of national income that has taken place from 1977 to 1992. This is after taxes, after adjusting for inflation. The lowest 20 percent has seen a 25-percent decline in their share of the Nation's income. The next 20 percent, a 16-percent decline. All of the middle-income American families have seen their share of America's national wealth go down. The top 1 percent has seen its share of the national income go up 84 percent. It has almost doubled.

One of the reasons why this change has taken place is the change in the tax burden. This graph shows the changes in the distribution of the tax burden. All of the middle-income families in this country have seen their tax burden go up from 1977 until today. The top 1 percent has seen its share of the tax burden go down almost 20 percent.

What we need to do is, yes, stimulate productivity and investment and the committee bill does that, but we also need to correct this problem. We have followed the Reagan-Bush blueprint of giving a lot more money to the top 1 percent on the theory that they are going to invest it and supercharge the economy and it has not worked because these families that have had money taken away from them do not have money to spend on the things that are being made.

Here is what has happened to actual incomes after taxes, after you adjust for inflation, 1977 to 1992:

Middle-income families have seen their real incomes go down, a very slight increase in the top 20 percent, but look at the top 1 percent. Real incomes after taxes and after inflation adjustment have gone up 136 percent. That is fine if it does not come at the expense of the rest of the country, but what we have done is we have increased, more than doubled the income of the top wealthiest 1 percent by taking money away from middle-income Americans.

What this bill does is to partly correct that problem by saying people who do not have money to go into the stores to buy new shoes for their children, the families who, as Chairman BENTSEN says, look at the newspapers to find out where the sales are in which supermarket, these families will get spending money under this bill and it will come in part from taking back some of the unjust and excessive extravagant gift to the top 1 percent under the Reagan-Bush policies.

I strongly urge my colleagues on both sides of the aisle to support this committee bill. I strongly urge a vote against the pending amendments. I feel very strongly about this, Mr. President.

Mr. President, we are getting a clear and urgent message from the people we represent. Our constituents are living an economic nightmare that makes the American dream about as real as a bad cartoon. The voices of our constituents are ringing in our ears, their fear is tugging at our hearts, their hopes, fading but not quite lost, must move us to action.

There is a new urgency to get this economy moving, to create jobs, to reduce health care costs and expand health care coverage, and to put some money back in the hands of middle income families. If anyone doubted that these families are in trouble, if anyone doubted that American families are hurting, those doubts have been erased. My constituents, like yours, don't mince words. They can't afford to.

All across Tennessee, in open meetings in the heart of our cities, in the shadow of the Smoky Mountains and in the rural areas of west Tennessee, I have been hearing the same fear, the same anxiety, the same frustration. For my constituents, like yours, everything but their paychecks is going up—and that is if they have paychecks. Too many people are unemployed. Too many people are without health insurance. Too many people, even if they have jobs and health insurance, are worried about losing both.

I spoke recently with a family in middle Tennessee, just outside Nashville, where the father is working two jobs. He has to—the day job does not provide his family health insurance, the night job does. I spoke with a family in east Tennessee, just outside Knoxville, a young couple who are barely making ends meet for themselves and their two small children. The husband is out of work and cannot find a job. There are more layoffs than openings.

My constituents bring to our open meetings a sense of outrage along with their fear. Outrage because every day they face new pressures, higher bills, and less hope. Yet, it seems to them that no one understands, no one cares and no one is willing to help them out. They are willing to do their part. They

work hard. They are involved and committed parents. They want more for their kids. They want more from the future. They want to know that the people they elect to represent them will work for them and for their families. To my constituents and to yours, George Bush is speaking a foreign language they can't understand.

But who can blame them? How could anyone believe or understand a President who persistently denied the very existence of a recession while millions of Americans were losing their jobs, their homes, their security? To these families, President Bush is not just out of touch. He is out to lunch.

It was not until plummeting poll numbers slapped him in the face that President Bush woke up. It was not the pain or suffering of American families that moved him, it was the fear of losing the New Hampshire primary. He has already lost the confidence of the American people. But lose an election? The guy who said he will do anything to win, was forced to do the unthinkable. President Bush was so afraid of losing his job, he finally had to break down and admit that America is in a recession. Problem is, "Better late than never" is not exactly a prescription for leadership.

Now, in a frantic effort at damage control, George Bush is scurrying around claiming he has an economic plan. But before we get too excited, we need to take a close look at what is behind the promises and the expectations.

Despite the flip-flop-flip on his "no new taxes" promise—in an election year confession, admitting he made a mistake by breaking his promise—where the economy is concerned, George Bush has not had a conversion. If nothing else, he is consistent. In this case, consistently pushing for tax breaks for the rich: more for those who already have more thanks to a decade of Reagan-Bush economics, and, thanks to Reagan-Bush economics, already pay less in taxes. Most Americans cannot pay their mortgage or afford health care and President Bush wants to reward those who have the extra cash to speculate on the stock market. For middle income families, George Bush offers warmed-over leftovers—and, he would make them wait months for them, serving his rich friends first. He still does not get it.

He probably did not hear the collective roar that came from hard working middle class families when they heard about a recent study confirming what they have known for years: the very rich have gotten even richer; they get the cake and everybody else shares the crumbs.

Mr. President, I want to praise our majority leader, GEORGE MITCHELL, and Senator BENTSEN, chairman of the Finance Committee, for their leadership and for demonstrating that even if President Bush does not understand what needs to be done, there are those in Congress who do. We are listening to our constituents. We understand. We are ready and committed to take action.

We will meet the President's deadline for action with real help for American families. President Bush puts them at the end of the line, in the back of the crowd; he will get around to them after his rich friends get theirs. We are saying, Mr. President, it is time your rich friends waited their turn and America's middle-income working families got the star treatment.

Tax cuts for middle-income families, not for the rich, must be a priority for this Congress. And, it is because we are serious about cutting taxes for middle-income families, that we are working to enact tax credits for children. The Finance Committee, under Senator BENTSEN'S leadership, wisely included tax credits for children as the centerpiece of their bill, and in doing that, they focused tax breaks where they are needed most—to families struggling to provide for their children.

Last spring, Congressman TOM DOWNEY and I introduced legislation calling for a tax credit for children because we believe strongly that this approach represents the most effective way to put money back in the hands of those families who for too long have been paying too much. Increasing the personal exemption keeps the Reagan-Bush tax train running up to the higher income taxpayers. Providing a tax credit for children, forces that train to stop in many more neighborhoods, helping families who have been left behind for too long.

Mr. President, American families need our help. In recent weeks, we've seen disturbing reports about the threats to our children and our families. Financial problems are creating other problems. Our children and our families are at risk. Our children are going hungry. Parents pray their kids won't get sick because if they do, there's no money for doctors or medicine. Our families are being forced to choose between health care and child care, between the mortgage payment and the grocery bills. A college education is becoming an unaffordable dream.

We must take action to strengthen these middle-income families, to let them know we understand how tough these times are for them and their kids. They are doing everything they can. It is time we stood shoulder-to-shoulder with them. It is time we joined their fight, did everything we can, to restore their hope, their future, and their dreams.

Mr. MACK addressed the Chair.

The PRESIDING OFFICER (Mr. DODD). The Senator from Florida.

Mr. MACK. Mr. President, I ask one of the managers for time, if I could have a moment or two, 2 minutes.

Mr. LEVIN. Which side is the Senator on?

Mr. MACK. I do not think I am on either side.

Mr. LEVIN. I reserve 5 minutes for myself and I will be happy to yield a half a minute of my 5 minutes. Maybe Senator BENTSEN would like to do the same. I will be happy to yield the Senator half a minute and cut my time down.

Mr. BENTSEN. Mr. President, I will yield a half, too. The Senator has himself a minute.

The PRESIDING OFFICER. The Senator from Florida is recognized for 1 minute.

Mr. MACK. Mr. President, I could not help respond because I got the impression the Senator from Tennessee indicated the problem the middle-income families are having is because of the shift in the tax burden in the 1980's, and I just wanted to say that according to the information that I have is that between 1980 and 1990, the top 1 percent tax burden increased from 18.2 to 25 percent of the overall tax burden.

So it just does not seem to me that is possible. I will say that the top 5 percent went from 36 to 44 percent. So it is very difficult for me to conclude that the problem of middle-income Americans is because this tax burden has been shifted away from the wealthiest to middle income. The figures that come from the Ways and Means green book published by CBO indicate again the top 1 percent tax burden, 1980, 18.2 percent; 1990, 25.4 percent.

I thank the Senators for yielding.

Mr. LEVIN. Mr. President, how much time do I have left?

The PRESIDING OFFICER. The Senator from Michigan has 4 minutes 27 seconds.

Mr. LEVIN. I yield myself 4 minutes and 20 seconds.

The PRESIDING OFFICER. The Senator from Michigan is recognized.

Mr. LEVIN. Mr. President, first let me say where I agree with the committee bill. It is time to achieve some equity in this Tax Code by raising the tax rates on the wealthiest seven-tenths of 1 percent who did so well during the eighties. The amendments that are pending maintain that increase, as they should, as fairness dictates. The issue is how do you use the revenues from that increase? That is the issue which this amendment will decide.

Surely, we ought to use those revenues to benefit middle-income people, working people, but that does not answer the question, what will most benefit middle-income people, working people? How do we spend these revenues in a way which will benefit working people in America? Should we provide the tax credit which is provided for in this bill or should we spend most of that money to reduce the deficit and to spend a portion on infrastructure and education?

That is the issue which this amendment raises and will be decided by this vote.

Working people want some relief, and the relief they want is they want to be secure in a decent job. If they are unemployed, they want a job. They want an economic future for their kids. That is what they are asking us. They are also telling us something else. More of them say they want us to cut the deficit, to get our economic house in order so that those goals can be achieved, than are saying provide me a tax cut.

They are right. The people of this country are right. They are asking us to get our house in order and to do it first. There is always a reason not to do it. But this is an opportunity to do it because we now have some revenues which are fair and equitable revenues, and the question is how do we best spend them for the future of this country. We are $4 trillion in debt. We are adding $400 billion more this year.

What will help our economy short term and long term? Will it be $30 billion in tax cuts that will be received by 25 percent of middle-income people; 1 in 4 middle-income people will receive the tax cut. Or is that money better spent 75 percent of it on deficit reduction and 25 percent on needed infrastructure, which has an immediate economic positive spinoff, and on retraining?

The $30 billion in tax cuts, make no mistake about it, said to be tax cuts for children, credits for children, are going to be borrowed from those children if we do not use it to reduce the deficit. So we should not kid ourselves as to what we are doing. We either can reduce the deficit or we necessarily will have to borrow more money from those very children whose future is in the hands of this Congress and the President.

We should not be neutral toward the deficit. During the 5 years of the committee bill that is covered by the Budget Act, it is revenue neutral and deficit neutral. We should not be neutral toward the deficit, any more than a baseball team that is behind 9–0 in the first inning can be satisfied by playing even the rest of the game. If we are ever going to make a dent in this deficit, if we are ever going to change the direction of this economy, if we are ever going to start saving and investing, we have to stop the tremendous drain on our resources that this deficit represents.

The CBO has warned us in one sentence. They say:

> Deficits of these magnitudes cripple economic growth by reducing national saving and capital formation.

I do urge the Senate to adopt this improvement on the committee bill, which is represented by this amendment, which has been cosponsored by six of us.

The PRESIDING OFFICER. The time of the Senator from Michigan has expired.

Mr. BENTSEN. Mr. President, how much time do I have?

The PRESIDING OFFICER. The Senator has 2 minutes 25 seconds.

Mr. BENTSEN. I yield the remainder of my time to the distinguished Senator from Tennessee.

Mr. GORE. Mr. President, I am overwhelmed by the generosity, truly. I will try to save some of this time. My colleague, the Senator from Florida, who is a sincere, well meaning, well informed Member, threw out some statistics that seem at first glance to be dissident with the ones which I offered, and I seek to explain the difference.

Both sets of statistics are accurate. The explanation is that the incomes after taxes for the top 1 percent have gone up so incredibly, more than doubled over this period, that the actual dollars they pay in taxes have indeed gone up, but not nearly as rapidly on a percentage basis as their incomes. So the amount of money they pay in taxes has gone up, but the percentage of their incomes attributed to taxes has gone down.

Now, again, if we could accomplish that in a vacuum, that would be fine. But the cost of it is that the percentage share of national income from middle-income Americans has gone down, and as a direct consequence their effective Federal tax rate has gone up.

So, yes, the statistics offered by my colleague are technically accurate. But what has happened is middle-income families have paid more in taxes as a percentage of their income, and their share of the national wealth has gone down significantly.

Now, there is yet a third set of statistics we really ought to be talking about, and that has happened to the entire Nation's economy. We have been in the deepest recession since the Great Depression, and this disparity, this unjust distribution of the tax burden, has been in part responsible for this performance.

So when we talk about stimulating investment, yes, let us do it. But let us correct this terrible injustice, as the chairman's bill and the committee's bill does.

I yield back the remainder of my time. I thank the Chair.

Mr. KASTEN. Mr. President, I rise to oppose the Levin amendment. While I too believe we must reduce the budget deficit, I do not believe tax increases will work. Raising taxes in a recession is economic lunacy. Higher taxes will slow the economy. Moreover, history shows that higher taxes lead to more spending and higher deficits. From 1940 to 1990, every dollar Congress has raised in new taxes has generated $1.59 in new spending. In 1990, we enacted one of the largest tax increases in history, and budget deficits hit record levels. The only way to reduce the deficit is to limit the growth rate of Federal spending and enact growth incentives that will get our economy moving again.

The other reason I oppose the Levin amendment is because it eliminates the $300 tax credit for families with children. To ensure long-term economic growth, we need to begin reversing the growing tax burden on families. The Finance Committee's child credit is an important and responsible first step in providing profamily tax relief.

The PRESIDING OFFICER. The Senator from Texas has 14 seconds.

Mr. BENTSEN. Mr. President, I yield back the remainder of my time.

The PRESIDING OFFICER. All time having been yielded back, all time has expired.

Mr. BENTSEN. Mr. President, I move to table the Levin amendment, No. 1712, and ask for the yeas and nays.

The PRESIDING OFFICER. Is there is a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The question is on agreeing to the motion to table the amendment, No. 1712. The yeas and nays have been ordered. The clerk will call the roll.

The assistant bill clerk called the roll.

Mr. BYRD (after having voted in the negative). Mr. President, on this vote, I have a live pair with the distinguished senior Senator from Hawaii [Mr. INOUYE] who is ill. If he were present and voting, he would vote "aye." Having already voted "no", I withdraw my vote.

Mr. FORD. I announce that the Senator from Iowa [Mr. HARKIN] and the Senator from Hawaii [Mr. INOUYE], are necessarily absent.

I also announce that the Senator from Michigan [Mr. RIEGLE] is absent because of illness in the family.

On this vote, the Senator from West Virginia [Mr. BYRD] is paired with the Senator from Hawaii [Mr. INOUYE]. If present and voting, the Senator from Hawaii would vote "aye" and the Senator from West Virginia would vote "nay."

I further announce that, if present and voting, the Senator from Michigan [Mr. RIEGLE] would vote "aye."

Mr. SIMPSON. I announce that the Senator from Oklahoma [Mr. NICKLES] is necessarily absent.

The PRESIDING OFFICER (Mr. LIEBERMAN). Are there any other Senators in the Chamber who desire to vote?

The result was announced—yeas 57, nays 38, as follows:

[Rollcall Vote No. 40 Leg.]

YEAS—57

Adams	Biden	Breaux
Akaka	Bingaman	Bryan
Baucus	Boren	Bumpers
Bentsen	Bradley	Burdick

Coats	Jeffords	Nunn
Craig	Johnston	Pell
Cranston	Kasten	Pryor
Daschle	Kennedy	Reid
Dixon	Kerrey	Robb
Dodd	Kerry	Rockefeller
Exon	Kohl	Sanford
Ford	Lautenberg	Sarbanes
Fowler	Leahy	Sasser
Glenn	Lieberman	Shelby
Gore	Mack	Specter
Gramm	Metzenbaum	Symms
Heflin	Mikulski	Wellstone
Helms	Mitchell	Wirth
Hollings	Moynihan	Wofford

NAYS—38

Bond	Garn	Packwood
Brown	Gorton	Pressler
Burns	Graham	Roth
Chafee	Grassley	Rudman
Cochran	Hatch	Seymour
Cohen	Hatfield	Simon
Conrad	Kassebaum	Simpson
D'Amato	Levin	Smith
Danforth	Lott	Stevens
DeConcini	Lugar	Thurmond
Dole	McCain	Wallop
Domenici	McConnell	Warner
Durenberger	Murkowski	

PRESENT AND GIVING A LIVE PAIR, AS PREVIOUSLY RECORDED—1

Byrd, against

NOT VOTING—4

Harkin	Nickles
Inouye	Riegle

So the motion to table the amendment (No. 1712) was agreed to.

Mr. MITCHELL. Mr. President, I move to reconsider the vote by which the motion was agreed to.

Mr. DASCHLE. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. Under the previous order, the Senator from North Carolina, Mr. HELMS, is recognized.

Mr. HELMS. Mr. President, this is a matter of pertinent interest. How long did this past vote consume in terms of the Senate's time?

The PRESIDING OFFICER. The Chair advises the Senator from North Carolina the vote went beyond the 15 minutes.

Mr. HELMS. First of all, I ask for the yeas and nays on the underlying committee substitute.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

AMENDMENT NO. 1714

(Purpose: To express the sense of the Senate regarding the House bank)

Mr. HELMS. Mr. President, I send an amendment to the desk and ask for its immediate consideration. I will say to the able clerk, I would like it stated in full.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from North Carolina [Mr. HELMS], for himself, Mr. DOLE, Mr. NICKLES, and Mr. SEYMOUR, proposes an amendment numbered 1714.

At the appropriate place in the amendment add the following:

The Senate finds that not only the House of Representatives, but the Congress as a whole is being held to account by the American public for the improper personal banking practices of its Members;

The Senate finds that only the House of Representatives provided for a system to collect the salaries of, and to honor checks written by, the Members of the House of Representatives;

The Senate finds that, while proposals to establish a similar system within the United States Senate have been suggested, they have never been agreed to by the Senate;

The Senate finds that no similar system has ever been in operation in the United States Senate;

The Senate finds that no Senate bank with characteristics similar to those of the former House bank will ever be established.

The Senate finds that the American public has not been made clearly aware of the differences in practices between the United States House of Representatives and the United States Senate, and that therefore,

It is the sense of the Senate that there should be full disclosure of all Members and former Members of the House of Representatives whose account balances at the House bank were insufficient to cover the amount of any check presented for payment.

Mr. HELMS. Mr. President, I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

Mr. DOLE addressed the Chair.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

AMENDMENT NO. 1715 TO AMENDMENT NO. 1714

Mr. DOLE. Mr. President, I send a second-degree amendment to the desk.

The PRESIDING OFFICER. The clerk will report the amendment.

The assistant bill clerk read as follows:

The Senator from Kansas [Mr. DOLE] proposes an amendment numbered 1715.

Mr. HELMS. Mr. President, I believe the distinguished leader does not wish to have the amendment read. Therefore, I ask that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

Strike all after the first word and insert the following:

Senate finds that not only the House of Representatives, but the Congress as a whole is being held to account by the American public for the improper personal banking practices of its Members;

The Senate finds that only the House of Representatives provided for a system to collect the salaries of, and to honor checks written by, the Members of the House of Representatives;

The Senate finds that, while proposals to establish a similar system within the United States Senate have been suggested, they have never been agreed to by the Senate;

The Senate finds that no similar system has ever been in operation in the United States Senate;

The Senate finds that no Senate bank with characteristics similar to those of the former House bank will ever be established;

The Senate finds that the American public has not been made clearly aware of the differences in practices between the United States House of Representatives and the United States Senate, and that therefore,

It is the sense of the Senate that no later than March 30, 1992, there should be full disclosure of all Members and former Members of the House of Representatives whose account balances at the House bank were insufficient to cover the amount of any check presented for payment.

Mr. HELMS. I ask for the yeas and nays on this amendment.

The PRESIDING OFFICER. Is there a sufficient second?

At the moment there is not a sufficient second.

Mr. HELMS. Very well. We will get it later, Mr. President.

The PRESIDING OFFICER. The Senator from North Carolina has the floor.

Mr. HELMS. Mr. President, I asked the able clerk to read my amendment in its entirety because if ever an amendment spoke for itself, it is this one. I might add, Mr. President, that if the disaster occurring in the House of Representatives at this moment affected only that body and its Members, I perhaps would not be offering this amendment now pending.

The enormity of the circumstances surrounding the hide-and-seek game thus far being played over in the House of Representatives has already been destructive in the minds of the American people—destructive to both the House and the Senate. There has been a cascade of protests by Americans across the country. People are utterly disgusted at the attempted coverup of the check-bouncing scheme that has been unfolding. Literally hundreds of calls are pouring into the offices of Senators from irate citizens who mistakenly assume that the same thing has been going on in the Senate, which, of course, it has not.

Mr. President, this is no time for the Senate to sit on its hands. This is no time for the Senate to look the other way. This is no time for Senators to keep silent. This is one of those instances when we will become a part of what we condone or what we try to ignore.

Mr. President, we all know that there was an attempt a few years ago to install in the Senate the same outrageous banking facility, to use the words loosely, that has been operating in the House of Representatives, with thousands of bogus checks bouncing around like ping-pong balls, checks totaling an astounding amount of money.

Mr. President, most of us know who proposed a similar facility for the Senate. Most of us know that this proposal was very wisely rejected by sensible Senators.

In any event, as the pending amendment makes clear, the Senate has never permitted such an operation and I pray never will. Still, we cannot wash our hands of this smelly mess. We either take a stand or we do not. And if we do not take a stand and speak out, the Senate will pay a perilous price.

The pending amendment—and the second-degree amendment which is virtually identical to the underlying amendment—proposes that the Senate speak out, take a stand and defend whatever is left of the people's respect for the Congress of the United States, which is diminishing rapidly.

Make no mistake, Mr. President, the American people understand this issue. They know they cannot bounce checks without paying a penalty. They know what would happen to them if they tried to bounce 800 checks totaling more than $100,000. So the scandal in the House of Representatives is a dead cat lying also on the doorsteps of the Senate in the minds of countless Americans.

That dead cat will continue to lie there on the steps of the Senate unless and until the Senate speaks out and takes a stand and heeds the advice of one of my historical heroes, Thomas Jefferson, who emphasized that "the whole art of Government consists in the art of being honest."

The pending resolution, in the form of an amendment, calls on the House of Representatives to release all the names, not just a few, not just half of them, not 90 percent of them, all the names. Further, it makes clear that the Senate is not associated in any way with this scandal.

Mr. President, the worst aspect is the appearance of a coverup. If the Democratic leaders of the House have their way, only 24 Members will be identified, just 24. This list includes only the most egregious check bouncers and the House Ethics Committee list of 24 includes a Member only if he or she had 8 months of overdrafts with a balance greater than the amount of the paycheck deposited in the account. What nonsense. I refuse to condone it, Mr. President, and I cannot believe that any Senator will condone it.

Without doubt, the American people smell a coverup and they do not like the stench. They are convinced that the House Ethics Committee is protecting dozens of other Members who abused the system and betrayed the confidence of the American people.

I do not know whether the C-SPAN camera can focus on this chart that I have, but these are the facts and figures thus far available. Look at the statistics. At least 66 Members of the House of Representatives wrote more than 200,000 bad checks totaling $10,800,000. There are 200 instances where overdrafts exceeded a Member's paycheck deposit, and overall about 300 current Members of the House of Representatives are involved.

As this chart demonstrates, the House Ethics Committee proposes to exclude one Member who bounced 851 checks totaling $166,400; another Member who bounced 739 checks totaling $134,419; and yet another who bounced 557 checks for $109,052.

I think I will conclude at this point, at least for the moment. But I will say this: Looking at this kind of thing, it is a small wonder that Congress cannot balance the Federal budget when so many Members of the House of Representatives cannot balance their own checkbooks.

I ask for the yeas and nays, Mr. President, on the second-degree amendment.

The PRESIDING OFFICER. is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

Mr. HELMS. I thank the Chair.

I yield the floor.

Mr. BYRD addressed the Chair.

The PRESIDING OFFICER. The Chair recognizes the Senator, the President pro tempore [Mr. BYRD].

Mr. BYRD. Mr. President, I would hope that the distinguished Senator from North Carolina would withdraw his amendment. I understand his strong feelings. I understand his indignation. And I suppose that every Member of this body shares some or all of the feelings that have been expressed. But I think it is a serious mistake for the Senate to take action on a matter of this nature. It is extremely important that we preserve the comity that should exist between the House and the Senate at all times.

Under the precedents of the Senate, I think that the amendment and, as a matter of fact, the statement that has been made, are both very much out of order. I will not make a point of order. I will simply urge Senators to vote against the amendment if it goes to a vote.

This is a matter that the Members of the House are fully capable of dealing with. They have a responsibility to deal with it. And I believe that they will deal with it. The public will render its own accounting of the matter in due time, and I am confident that the public is already expressing itself and will continue to do so.

Let me refer to some precedents in the book on "Senate Procedure," and I call the attention of Senators to pages 595, 596, and 597. I shall read therefrom.

It is true that some of the precedents appear to be confusing. But I think that enough is said in these two pages in the book on procedures to make it very clear that the Senate ought not be taking action on an amendment of this nature.

Let me read all of the precedents on those two pages lest it be said that I left some out, and let Senators judge for themselves as to whether or not this is an approach that is quite contrary to the precedents as a whole, and is not calculated to maintain the comity and good feeling between the two Houses that are so necessary if we are to serve our people well.

I begin on page 595:

There is no standing rule of the Senate—

That is true. The standing rules of the Senate do not make reference to this matter.

The Senate rules will be found in the book "Rules and Manual of the United States Senate," and Senators know that there are 42 standing rules of the Senate. But there is no standing rule of the Senate relating to comments upon proceedings in the House of Representatives, although such a provision is contained in "Jefferson's Manual."

Mr. President, there are a good many matters that are not covered by the Standing Rules of the Senate explicitly. The standing rules have, over the years, been fleshed out by the precedents of the Senate. So we have to go to the book of precedents when something is not explicitly found in the standing rules.

There is no standing rule of the Senate relating to comments upon proceedings of the House of Representatives, although such a provision is contained in Jefferson's Manual.

The rule in Jefferson's Manual is not actually regarded by the Senate as a question of order, but rather as a question of propriety or impropriety, and the Presiding Officer on one occasion expressed a reluctance to call a Senator to order for that alone where there was no breach of a positive rule of the Senate.

The Presiding Officer (in 1913) expressed the opinion that as a self-governing body it was for the Senate to determine how far Senators might go in commenting upon language used in the other body.

Jefferson's Manual not having been adopted as a part of the Rules of the Senate, a Senator may refer to proceedings in the House of Representatives, provided it is done in parliamentary language, but under Senate precedents it has been held not in order in debate for a Senate—

The word is "Senate," but it is obviously meant to be "Senator"—

for a Senator to make reference—

Mr. President, may we have order in the galleries?

The PRESIDING OFFICER. The Sergeant at Arms will restore order in the gallery.

Mr. BYRD. Mr. President, I thank the Chair. And I thank the guests in the galleries.

but under Senate precedents it has been held not in order in debate for a Senator to make reference to action by the House of Representatives, to read an extract from the proceedings of the House relating to a matter under discussion, to read from a speech made by a Member of the House during that particular Congress on the pending subject, to refer to or to make any allusion to or comment upon the proceedings of the House of Representatives, or to make reference to the proceedings in the House on the matter under consideration for the purpose of influencing the action of the Senate.

It is out of order, as interfering with the independence of the two Houses, to allude to what has been done in the other House as a means of influencing the judgment of the one in which a question is pending.

It has been held that "it was not competent for a Senator to make reference" to the House of Representatives, or to criticize that body.

In each instance, when I read a precedent here, I am not referring to the footnotes by which one will find the precedents if one wishes to research those footnotes. I am leaving out the references to the footnotes.

Continuing:

References in debate to the proceedings of the House of Representatives on one occasion were ruled out of order, and the Senator was called to order for a violation of the rules.

It has been held out of order in debate for a Senator to refer to the proceedings in the House, to read from the House proceedings as published in the Record, as ruled in 1923, or to refer to proceedings relating to action on a bill.

It has also been held a violation of the privilege of the membership to refer to the individual character or to the acts or conduct of Members of the House.

It has also been held improper for a Senator to make references to or reflect on Members of the House, to refer to a Member of the House by name, to criticize the action of the Speaker, or to refer in debate to a Member of the House in opprobrious terms or to impute to him unworthy motives.

Under the precedents of the Senate, a Senator should not reflect unfairly on Members of the other body.

I say these are separate precedents, and I am going from one precedent to another, so that I will cover all that are in this chapter without referring to the footnote which is numbered at the end of each precedent.

The reading of a telegram being interrupted by a point of order that it reflected upon a Member of the House of Representatives, the objectionable language by unanimous consent was stricken from the RECORD.

In connection with the consideration of a resolution authorizing an inquiry into the failure of the Speaker of the House of Representatives to take prompt action on a Senate joint resolution passed by the Senate, the Vice President held that it was in the discretion of Senators as to what they might or might not say about proceedings in the House, provided they do not speak disrespectfully.

On another occasion, the House of Representatives sent a message to the Senate characterizing certain language by a Senator in debate as being improper, unparliamentary, and a reflection on the character of one of its Members; the Senate, subsequently, upon the request of that Senator, ordered the language expunged from the permanent RECORD.

On another occasion, the Senate never took any action on such a House-passed resolution—the resolution alleged that certain language used by a Senator concerning a Member of the House was a reflection on him, and requested that the Senate take appropriate action in connection therewith.

A resolution of the Senate declaring that certain language used by a Member of the House in debate concerning a Senator was unwarranted, unjust, and untrue, thus constituting a breach of privilege, was returned by the House on the ground that the resolution itself was a breach of privilege; the House, however, subsequently expunged from the permanent RECORD the remarks to which the Senate took exception.

Mr. President, I hope that Senators will, before they cast their vote on this matter, refer to pages 595, 596, and 597 in the book titled "Senate Procedure," written by Floyd M. Riddick, Parliamentarian emeritus.

Mr. President, I appeal to the distinguished Senator from North Carolina to withdraw his amendment. I do not think that the Senate ought to vote on this amendment. We all have strong feelings about the matter, I am sure. We are all capable of keeping up with the news—and I am sure we do. We know what is being said. But this is a matter that the House should decide. We would consider it out of order for the House to take action on a matter involving the Members of the Senate.

As the Senator from North Carolina stated, the Senate does not maintain a Senate bank. The record will show that. The Senate is not involved in any way in the matter about which we read in the newspapers. It clearly can, and probably will, do damage to the comity between the two Houses if the Senate proceeds to express itself on the matter that involves Members of the other body. I am advised that the House has moved today to fully disclose all 355 current and former House Members involved in bank overdrafts.

Mr. President, I think we ought to let it go at that. The House has taken the appropriate action to fully disclose all current and former House Members involved, so the House has, in its judgment, and in my judgment, acted properly.

I hope that we will not, in the Senate, engage in an action that will produce rancor and ill-feeling between the House and Senate, and I appeal to the sense of fairness and justice and responsibility of the distinguished Senator from North Carolina, to withdraw his amendment and let the matter take its course in the House, and let the people be the judge.

Mr. HELMS. Mr. President, first of all, let me describe how I feel about the distinguished President pro tempore of the Senate, the distinguished Senator from West Virginia [Mr. BYRD]. He is my friend, and he is as accomplished a Senator, in terms of rules, as I have ever seen.

Obviously, I disagree with him. I disagree with his interpretation.

I am looking at the same page or pages in the book of "Senate Procedure" that he read from. I suppose we can take the time to examine every jot and title. But I have checked with the distinguished Parliamentarian, and I am persuaded that the precedents cited are about the debate, not about amendments.

There is no rule, I say to my fellow Senators, about debate concerning the House of Representatives—no rule at all. Rule XIX, which governs debate, prohibits only those statements impugning the motives of Senators and criticizing the States of Senators. We could go down line by line, and we could debate for hours on this issue.

I hope that the Senator from West Virginia and the Senator from North Carolina can agree to disagree agreeably with me on the rule. I do not agree with him, I say respectfully. Furthermore, it needs to be said for the record that I have before me the 1988 report from Institutional Investor, Inc.; Bank Letter, dated October 17, 1988.

The headline says: "Senate Bank" Idea Nixed.

Then it says:

Freshman members of the Senate were hoping the Senate leadership would go along with setting up a bank in the Capitol for senators, just as the House currently has one for House members, but the idea is a dead letter now, sources said. If the lawmakers could do their banking where they worked, proponents argued, time would be saved for the nation's business.

I am going to omit the name of the Senator who is said in this report to have "advanced the bank suggestion in 1987." I am just going to put out that it is a matter of record that this Senator "found Majority Leader Robert Byrd (D-WV), was against it, sources said. Last April"—the Senator in question—"and other freshman Senators sent a letter to the three candidates running to replace Byrd when he steps down from the leadership post next year and offered a number of ideas for modernizing the Senate bank.

Included on the list was the proposal for a Senate bank, but in view of BYRD's opposition, a spokeswoman for a Senator, whom I am not going to identify, "said last week the Senator is now discouraging further talk about it."

Mr. President, so I commend the Senator from West Virginia for nipping this in the bud, though I say I do not agree with him on the interpretation of the rules. He may be correct, but I do not read the rules the same way he does. Certainly, I do not read the precedents the same way.

Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. MITCHELL. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. MITCHELL. Mr. President, I merely wish the RECORD to reflect that at 2:34 p.m. eastern standard time today, the Associated Press reported a story under the headline "House To Name All Bad Check Writers." And the story went on to report that the House leadership had decided earlier today—this wire service story appearing on the wires at 2:34 p.m., so it was sometime prior to that—the House leader-

ship had decided to proceed with the naming of all back check writers.

The pending amendment was proposed at 3:18 p.m. I do not know whether the authors of the amendment were aware of the prior House action; and in any event, I know that there had been no claim or allegation that the House action bore any relation to the Senate resolution. I merely wanted to make clear that it did not and could not have, since the House action occurred earlier in the day, prior to 2:34 p.m., which is the time at which the wire service story appeared reporting on that event, and this amendment was proposed at 3:18 p.m.

So there is, of course, no causal relationship between the House action and this amendment, the House action having occurred well in advance of the time on which this amendment was introduced. And I am advised that, although the House has not yet voted formally, the decision was made earlier and they are proceeding to implement that decision.

Mr. President, I thank my colleagues and I yield the floor.

The PRESIDING OFFICER. The Senator from West Virginia.

Mr. BYRD. Mr. President, I do not intend to belabor the point. I have been in the Senate now going on 34 years, and I have never seen this type of action taken in these 34 years. I have heard from time to time a Member voice some criticism of a Member of the other body; even call him by name, perhaps, which was a violation of the Senate precedents, and if I had been in the chair at that time, I would have attempted to call the Senator to order, but I did not say anything on that occasion because it passed, and I hoped I would not have to experience it again. But I have never seen the Senate go this extreme before, and I think it is a mistake.

I have stood with the Senator from North Carolina on several occasions when he has offered amendments in this body that were not popular—perhaps popular out there beyond the beltway; but not popular within the beltway. I have voted with him on many occasions.

But I oppose this amendment and will vote against it, and I hope that Members will think very carefully before they cast this vote. I think we would all be incensed if the House of Representatives were to try to tell the Senate what it ought to do about inhouse matters involving Members of the Senate. We would say, well, we Senators are capable of making that decision. Members of the other body have no business telling us how to run the Senate, and, besides, it is against the rules.

As I stated when I first began, it cannot be found in the Senate rules, but I have read all the relevant precedents into the RECORD today, and they are as authoritative as are the printed rules themselves. Where the rules do not expressly state a matter, and where there are precedents on point that indicate what the Senate has decided in previous years or what the Chair has ruled on a point of order in previous years, or what the Chair has said in response to a parliamentary inquiry in previous years, those precedents are authoritative and will be followed.

I have asked the distinguished Senator to withdraw his amendment. I do not think he will do that based on his statement. I think the amendment is a mistake, and I am sorry.

This is not to say I do not feel as strongly as does the Senator from North Carolina about certain things that have been discussed on the floor here today. But for the reasons I have stated, I intend to vote against the amendment.

The PRESIDING OFFICER. Is there further debate? The Senate Republican leader is recognized.

Mr. DOLE. Mr. President, I do not disagree with the distinguished Senator from West Virginia nor with the majority leader, but I think there is a practical problem called the American public—not a problem; it may be part of the solution. I am getting mail in my office about Congressmen writing bad checks. We do not have a bank in the Senate, and the primary intent of this amendment—or one of the primary intents—is that we will not have a Senate bank.

There have been efforts to establish a Senate bank. Fortunately it did not occur, but I do not think the American public is making a distinction between House Members and Senators, or the Senate and the House. It is Congress and the bank, and if you have written any hot checks on the bank. I think that is the reason for the amendment.

I certainly agree with the Senator from West Virginia. It is certainly not customary; there is no precedent for interfering with what the House may do. But I think in a case where it sort of slops off over onto the Senate side, at least we ought to declare by a record vote that we certainly disagree with what may be happening and disassociate ourselves from it, and indicate very clearly this is not a Senate bank and there will not be a Senate bank.

That is the primary reason for the amendment. We have turned back efforts to create a bank that could have permitted this kind of activity; maybe it would not have. And I salute the leaders of the Senate who said no at that time.

Mr. President, I rise in support of the Helms amendment.

Despite the fact that the Senate does not have a bank which operates for the pleasure of its Members, I have received calls and letters from constituents who assume that the Senate is involved in the House bank scandal.

Most people do not know that in the Senate, we have turned back efforts to create a bank that would have permitted this kind of bogus activity, and I want to salute the Senate leaders who had the wisdom and courage to say no.

What the media often neglects to point out is that the House and the Senate are separate institutions with very separate practices. It is not Congress' bank; it is the House bank.

It seems to me the only way our reputation will bounce back from so-called rubbergate is to make two facts plainly clear and on the record—the U.S. Senate does not, has not, and—I cannot say never—hopefully never will have a bank similar to the House bank; and I think the U.S. Senate would endorse full disclosure if this matter involved the Senate of the United States. We demand full disclosure of everything else. I think we have full disclosure of nearly everything else. We demand it of the executive branch; we are not bashful around here to demand full disclosure, whether it was Watergate, Irangate, whatever it is. There are a lot of calls for full disclosure.

Certainly, some of these cases are going to be honest mistakes. And there ought to be some way to prevent everybody from being lumped together.

But it is just my view that this is not the Senate. We do not have a bank; we have not written any rubber checks on the Senate side, I think this amendment makes that clear. And the U.S. Senate endorses full disclosure of all Members and former Members of the House who bounced checks at their inhouse bank.

I am certain that many check-bouncing cases resulted from nothing more than honest mistakes. But it should be up to the American people to decide if their Congressman's lack of sufficient funds should earn them a lack of sufficient votes. Only by full disclosure can this situation be put behind the House, and can both Houses of Congress go about regaining the good faith of the American people.

It is time to let the checks fall where they may.

Mr. President, I ask unanimous consent that editorials on this subject from the Topeka Capital-Journal and the Hutchinson News, as well as a table from today's Washington Times be printed in the RECORD.

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

[From the Topeka Capital-Journal, Mar. 12, 1992]

CALLED TO ACCOUNT

At the U.S. House of Representatives, where red ink is delivered by the barrel, there has been a debate over whether to make public the names of representatives who wrote worthless checks on accounts at the House's bank.

Well, if members are so worried about making their names public, why not do the safe thing? Why not order the names sealed

until the year 2039, a la the Warren Commission?

Here's why not: The longer the names are kept secret, the greater the cynicism will grow over Rubbergate.

The House Ethics Committee has determined that 296 of the 435 House members, and 59 former House members, wrote at least one bad check during a certain 39-month period. But the committee endorses releasing the names of only the 24 worst offenders.

Indeed, The Washington Times has reported that the worst offender wrote nearly 1,000 worthless checks during the period, and that at least 100 members exceeded 45 bad checks.

But it is not enough to know only the worst offenders. The public deserves to see the entire roll call of check bouncers.

The bank has since closed. And it must be noted that the floated funds were members' and not the taxpayers'. But that is not the point. Rather, taxpayers have a right to know how responsibly or irresponsibly their legislators are acting in Washington, D.C. Though the scandalous national debt is one painfully obvious barometer of that, so is the members' use of the House bank.

If House members are better at reading the public mood than their checkbooks—and many of them should hope they are—they will release all the names associated with Rubbergate.

After all, no one can cover members' lost credibility the way the House covered their worthless checks.

[From the Hutchinson News, Mar. 7, 1992]

NAME NAMES

Is it any wonder that the nation's deficit is in the shape it's in when so many lawmakers can't even keep their personal checkbooks straight?

Unfortunately, that's not the worst of it as the U.S. House ethics committee sparsely revealed this week.

In the last three years, 355 current or former members of Congress bounced checks at the House bank. In one case, a congressman bounced checks nearly every month during the period studied.

Nowhere but in the privileged bosom of the House bank could such larceny have taken place without acquiring a prison term along the way.

The House is doubly fouling its nest by refusing to disclose all the names of all the elected check kiters and schemers whose irresponsible actions have once again added another layer of mistrust on top of the growing layers that are burying this government up to its collective neck in shameful acts.

The Japanese have called the American worker lazy and stupid. Now we all know where they got that notion. They merely read The Washington Post, the daily diary of dubious congressional dealings.

The House bank is a perk that House members and American taxpayers can do without. Let elected officials have to wade through the mean streets of Washington to kite their checks at traditional financial institutions, and let them cope with the real-life rules applied there, just as other Americans must. Let them cope with their bills as other Americans do, making do without engaging in illegal, immoral and unethical habits.

Lastly, name names. If the House leadership wants this scandal to go away, then names must be named and slates cleaned.

Kansans certainly want to know how their own elected officials fared, as do taxpayers and voters in all 50 states.

If the House ethics committee does not release names, then pressure should be brought to bear against its members to resign. They are not worthy of serving on such a committee.

It's time congressmen showed their bosses, the taxpayers, that they are worthy of their election to high office. Name names, and let the check kiters and schemers explain their actions to their constituents.

[From the Washington Times, Mar. 12, 1992]

WORST HOUSE CHECK-KITERS

[Sixty-six current and former lawmakers with accounts at the now-closed House bank cashed bad checks totaling $10,846,856 over a 39-month period ending Oct. 7. The House has not disclosed the names of lawmakers that match these accounts]

Account No.	Amount of bad checks	Number of bad checks	Highest negative balance	Days with negative balance
723[1]	$594,646	743	$23,019	917
168[1]	565,651	514	41,200	506
235[1]	552,447	388	20,743	1,003
784[1]	537,985	124	75,723	215
638[1]	351,609	972	27,398	642
116[1]	344,450	878	13,416	756
288[1]	296,681	716	9,474	1,005
595[1]	292,603	316	60,625	295
764[1]	277,101	53	39,557	380
520[1]	275,849	673	9,409	927
545[1]	273,361	819	10,746	1,052
670[1]	251,609	996	28,036	544
351[1]	227,598	217	18,515	219
576[1]	226,161	858	14,478	633
373[1]	218,994	397	13,978	711
800	215,285	119	57,555	226
918[1]	208,546	499	10,957	804
475	192,033	38	27,638	73
387	188,136	329	33,766	519
506[1]	188,016	439	25,078	379
397	180,251	481	9,838	393
321[1]	182,119	140	5,449	318
344[1]	176,503	344	12,964	560
354[1]	170,686	89	3,436	492
975	166,402	851	13,550	550
303	163,370	79	21,643	228
826	156,252	119	16,824	411
243[1]	143,857	81	22,190	230
143	134,119	739	6,910	437
702	133,419	92	8,165	370
814	128,738	399	8,602	318
547	128,229	551	8,097	499
752[1]	118,856	169	10,880	226
997	115,700	164	12,178	204
204	113,538	29	10,064	326
658	111,170	39	17,801	195
912	109,052	557	6,032	476
859[1]	108,386	273	7,319	489
639	107,263	9	80,068	14
796	103,968	300	9,573	284
212	103,946	121	9,544	317
852	103,623	93	5,721	430
270	100,967	3	92,158	3
442	97,167	88	15,786	151
394	95,450	83	21,568	129
198	94,343	150	22,582	273
180	93,395	45	63,150	69
223	87,050	575	7,711	355
837	86,338	57	18,153	292
693	82,811	151	8,209	253
759	78,948	27	5,712	193
781	77,624	191	6,152	283
426	74,939	89	6,183	325
560	72,951	209	4,869	268
473	70,484	128	5,310	196
890	70,039	126	23,048	241
540	69,511	125	5,015	213
207	67,637	106	16,406	235
501	62,455	64	4,319	131
317	55,523	125	4,711	231
533[1]	54,299	386	5,385	409
410	44,902	283	3,469	277
362	37,292	138	5,973	178
364	28,819	142	2,467	274
127	17,955	128	1,342	511
954	6,556	73	624	367

[1] These accounts would be the only ones publicly disclosed if the House ethics committee's recommendation is adopted.

Sources: General Accounting Office; House Committee on Standards of Official Conduct.

The PRESIDING OFFICER. The Senator from West Virginia.

Mr. BYRD. I beg the indulgence of the Senate once more. Mr. President, I do not claim to be a sinless man. I do not even claim to be a righteous man. But I will put my honesty up against anybody else's, and I will put the Senate up against any other legislative body when one takes the broad sweep of the years and looks at the whole record across two centuries of time.

I am perfectly capable of informing my constituents in, response to letters, if any of them have any question as to whether or not the Senate has a bank, or as to whether or not I have ever written a bad check. I am perfectly capable of defending myself and laying it on the line if a question occurs.

If the President of the United States and others in the administration would quit pointing the finger at the Congress on everything and if he is going to talk about anybody—there is no rule, of course, there is no precedent with respect to what the Executive may say or the legislative branch may say each with regard to the other. But when he points his finger at the Congress, then perhaps it is he who is making it appear that the Senate is involved where it is not.

I simply call attention to the last paragraph of the amendment, which I think most violates the Senate precedents.

I am like the Republican leader in that I get a little tired of having Congress made the whipping boy all too often. But too many of us ourselves make the Congress a whipping boy, and we relish getting a big laugh or applause from the galleries by running down the very body of which we are members.

I have never done that in 34 years, and I do not intend to ever do it. It does not mean that I am incapable of finding fault with this body. I can find fault with it. I can criticize it constructively. But I never intend to hold it up to obloquy and scorn.

And I do know something about the rules and precedents. I have still a lot to learn. I will probably be one of the first to read the new and updated book on Senate procedures when the present Parliamentarian completes his work on it, which has been going on since the days when I was the leader of this party on this side of the aisle. I still have a lot to learn.

I am sorry that the Senate feels that it has to adopt this amendment to prove that it is spotless, honest, and above criticism. But I think, Mr. President, these things have a way—the worm will turn. The worm is capable of turning.

I have a deep appreciation for both the House and Senate. I have served in both bodies. I have a deep appreciation and understanding of the need for good will and comity between the two Houses. And it is in that spirit that I have taken the floor today. At least I want to call to the attention of my fellow Members what the precedents are, and I think a careful reflection on those precedents can explain to any Member why they are there. They reflect the wisdom of the Senate down through the years, and I hope we will heed them.

Mr. President, I yield the floor.

Mr. PRYOR addressed the Chair.

The PRESIDING OFFICER. The Chair recognizes the Senator from Arkansas [Mr. PRYOR].

Mr. PRYOR. Mr. President, I am going to take just a few moments of the Senate. I know the distinguished managers of this bill want to get back to the regular bill.

I can very quickly see, I think, why the authors at this particular moment may want to distinguish the U.S. Senate from the House of Representatives in the way that we do or do not conduct our financial affairs in the Senate; that is, that we do not have a Senate bank as the House has a House bank.

But, Mr. President, having made that distinction—and I think that we can without including some of these later paragraphs in the resolution as proposed by the Senator from North Carolina and the Senator from Kansas.

I think, Mr. President, if I could suggest, if it was any compromise, that we might consider just taking three of the paragraphs. It would read:

The Senate finds that only the House of Representatives provided for a system to collect the salaries of, and to honor checks written by, the Members of the House of Representatives;

The Senate finds that, while proposals to establish a similar system within the United States Senate have been suggested, they have never been agreed to by the Senate;

The Senate finds that no similar system has ever been in operation in the United States Senate.

Mr. President, in my opinion, that would stand on its face. It would suffice and it would preclude us from marching off where we have never marched before in an out-and-out mandate, if you will, or request of the House to do a certain act.

Mr. President, I join with the concern expressed by the distinguished President pro tempore, Senator BYRD, of West Virginia, who not only has a love for this institution but a depth of understanding for its history that is unequaled in this body.

I would like also to read the final paragraph, if our colleagues have not had the opportunity:

It is the sense of the Senate that there should be full disclosure of all Members and former Members of the House of Representatives whose account balances at the House bank were insufficient to cover the amount of any check presented for payment.

Mr. President, a literal interpretation of that final paragraph means that we are talking about not a few former House Members; we are talking about hundreds and perhaps thousands of former House Members, some alive and hundreds and perhaps thousands deceased.

I think, Mr. President, this amendment accomplishes nothing. In fact, it accomplishes, I think, something that could be very wrong. It is the presumption expressed by this body that the House is incapable of addressing its own problems. I believe that the House is capable of addressing its own problems. The distinguished majority leader just read into the RECORD from the Associated Press the fact that the House of Representatives has just addressed this problem. They have just voted to disclose the names of those individuals who have written insufficient checks.

Mr. President, I do not see the distinguished Senator from North Carolina on the floor at this time, but if he were here, I would appeal, through the Chair, to his sense of decency and his sense of fairness.

I spent some numbers of years sitting at the same table with the distinguished Senator from North Carolina on the Senate Ethics Committee, and I can tell you, Mr. President, that the Senator from North Carolina, when an appeal is made to his fairness, to his decency, I have seen the Senator from North Carolina, on many occasions, do what is fair and what is decent.

Today, I would like to appeal, through the Chair, to our colleague from North Carolina to really withdraw or to perhaps accept these three paragraphs as suggested by myself or others who might take some time to craft some resolution that we might look at and might consider that would distinguish us and our system from that employed by the House.

I hope we can delay this a little bit, Mr. President, so we can have an opportunity to look at what we need to do and certainly not to do what we do not need to accomplish.

Mr. President, I thank the indulgence of my colleagues and I yield the floor.

The PRESIDING OFFICER. The majority leader.

Mr. MITCHELL. Mr. President, I first became aware of the existence of a House of Representatives bank in 1988, 8 years after I entered the Senate, when I sought the position of majority leader. There had been some suggestion that a Senate bank should be created, similar or identical to that which existed in the House of Representatives. And upon inquiry I learned that the then majority leader, Senator BYRD, had rejected the suggestion.

I consulted with the chairman of the Senate Rules Committee, Senator FORD, for whom I have the greatest respect, and he provided me with information about the operation of the House bank and recommended that I adopt a position identical to that which Senator BYRD had taken. I did so. There has not been any Senate bank created.

I welcome any statement by the Senate that no such bank should ever be established. But I wish to state clearly and for the record there is no possibility of that occurring in any event with or without this resolution so long as I am majority leader. I made that decision more than 3 years ago, prior to any knowledge, of course, of the current circumstances, and will adhere to that decision.

So the statement by the Senate encouraging that no such institution be created will have no effect, at least with respect to my decision, because that decision to that effect was made years ago. And while the human ability to predict future events is limited, I think it is fair to say that we are now engaging in an academic discussion, and that the likelihood of any Senator or any majority leader urging the creation of a bank is, to understate the case, highly unlikely, remote in the extreme, and in fact as a practical matter, not feasible or possible.

It has not occurred. It will not occur. And this resolution, therefore, will have no effect in that regard.

Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant bill clerk proceeded to call the roll.

Mr. HELMS. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. HELMS. Mr. President, I ask unanimous consent that Senator SEYMOUR be added as a cosponsor.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. HELMS. Mr. President, I am being exhorted to modify the amendment. Let me say that I have not yielded to the exhortations yet. Let me further say that if the House of Representatives ever catches the U.S. Senate doing the kind of thing that was going on in the House of Representatives, I hope they will blow the whistle on us and blow it loud. I do not think it will do any damage to comity. It certainly will not do any damage to the ever-diminishing respect that the American people have for the Congress of the United States.

But I will continue to think about that and I will confer with Senator DOLE, who is the author, of the pending amendment. The Dole amendment is identical to the Helms amendment, I confess, except for the change of a word or two.

I have obtained a copy of the Associated Press story to which the distinguished majority leader referred, and there may be some confusion about where the matter stands in the House of Representatives.

The House has not acted on the question of the House bank. And in a moment, I think it would be useful if I read into the RECORD precisely what the Associated Press story said, the story to which the distinguished majority leader referred.

Mr. President, I feel obliged to say again what I have said before on and

off this floor; that I love the U.S. Senate with a fervor that is exceeded by no other Senator, not even my friend from West Virginia. He has been here longer and he is smarter than I am, but I expect that his feelings about the meaning and the intent and the purpose of the U.S. Senate are the same as mine.

I have been around this place off and on since the early 1950's. I first came here as an administrative assistant to a distinguished North Carolinian who was the Senator from North Carolina at that time, a Senator who, by the way, died in June of 1953.

The Governor of North Carolina asked me not to do what I had intended to do upon the death of Senator Willis Smith. I wanted to go home because in a sense with the death of my Senator, I was experiencing a traumatic episode and I wanted to go home. But Governor Hempstead persuaded me to stay with whomever he appointed to succeed Willis Smith, and I agreed to do so for a few months.

Mr. President, it is not a matter of lack of love for the U.S. Senate. I do not love everything about it, but I do love the original intent and the meaning of the Senate. It is the most unique legislative body in the history of the world. It is a place where a minority, even a minority of one, can stand as long as he is physically able or included and speak his piece. I have done that throughout my nearly 20 years in the Senate and will continue to do so however long the Lord lets me remain here. I do not regret even one position I have taken as a Senator.

Now let us get to the Associated Press story. I emphasize that the House has not acted on this matter. It is still an open question. It may be that the expectation is correct that the House will go along with what has been agreed to in the caucus, but we do not know that.

Furthermore, I was ready and prepared to offer my amendment last night and I agreed not to offer it because the distinguished majority leader informed me that there was an informal agreement between him and the Republican leader, Mr. DOLE, that there would be alternating recognition for Senators to offer amendments.

I came here this morning at 10 o'clock—prior to 10 o'clock, as a matter of fact—and I have been here since that time. So I would have offered the amendment last night. I would have offered it this morning. But we have a way of consuming of a great deal of time on amendments, and we are consuming a great deal of time on this one. I think a simply vote up or down, for or against, with me or against me would be the proper way to go.

Be that as it may, the Associated Press reported this afternoon as follows:

WASHINGTON.—Democrats bowed to Republican charges of a coverup today and moved to publicly indentify the 355 current and former lawmakers who wrote bad checks at the House bank over a 39-month period. With a House vote scheduled for as early as this evening—

And I might say parenthetically that I doubt that it will happen this evening, it may—

lawmakers who had long kept their silence about their check-writing practices were confessing in hopes of limiting the political damage.

Representative Duncan Hunter, R-California, disclosed he had written an estimated 150 bad checks in the past 3 years.

Representative Charles Wilson, D-Texas, said he wrote between 75 and 85 rubber checks at the House bank during the 39-month period under review. Wilson said he was taking advantage of a service that had existed for over 100 years.

I think he is wrong about that. I think it is closer to 200 years. I was not around 200 years ago or 100 years ago—sometimes I feel like it—but I think it was 1800 or thereabouts the bank in the House was established.

Under the bank's procedures, checks written on insufficient funds were honored anyway, without a financial charge or penalty.

Lawmakers nervously began detailing their financial secrets as House Speaker Thomas S. Foley reversed field and said he was working with Republicans on legislation providing a wider disclosure of the bad check writers. He had been backing release of the names of only 24 worst abusers.

Then the Associated Press story continues:

"The position is being reassessed," Foley spokesman Jeffrey Biggs said, adding that the Speaker now was discussing ways to have a fair system for disclosing all the names.

Democrats account for a majority of the House, and many Republicans accuse Democrats of trying to shelter their colleagues from political harm.

The plan to release only 24 names failed to pass the public "smell test," charged Representative Jim Bunning, R-Kentucky.

The House Ethics Committee, which devised the plan for naming only the 24 abusers, has more complete information on 66 account holders than on the others.

Representatives Jon Kyl, R-Ariz. and Nancy L. Johnson, R-Conn., said after a meeting of all House Republicans that most Members spoke up for their proposal although no formal vote was taken.

Parenthetically, Mr. President, the matter is still up in the air. I do not know and I do not think any other Senator knows what will be the final outcome.

"The vast majority supported full disclosure," Kyl told reporters. He added that some Democrats also have promised to fire House Sergeant at Arms Jack Russ, who ran the now-closed bank.

The Ethics Committee said Russ misused his office by cashing his own bad checks at the bank and failed to carry out reforms.

"If the Democratic leadership doesn't move, others will," Kyl said.

The rest of it is a review of all of the activities during the past 2 or 3 weeks. I think it is not relevant to the issue at hand.

Mr. President, let me say, in closing, that I wonder what action would have been taken in the caucuses today if Members of the House had not learned that the pending amendment would be brought up in the Senate. Instead of being regretful about the amendment, I think I am even prouder that I worked with Senator DOLE and others in its preparation.

I say that respectfully to all Senators who disagree with me, but we will see how it comes out.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant bill clerk proceeded to call the role.

Mr. JEFFORDS. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. JEFFORDS. Mr. President, like the sap run underway in my State of Vermont, tax bills have become something of an annual ritual. The result, of course, unfortunately, is not so sweet.

Tax bills, like all legislation, inevitably involve compromise. We often must make distasteful choices in the hope of advancing the general good. And just as inevitably, we find tax bills longer on promises than results, longer on politics than economics.

This round of the endless tax debate is no exception. This tax bill has been characterized as providing a great boost to the economy. It has been described as a boon to middle income taxpayers. It is sold as retribution for the 1980's tax giveaways to the rich.

It is none of the above. Our Tax Code is less progressive today more because of the payroll tax changes of the late 1970's than the income tax changes of the early 1980's. The vaunted tax relief for the middle class being proposed is significantly undermined by other, less publicized changes in the bill. And the only economic boost the bill provides is to a few campaign advertising consultants in need of some new material and 30 second spots.

Much has been made of the fact that this bill is deficit neutral. I am glad for that. But I wonder how a bill that does not affect spending in the aggregate will do anything to stimulate an economy that is static. How will a bill that rearranges a few billion in taxes haul a $5 trillion economy out of the mud?

This is not a novel question. It has been asked of one economist after another. And a remarkable consensus has emerged. Virtually all agree, and testified as much, that fiddling with the tax code will more likely do harm than good.

Everybody knows that economists can never agree on anything. Now that they finally do agree on something, we will not listen to them when they tell us to leave the Tax Code alone.

And with no offense to the economists, the people who count, my constituents, are telling me much the same thing.

In letter after letter from Vermont, people have either scoffed at the notion that small tax benefits will move a gigantic economy, or questioned how we can possibly afford a tax cut when we face a $400 billion deficit.

Those are not bad questions. You would think that even in Washington, DC, $400 billion would still be considered real money.

But you do not hear candidates talk about it much, if at all. It is abstract, and probably doesn't excite voters. But I think we underestimate those voters if we think they cannot see through the political posturing in progress.

The Democrats barely had the votes to pass this bill out of the House, and only bought the votes in the Senate Finance Committee by adding provisions to accommodate this Senator or that. I have no objection to that process. It is time-honored. But it does make the grandiose claims of fairness and equity sound a bit hollow.

And the Democratic party has no monopoly on partisanship. I was left scratching my head last night when we sought to waive the Budget Act to consider the President's package. I thought it was our party that wanted to preserve the budget agreement, and the other party that wanted to break down the limits on spending. But that is simply more fodder for the hustings.

The plain truth is that a $400 billion deficit does not give us the luxury, however tempting, of reducing revenues, not now, and not in the forseeable future. Yet this proposal incorporates proposals that would play the shell game of raising revenues in the short term while losing them in future years.

If you ask any lawyer, and that includes most of my colleagues, you will find that a tried and true tactic in class action cases is to put your strong cases out front and bury your weak ones. Tax bills work the same way. But unlike a trial, the verdict on a tax bill comes before the process of discovery, not after.

This bill is promoted as being designed for middle income families. I have no quarrel with making the tax code more progressive, and have voted in the past to increase the rates paid by the rich. But it is an odd collection indeed that is scurrying through the Senate, salted in the midst of the middle class.

This bill will expand tax breaks for oil companies. It will repeal the luxury tax on boats and planes, but not on cars. It will effectively charge utility customers in my State so that members of one union will enjoy retiree health benefits that most Vermonters can only dream about. We know, if I read the bill correctly, that our friends in Washington's foreign embassies will be able to buy beer without paying the excise tax. So much for all that talk about the shrinking middle class.

This bill is at odds with itself in far more fundamental ways than these few anecdotes indicate. This bill seeks to strengthen our economic foundation through increased savings, while fighting the recession through increased consumption.

How do you save and consume simultaneously, especially when you're broke to start with? We are telling the American people to go spend their money on a house, on durable goods, you name it. But at the same time we are telling them to save it in an IRA or invest it in small business. Much as we might like, we cannot have it both ways.

The American people are not stupid. If we should know anything, it is that they view Congress with great suspicion, especially in an election year. Tinkering with the Tax Code will not amount to a tinker's dam for the economy. They know it, and we know it.

I think there are many good provisions in this legislation. It makes some good changes to the earned income tax credit, some helpful changes in the area of health care, and several others.

But by and large, this bill is about politics, not economics. We all know, and the American people know, that this is a political exercise. We know the President will veto this bill, and that the House passed this bill by only a few votes. His veto will be sustained.

This bill will be rushed to the White House even though it will take an ambulance with life support. It is dead before arrival.

I do not begrudge the Democratic party for staking out its campaign proposals. But I do not think campaign proposals are either good tax policy or good economic policy. Both policies need some serious work. But if good policy were the aim of this bill, it would not be undertaken in a partisan fashion.

Serious work may be impossible in an election year. But our choices are not simply between the Republican and Democratic proposals. They are not limited to the lesser of two evils.

I do not think we need to choose either proposal, Republican or Democrat. I think we should choose instead to forget the politics and move on to the real issues—creating jobs strengthening our schools, making sound investments in our future, and staunching the deficit spending that jeopardizes our future and our children's future, and our grandchildren's future.

Mr. President, I speak with reluctance, as I see where we are going today, but I urge and hope that sometime in the not too distant future we will come forward with a responsible piece of legislation.

Mr. President, I yield the floor and suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant bill clerk proceeded to call the roll.

Mr. MITCHELL. Madam President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER (Ms. MIKULSKI). Without objection, it is so ordered.

The Senator from North Carolina is recognized.

Mr. HELMS. Madam President, Senator DOLE and I have been in consultation.

After consultation with Senator DOLE, we have decided in order to get a vote on this question to propose the following unanimous-consent agreement.

I ask unanimous consent that the Dole amendment be withdrawn with the understanding that no further second-degree amendment be in order. I further ask unanimous consent that it be in order to modify the underlying amendment.

The PRESIDING OFFICER. Is there objection to the Senator's request?

Without objection, the unanimous-consent request is agreed to.

So the amendment (No. 1715) was withdrawn.

AMENDMENT NO. 1714, AS MODIFIED

Mr. HELMS. Madam President, I have at the desk the modification and I ask for its immediate consideration. I ask the clerk to read it in its entirety.

The PRESIDING OFFICER. The clerk will report the modification.

The legislative clerk read as follows:

At the appropriate place, add the following:

The Senate finds that not only the House of Representatives, but the Congress as a whole is being held to account by the American public for the improper personal banking practices of its Members;

The Senate finds that only the House of Representatives provided for a system to collect the salaries of, and to honor checks written by, the Members of the House of Representatives;

The Senate finds that, while proposals to establish a similar system within the United States Senate have been suggested, they have never been agreed to by the Senate;

The Senate finds that no similar system has ever been in operation in the United States Senate;

The Senate finds that it has been reported that the House will vote to require a full disclosure of checks drawn upon accounts at the House bank or presented for payment at the House bank for which there were insufficient funds;

The Senate finds that such disclosure is the only means by which the full facts will reach the American public;

The Senate finds that the American public has not been made clearly aware of the differences in practices between the United States House of Representatives and the United States Senate and that therefore,

It is the sense of the Senate that no Senate bank with characteristics similar to those of the former House bank should ever be established.

Mr. HELMS. Madam President, the yeas and nays are still in order, inasmuch as this is a modification, is that correct?

The PRESIDING OFFICER. The Senator is correct.

Mr. HELMS. I am prepared to vote.

The PRESIDING OFFICER. Is there further debate?

If there be no further debate, the question is on agreeing to the amendment of the Senator from North Carolina, as modified.

The yeas and nays have been ordered. The clerk will call the roll.

The legislative clerk called the roll.

Mr. FORD. I announce that the Senator from Iowa [Mr. HARKIN] and the Senator from Hawaii [Mr. INOUYE] are necessarily absent.

I also announce that the Senator from Michigan [Mr. RIEGLE] is absent because of illness in the family.

The PRESIDING OFFICER. Are there any other Senators in the Chamber who desire to vote?

The result was announced—yeas 95, nays 2, as follows:

[Rollcall Vote No. 41 Leg.]

YEAS—95

Adams	Fowler	Mitchell
Akaka	Garn	Moynihan
Baucus	Glenn	Murkowski
Bentsen	Gore	Nickles
Biden	Gorton	Nunn
Bingaman	Graham	Packwood
Bond	Gramm	Pell
Boren	Grassley	Pressler
Bradley	Hatch	Pryor
Breaux	Hatfield	Reid
Brown	Heflin	Robb
Bryan	Helms	Rockefeller
Bumpers	Hollings	Roth
Burdick	Jeffords	Rudman
Burns	Johnston	Sanford
Chafee	Kassebaum	Sarbanes
Coats	Kasten	Sasser
Cochran	Kennedy	Seymour
Cohen	Kerrey	Shelby
Conrad	Kerry	Simon
Craig	Kohl	Simpson
D'Amato	Lautenberg	Smith
Danforth	Leahy	Specter
Daschle	Levin	Stevens
DeConcini	Lieberman	Symms
Dixon	Lott	Thurmond
Dodd	Lugar	Wallop
Dole	Mack	Warner
Domenici	McCain	Wellstone
Durenberger	McConnell	Wirth
Exon	Metzenbaum	Wofford
Ford	Mikulski	

NAYS—2

Byrd	Cranston

NOT VOTING—3

Harkin	Inouye	Riegle

So the amendment (No. 1714), as modified, was agreed to.

MILEAGE COMPUTATION FOR RURAL POSTAL CARRIERS

Mr. DOMENICI. Madam President, day before yesterday, in analyzing the basic underlying bill, I went through a number of the provisions which I thought did not belong in a jobs bill, and I spoke about changes in the mileage computation for rural postal carriers.

If I said that the provision was not a good provision, and a good reform measure, I was mistaken, because it is. However, what I stand by is that we should not have this jobs bill filled with that kind of provision, and in that regard I believe my statement is accurate. But it is a good measure.

I have reviewed it at someone's request, and I think it would be good that we adopt it someday because it would help those who should be helped, and it would not in any way create any kind of preference, but it would be fair. I thank the Chair.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant bill clerk proceeded to call the roll.

Mr. HELMS. Madam President, I move to reconsider the vote.

Mr. FORD. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. BYRD. Madam President, I voted "no" on the amendment. I thank the distinguished Senator from North Carolina [Mr. HELMS] and I thank the distinguished Republican leader for making the modifications that were made.

I want to state for the record again—so as not to be misunderstood—that I do not favor a bank in the Senate. I did not favor one when I was majority leader and I will not ever favor one.

But I think that the amendment as modified still violates the precedents of the Senate. I think it has been improved, but I still think it violates the precedents, and does not promote the comity that ought to exist between the two Houses.

Several Senators addressed the Chair.

Mr. BENTSEN. Madam President, if the Senators will defer for a moment, we have the problem of trying to finish this piece of legislation. Obviously we have been going at a snail's pace, hours and hours on very few amendments.

If we are trying to meet the deadline of March 20, it requires some cooperation. We have a situation where everyone wants to make his points on it, and we need to know how many are insisting that their amendments be considered. We need some time agreements.

So I would ask the membership to use some discipline. Let us have your feelings insofar as which amendments you feel are absolutely essential for you to offer, again, what you will agree to in the way of a time limitation. I have had people come up to me and say well, I want an hour. And I look at the number of amendments we have. No way can we finish tonight with that kind of an extravagance of the use of the time of the Senate.

But I would like you to report to the staff of the minority on the Finance Committee, as to which amendments you are insisting on presenting, and the time limitation on it; and that the staff of the majority of the Finance Committee let us get some limitations on it and move ahead in a better disciplined way; and try to get frequency or a series of the amendments that will be offered and the time limitations so we can better plan.

I defer to my colleague.

Mr. PACKWOOD. Madam President, we have a lot of amendments, unfortunately from my standpoint, but many of them are perfectly well-intentioned amendments. They want votes. Just tonight alone I have Senators SPECTER, MCCAIN, KASTEN, and I have others that are ready to go. Those are ready to go now. We are going back and forth. So that there will be only one at a time.

Very frankly, we are not going to finish tonight, or until 4 in the morning. Whether I can get time limits, I cannot tell. My guess would be on many of them the proponents, I find, are more often willing to give time agreements than the opponents because the proponents are the ones that want to vote and sometimes the opponents do not. But I cannot give any more assurance than that.

Mr. BENTSEN. If we can get as much information as we can, we will make a better judgment and decision on that.

With that I yield the floor.

The PRESIDING OFFICER. The Senator from Ohio.

AMENDMENT NO. 1716

Mr. METZENBAUM. Madam President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Ohio [Mr. METZENBAUM], for himself and Mr. ROTH, proposes an amendment numbered 1716.

Mr. METZENBAUM. Madam President, I ask unanimous consent that reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

At the appropriate place, insert:

(a) GENERAL RULE.—For purposes of chapter 1 of the Internal Revenue Code of 1986—

(1) any FSLIC assistance with respect to any loss of principal, capital, or similar amount upon the disposition of any asset shall be taken into account as compensation for such loss for purposes of section 165 of such Code, and

(2) any FSLIC assistance with respect to any debt shall be taken into account for purposes of section 166,158, or 593 of such Code in determining whether such debt is worthless (or the extent to which such debt is worthless) and in determining the amount of any addition to a reserve for bad debts arising from the worthlessness or partial worthlessness of such debts.

(b) FSLIC ASSISTANCE.—For purposes of this section, the term "FSLIC asssistance" means any assistance (or right to assistance) with respect to a domestic building and loan association (as defined in section 7701(a)(19) of such Code without regard to subparagraph (C) thereof) under section 406(f) of the National Housing Act or section 21A of the Federal Home Loan Bank Act (or under any similar provision of law).

(c) EFFECTIVE DATE.—

(1) IN GENERAL.—Except as otherwise provided in the subsection—

(A) The provisions of this section shall apply to taxable years ending after March 4, 1991 but only with respect to FSLIC assistance not credited before March 4, 1991.

(B) If any FSLIC assistance not credited before March 4, 1991 is with respect to a loss sustained or charge-off in a taxable year ending before March 4, 1991, for purposes of determining the amount of any net operating loss carryover to a taxable year ending after on or after March 4, 1991, the provisions of this section shall apply to such assistance for purposes of determining the amount of the new operating loss for the taxable year in which such loss was sustained or debt written off. Except as provided in the preceding sentence, this section shall not apply to any FSLIC assistance with respect to a loss sustained or charge-off in a taxable year ending before March 4, 1991.

(2) EXCEPTIONS.—The provisions of this section shall not apply to any assistance to which the amendments made by section 1401(a)(3) of the Financial Institution Reform, Recovery, and Enforcement Act of 1989 apply.

Mr. METZENBAUM. Madam President, I rise today to offer an amendment to the tax bill that would stop the double dipping in the Tax Code by savings and loans receiving Government assistance. This amendment would require that assistance received from the Federal Government be taken into account for purposes of determining any loss or the worthlessness of a debt under the Tax Code.

The PRESIDING OFFICER. Will the Senator withhold? The Senate is not in order.

The Senator from Ohio may proceed.

Mr. METZENBAUM. I thank the Chair.

We are all too familiar with what happened at the former Federal Home Loan Bank Board during the last days and weeks of 1988. In the mayhem of around-the-clock negotiations and uncontrolled deal making, the bank board and the former Federal Savings and Loan Insurance Corporation known as FSLIC put together deals which amounted to nothing more than careless fire sales, and the American people were left holding the bag.

FSLIC resolved 199 insolvent thrift institutions into 96 Government-assisted transactions commonly referred to as the "1988 deals". Twenty-five of the deals were put together in the last 2 days of December 1988.

Madam President, may we have order in the Senate?

The PRESIDING OFFICER. The Senator is correct. Would Senators clear the aisle, please? Would those Senators involved in negotiations on the amendment please retire to the cloakroom? They are important negotiations

The Senator from Ohio.

Mr. METZENBAUM. I thank the Chair.

Some of our Nation's smartest and most aggressive financiers and corporate takeover artists, sensing an opportunity, got the deal of the century. For a relatively modest amount of money, investors acquired not only an S&L and its assets, but also huge sums of Government subsidies and guarantees spanning in most cases a 10-year period.

Let me give you an example of just how bad some of the deals were. My subcommittee investigated the deal for Bluebonnet Savings. James Fail purchased Bluebonnet Savings in December 1988. He invested only $1,000 of his own money in the deal. In return, the Government promised Fail and his thrift almost $3 billion in tax-free subsidies and guarantees over 10 years; $1,000 investment, $3 billion in tax-free subsidies and guarantees.

The deal was so lucrative that in the first year Bluebonnet became one of the most profitable thrifts in the United States, all from tax-free subsidies.

When our committee investigated this matter, it produced sufficient evidence to provide a basis for the Government to reopen and renegotiate the contract. Do you think the Government ever did so? Do you think the Government ever made an effort to do so? Of course not.

This Government agency has spent over $700 million in legal fees, but did not have enough lawyers to go back and reopen and negotiate a deal for which there was a legal basis, as evidenced by the hearings that we held in our committee.

Unfortunately, this is but one example of the questionable deals made by the bank board and the FSLIC in 1988.

The Bluebonnet deal, and most of the other deals, contained one or more different forms of Government subsidies.

The Government subsidies took three forms. First, FSLIC agreed to pay the acquirers the difference between the book value of the assets and the amount for which those assets are sold.

Second, because many of these assets were nonperforming, or troubled at the time the FSLIC sold them to the acquirer, the FSLIC guaranteed the acquirer a minimum return or yield on the value of the asset.

And the third subsidy is based on FSLIC's authority to order the acquirers to write-down the value of an asset on their books to reflect the fair market value of the asset. In exchange the acquirer would get a payment from the Government in the amount of the write-down.

All of those subsidies are tax free. FSLIC dangled these tax-free Government subsidies in front of the acquirers as an inducement to buy defunct thrifts. In facts, in many cases FSLIC targeted, as prospective acquirers, corporate entities and wealthy individuals who could utilize these tax benefits and accordingly would be willing to accept lower guaranteed yield rates on covered assets, lower interest rates on FSLIC notes, and similar terms.

Tax breaks became the glue that held many of the deals together. The tax breaks alone in many cases were equal to or greater than the investors paid to purchase the thrift.

(Mr. AKAKA assumed the chair.)

Mr. METZENBAUM. After having thanked the American taxpayer for the gold-gilded subsidies, now the 1988 deal acquirers are eager to exploit the Tax Code. Many acquirers have taken the aggressive position that even though their losses are reimbursed tax free by the Government, they still can deduct those losses for Federal income tax purposes.

The tax bonanza about which I am speaking has been known as double dipping, getting the benefit twice, dipping into the Federal Treasury twice.

Some of the smoothest and slickest businessmen in the country, with negotiating skills and other professional expertise far beyond those of the Government, want to further capitalize on the Government's misfortune of having made rotten deals, all at the expense of the American taxpayer. These deal makers receive tax-free Government assistance for assets sold at a loss, and now they want to deduct those same losses from their tax bills, as if they have not received one nickel in Government assistance.

A game of now you see it, now you don't with taxpayers' money. A form of hocus pocus with the Tax Code that bleeds the taxpayer for billions of dollars of tax deductions and escalates the savings and loan bailout costs to more than $500 billion in the past and over the next few years.

These are hard-earned tax dollars paid by the American people, and some of the slickest deal makers in the country are on the way to the bank constantly depositing those extra dollars. And the unfortunate part is that our Government is a party to their activity.

To add further insult to the American taxpayer, we now find that the losses experienced by the thrift are not only being used to reduce the taxable income of the thrift, but may also be used to shelter the taxable income of the parent company. Take, for example, the Perelman deal.

Ronald Perelman, chairman of Revlon, Inc., purchased several thrifts known as First Gibraltar. The losses of First Gibraltar can be deducted from the profits of MacAndrews & Forbes, the holding company through which the purchase was made. As a result of special tax benefits, MacAndrews & Forbes, and not the thrift, saved more than $121 million in 1989, in addition to the thrift's $129 million in profits.

As I predicted in 1988, the chaotic manner in which the 1988 deals were put together has indeed proven to be "shortsighted, irresponsible, and ultimately unfair to the American taxpayer."

Congress began addressing these tax issues with the passage of the 1989 FIRREA legislation. As part of the

FIRREA legislation, I sponsored an amendment that required the Resolution Trust Corporation to review and analyze the 1988 deals and actively review all means by which the cost of the deals could be reduced. This mandate included, among other things that the RTC evaluate the cost of the deals with regard to capital loss coverage, yield maintenance guarantees and tax consequences.

In March 1991, I sponsored legislation requiring the RTC to pursue all means by which the RTC can reduce both direct outlays and the tax benefits associated with the agreement, including, but not limited to, restructuring the deals to eliminate tax-free interest payments and to recapture a larger portion of the tax benefits.

Finally, after much discussion, the Treasury department has finally weighed in on this matter by issuing a report that settles this issue once and for all. The Treasury report concludes that there is no reasonable basis to allow double dipping by thrifts that receive Federal assistance.

The Treasury report recommended that Congress enact legislation clarifying that it did not intend to allow the deduction of losses that are reimbursed with tax-free assistance. That is exactly what this amendment does.

The House Committee on Ways and Means wisely followed Treasury's direction and included the Treasury's proposal in its tax package.

The amendment I offer today is the same language included in the Ways and Means Tax Fairness and Economic Growth Act of 1992.

This amendment is designed to stop the tax ripoff of double dipping. It clarifies that reimbursed losses received by thrifts from the Federal Government are not deductible. The amendment would apply to any assistance credited on or after March 4, 1991, which is the date of the Treasury report.

For those who would argue that this amendment is a retroactive change in the law, I say that is simply not the case. This amendment merely clarifies existing law.

As pointed out in the Treasury report: "Congress never intended to allow thrift acquirers to deduct losses when such losses are reimbursed by the Government."

The Tax Code was clear then, and it remains clear today. A taxpayer may claim a deduction for loss on the sale or disposition of an asset only to the extent that the loss is not compensated or reimbursed by insurance or otherwise.

This basic tax principle was not altered by the Congress at the time the 1988 deals were made and could not be legally altered by FSLIC or the bank board.

If you or I, or any other taxpayer, had a loss that was compensated for by insurance, or any other form of reimbursement, we would be required to take such compensation into account for tax purposes. Why should some of our country's wealthiest business persons and financiers not be required to do the same thing?

In a Washington Post article dated March 7, 1991, Treasury officials are quoted as saying that: "The savings and loan buyers are virtually the only taxpayers in the Nation who get to deduct losses even though they don't actually lose any money." Believe it or not, they get the right to deduct losses, even though the Government has already reimbursed them for the amount of those losses.

The President also agrees with this amendment. A similar proposal was contained in the President's tax package. There is not much that I agree with in the President's package but I agree with his position on double dipping. We must stop those who would exploit the incompetence of FSLIC and erode our tax system for their own personal gain and greed at the expense of the taxpayer.

According to the Treasury Department, this measure could save the American taxpayer over $900 million over the next 5 years. In this time of recession, can we really afford not to pass this clarifying amendment? If we should fail to pass this amendment, which I am certain we will not, how can we in good faith expect taxpayers to continue to pay billions of dollars to bail out the thrift industry?

As aptly pointed out by Bob McIntyre of Citizens for Tax Justice:

> There is no way that anyone could successfully explain to ordinary taxpayers—who pay tax on virtually all their earnings—that wealthy thrift operators can make hundreds of millions of dollars, guaranteed by the Government, not lose a penny, and still take artificial deductions for phony "losses."

I believe that this amendment is as right as any amendment could possibly be. I believe this is a major step in the right direction with some of the deals that have been negotiated by FSLIC.

It is this Senator's opinion that FSLIC and RTC have not been doing the job that they owe the American people. It is this Senator's opinion that they have thrown away hundreds of millions of dollars in paying lawyers and have not accomplished much for the Government.

But in this instance, this is a chance for we in the Congress to take some action that will save the taxpayers of this country an amount close to a billion dollars within the next 5 years.

The PRESIDING OFFICER. The Senator from Delaware is recognized.

Mr. ROTH. Mr. President, I rise to join the Senator from Ohio to offer this amendment to put an end to what the Treasury Department called the perverse economic effects caused by allowing thrift institutions to receive Federal financial assistance at the same time that they deduct losses for the same money. This is what this amendment is meant to stop, the so-called double-dip by savings and loans.

On March 6, 1991, I introduced S. 583, which was designed to deal with this problem. The bill has eight cosponsors and is the only one addressing this problem, to my knowledge. It reflects the views of the Treasury report on the issue, released at about the same time.

It is a reasonable question to ask why anyone would think that they are entitled to deduct losses, while at the same time receiving insurance money from the FSLIC or RTC for the same loss. In reality, this is not a loss at all.

The tax benefits claimed by the S&L buyers are best explained with reference to an example. Assume that an asset has a book value of $100 in 1988, and is sold to a buyer in 1991 for $60. Under a typical FSLIC agreement, the buyer is entitled to an FSLIC payment of $40. Thus, the total amount received upon the sale of the asset is $100. But the buyers of these troubled S&L's claim that they are entitled to two tax benefits:

First, the $40 FSLIC payment is excluded from income under section 597; and

Second, the transaction generates a deductible loss of $40 assuming the buyer's tax basis is equal to the asset's book value.

Under this view, the FSLIC payment is both statutorily excluded from income and then ignored for purposes of the computation and deduction of loss.

Clearly, this is not right. Allowing tax deductions for losses on covered assets that are compensated for by FSLIC assistance gives thrift institutions a perverse incentive to hold these assets and to minimize their value when sold. The FSLIC or RTC, and not the institution, bears the economic burden. The tax benefit to the thrift and its affiliates increases as tax losses are enhanced, bringing rise to the axiom, "The more you lose, the more you make." This is a moral risk for the Government. The result is, the institution has an incentive to minimize the value of covered assets in order to maximize its tax loss and the resulting tax savings.

Take the example above, where the book value is $100, the FMV is $60 and the FSLIC payment is $40. The taxpayer will receive $60 from the sale, $40 from FSLIC and a $40 tax loss under the buyer reasoning. Assuming a 34-percent tax bracket the buyer gets $113.60 for the sale of his $100 asset.

Now assume that the buyer allows the property to decay and rot to lower its fair market value to $10. Assuming a 34-percent tax bracket, the buyer now will receive $10 from the sale, $90 from the FSLIC and $30.60 from the tax loss for a grand total of $130.60, thus increasing their profit by 15 percent by

simply allowing the asset to rot. All of the risk falls on the Government, while the institution stands to profit.

The issue remains relevant because significant numbers of covered assets acquired in transactions closed in 1988 and 1989 have yet to be disposed of by the S&L buyers.

Some still argue that a deal is a deal and the Congress should not change the rules because they made a bad deal. I disagree. These people argue that Congress intended to allow the deduction of FSLIC-reimbursed losses when it enacted section 597 in 1981.

This does not stand up on review. Section 597 contains two operative provisions, the effect of each depending on the nature of the payment. In the case of a payment that would otherwise be included in income, section 597(a) renders the payment tax free. In the case of a capital contribution, section 597(b) suspends the rule requiring a basis reduction to the corporation's existing assets.

Neither the statute nor the legislative history of section 597 indicates that Congress intended to alter the rules for the computation of gain or loss—section 1001—or to suspend the existing statutory limitation on the deduction of losses that are compensated for by insurance or similar payments under section 165.

In short, I agree with the Treasury Department and their report dated March 1991, "Report on Tax Issues Relating to the 1988–89 Federal Savings and Loan Insurance Corporation Assisted Transactions." And the Treasury Department supports this amendment.

I also agree with an article from the Wall Street Journal dated July 10, 1991. This article outlines the perverse incentives caused by the interpretation by these thrift purchasers who claim this double-dip. I would ask unanimous consent that the Treasury report, the Wall Street Journal article and a similar New York Times article on this issue be printed in the RECORD.

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

[Department of the Treasury, March 1991]

REPORT ON TAX ISSUES RELATING TO THE 1988/89 FEDERAL SAVINGS AND LOAN INSURANCE CORPORATION ASSISTED TRANSACTIONS

On September 18, 1990, the Resolution Trust Corporation (RTC), in accordance with the requirements of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA), issued a report to the Congress and the Oversight Board of the RTC on the 1988/89 Federal Savings and Loan Insurance Corporation (FSLIC) transactions.[1] The RTC Report recommended further study of certain tax issues relating to the 1988/89 FSLIC transactions. The Treasury Department has examined whether legislation or other action is appropriate to address the tax issues raised by the RTC Report. This report analyzes the tax issues raised by the RTC Report and provides the Treasury Department's views on those issues.

I. INTRODUCTION

Until it was abolished by FIRREA, FSLIC insured the deposits of its member savings and loan associations and was responsible for insolvent member institutions. During 1988 and 1989, FSLIC resolved 199 insolvent financial institutions in 96 assisted transactions. The assistance agreements with respect to the 1988/89 transactions obligated FSLIC to make ongoing assistance payments to the 91 institutions remaining after the restructuring of the insolvent financial institutions that were involved in those transactions.

FIRREA abolished FSLIC and established the FSLIC Resolution Fund (FRF) to assume all of the assets and liabilities of FSLIC (other than those expressly assumed by or transferred to RTC). FRF is administered exclusively by the Federal Deposit Insurance Corporation (FDIC). Thus, under FIRREA, the FDIC (through FRF) has assumed responsibility for FSLIC's obligations under the 1988/89 assistance agreements.

It is estimated that the cost of assistance with respect to the 1988/89 transactions will exceed $69 billion without considering the tax benefits involved in those transactions.[2] In structuring the 1988/89 assisted transactions, FSLIC increased its reliance on long-term assistance. As a result, only a portion of the total estimated assistance with respect to these transactions has been paid thus far (approximately $14.6 billion as of January 1, 1991).

The most significant forms of continuing assistance provided in the 1988/89 transactions are described below.[3]

1. Promissory notes.—Promissory notes were provided to offset negative net worth and generally bear interest at a specified cost of funds index plus a spread.

2. Capital loss protection.—In virtually all of the larger 1988/89 transactions, FSLIC agreed to pay acquirers assistance in an amount equal to the difference between the book value of "covered assets" and the proceeds received upon disposition of the assets. This type of assistance is designed to protect the acquirer from losses incurred with respect to covered assets. The assistance agreements generally grant FSLIC the right to purchase covered assets at market or book value. In addition, many of the assistance agreements permit FSLIC to order the assisted institution to write down the value of covered assets on their books to fair market value in exchange for a payment in the amount of the write-down. Some assistance agreements limit the amount of such a write-down to a percentage of book value or by other factors.

Typically, covered assets are assets that were owned by the acquired institution and that were classified as nonperforming or troubled at the time of the assisted transaction. In some cases, covered assets include assets that were expected to become troubled within a relatively short period of time. Some assistance agreements specifically identify the covered assets and others identify these assets by category. Covered assets usually include some combination of real estate, loans in various stages of default, delinquent loans (*i.e.*, usually loans at least 90 days past due), noninvestment grade securities, and investments in subsidiaries. Most agreements also permit or require the assisted institution to provide financing to facilitate the sale of a covered asset. In some cases the assistance agreements provide for these purchase money loans to become covered assets.

3. Guaranteed yield maintenance.—FSLIC generally guaranteed the acquirer a minimum return or yield on the book value of covered assets. This type of assistance is designed to ensure that the acquirer would earn a minimum return over a base rate on covered assets. Any reduction in the amount of covered assets, whether by way of a write-down, purchase by FSLIC (now the FDIC), or other disposition, reduces the base on which yield maintenance payments are determined. In general, guaranteed yields exceed the amount of market yield that the institution could otherwise earn on the assets.

4. Indemnification and reimbursement from losses.—The assistance agreements generally obligate FSLIC to reimburse acquiring institutions for amounts incurred and paid in connection with the satisfaction, settlement or compromise of certain claims and for reasonable costs and expenses related to such claims. These claims include unreserved claims, challenges to the transaction, and claims involving unassumed or undisclosed liabilities and nonexistent assets. The agreements also require FSLIC to reimburse acquiring institutions for reasonable costs and expenses incurred by the institutions in pursuing related claims (*e.g.*, counterclaims) undertaken with FSLIC approval.

The timing and structure of the 1988/89 assisted transactions can be attributed to two factors. First, FSLIC did not have the financial resources required to liquidate insolvent institutions even where liquidation would have minimized the cost of resolving the institutions. Consequently, in order to resolve insolvent institutions, FSLIC resorted to long-term assistance. Second, the special tax benefits provided to troubled financial institutions were due to expire on December 31, 1988. This resulted in a increase in the number of assisted transactions completed in 1988.[1] The Technical and Miscellaneous Revenue Act of 1988 (TAMRA) postponed the expiration of these special tax benefits, but significantly reduced the amount of tax benefits available to assisted transactions occurring after 1988.

II. OVERVIEW OF SPECIAL TAX BENEFITS AVAILABLE IN CONNECTION WITH THE 1988/89 ASSISTED TRANSACTIONS

Prior to their repeal by FIRREA, the following three provisions of the Internal Revenue Code (the Code) provided the special tax benefits available in the 1988/89 transactions:

Under old section 597 of the Code, qualifying assistance payments to a financial institution acquired in an assisted transaction prior to January 1, 1989, are excluded from the institution's income, and the institution is not required to reduce the tax basis of its property or other tax attributes on account of the receipt of such assistance. In addition, the general rule disallowing deductions for expenses and interest relating to tax-exempt income (section 265) does not apply to deductions allocable to amounts excluded from gross income pursuant to old section 597. Generally, in the case of any assisted transaction after December 31, 1988, and before May 10, 1989 (the effective date of the repeal of tax benefits available to troubled financial institutions), the assisted institution is required to reduce its net operating losses, built-in losses, and interest expense deductions by 50 percent of any assistance paid to the institution.

Under section 368(a)(3)(D) of the Code, the acquisition of a troubled financial institution in a FSLIC-assisted transaction could qualify as a tax-free transaction without regard to the generally applicable requirement that the shareholders of an acquired corporation have a meaningful ownership interest in the acquiring corporation for the acquisition

Footnotes at end of article.

to qualify for tax-free reorganization treatment.

Under section 382(l)(5)(F) of the Code, a corporation could acquire a troubled financial institution in a tax-free reorganization under section 368(a)(3)(D) without triggering the limitations that would otherwise apply to the net operating losses, built-in losses, and excess credits of the troubled financial institution.

Prior to the enactment of old section 597 in 1981,[5] the tax treatment of a payment from FSLIC to a financial institution was unclear. The payment could be treated as gross income or as a contribution to the capital of the institution. If treated as a contribution to capital, the payment was not included in gross income, but the institution was required to reduce the basis of its property by the amount of the contribution. After the enactment of old section 597, however, financial assistance payments made by FSLIC to certain troubled financial institutions were not included in the gross income of the institutions, and the institutions were not required to reduce the tax basis of property on account of the receipt of those payments.

The tax benefits available in 1988/89 assisted transactions represent a significant portion of the total cost of those transactions to the fisc. FSLIC estimated in early 1989 that the tax benefits attributable to the 1988/89 assisted transactions would equal $8.5 billion. After reducing this amount by FSLIC's estimate of the portion of those tax benefits that will accrue to its benefit under tax sharing agreements, FSLIC's total estimated cost to the Treasury of the tax benefits attributable to the 1988/89 assisted transactions is $4.2 billion in foregone revenues.[6]

III. TAX ISSUES RAISED BY RTC REPORT

The special tax provisions that applied to assisted transactions prior to FIRREA raise numerous tax issues. While many of these tax issues are not free from doubt, the resolution of most of them has not been controversial. The RTC Report, however, identifies a select set of tax-related issues that, depending on how they are resolved, may materially affect the cost of the 1988/89 transactions, most importantly:

1. The extent to which an assisted institution should be allowed to deduct losses and expenses even though the FDIC compensates or reimburses the institution for the losses or expenses; and

2. The extent to which the earnings on assets covered by yield maintenance guarantees are exempt from tax.

The remainder of this report analyzes these issues and provides the Treasury Department's views thereon.[7]

IV. DEDUCTIBILITY OF REIMBURSED LOSSES AND EXPENSES

The critical tax issue raised by the RTC Report is the extent to which financial institutions may deduct losses and expenses even though they receive assistance payments from the FDIC as compensation for those losses or expenses. In considering this issue, first this report provides an overview of the federal income tax considerations relating to the deductibility of covered losses and expenses, describing briefly the types of transactions in which covered losses and expenses arise. Second, the report considers the incentive effects of the deduction of covered losses and expenses on assisted institutions. Third, the report analyzes the arguments for and against the deductibility of covered losses and expenses. Finally, the report presents the Treasury Department's views on the appropriate response to this issue and considers potential legislative clarification.

A. Overview of Federal Income Tax Considerations

1. Sale or other disposition of covered assets

Generally, a taxpayer incurs a loss for tax purposes on the sale or other disposition of property to the extent that the taxpayer's adjusted basis for the property exceeds the amount realized on the disposition.[8] When an institution sells a covered asset, the question arises whether it is entitled to claim a tax loss to the extent the tax basis of the covered asset exceeds the proceeds from the sale even though it receives assistance payments to compensate for that loss. The following two types of transactions are at issue:

(i) Sale to third party.—If an institution sells a covered asset to a third party, the question is whether it may claim a tax loss even though it receives tax-free assistance payments from the FDIC to compensate for that loss and therefore experiences no economic loss. Assume, for example, that an institution sells a covered asset with a book value and tax basis of $100 to a third party for $40. Under the 1988/89 assistance agreement, the FDIC pays the institution $60 in tax-free assistance as compensation for the loss. The institution might nonetheless claim a $60 loss for tax purposes. Although, as the report discusses in detail, the issue is not free of doubt, the IRS has issued one unpublished ruling allowing the tax loss. The rationale for allowing the loss is that, under the law applicable to the 1988/89 transactions, assistance payments are excluded from income. The allowance of tax losses in such cases, even though the institution has experienced no economic loss, produces unintended and disadvantageous effects, which are described in the next section.

(ii) Sale to the FDIC.— Because it may be argued that all payments made with respect to covered assets constitute "assistance" provided under the 1988/89 agreements, institutions may claim that they are entitled to a tax loss equal to the entire tax basis of the covered assets if they sell the assets to the FDIC for market value or their book value. Assume, for example, that an institution owns a covered asset with a fair market value of $90 and a book value and tax basis of $100, and that the FDIC purchases that asset from the institution for its $100 book value pursuant to one of the 1988/89 agreements. The institution may argue for a $100 tax loss even though the institution receives $100 from the FDIC for the asset. The rationale for this view is that the entire amount paid by the FDIC should be treated as federal financial assistance and therefore disregarded in determining the institution's tax loss from the transaction. If this argument prevails, the covered asset would be treated as having been sold for $0 and the institution would be entitled to a loss equal to its entire tax basis in the asset. Alternatively, the institution might claim a $10 loss, on the ground that it would claim a loss in this amount had it sold the asset to a third party for its $90 fair market value and received $10 in assistance payments from the FDIC. In most cases, the FDIC's contractual rights to repurchase covered assets are at fair market value ($90 in the example), but in some cases the FDIC has a contractual right to repurchase covered assets at book value.

2. Write-down of covered assets

When an institution is ordered to write down a covered asset, the FDIC is generally required to make an assistance payment to the institution in the amount of the write-down. If the covered asset is a loan ("covered loan"), the issue is whether the institution must take the assistance payment into account in applying its method of accounting for bad debts. If an institution uses the reserve method of accounting for bad debts and the assistance payment made on account of the write-down is ignored for tax purposes, the institution may be entitled to charge the write-down against its reserve as a bad debt loss, potentially increasing the institution's addition to its reserve for bad debts and the deduction it may claim therefor.[9] If an institution uses the specific charge-off method of accounting for bad debts and the assistance payment made on account of the write-down is ignored for tax purposes, the institution maybe entitled to claim a bad debt deduction on the write-down of a covered loan.[10]

In the case of covered assets other than loans or covered loans with respect to which bad debt losses may not be claimed on the write-down, the issue is whether the assistance payment made in connection with the write-down must be taken into account in determining whether the institution is entitled to claim a loss on the subsequent disposition of the asset. As a result, in the case of an asset other than a loan, the tax considerations implicated by a write-down of the asset are similar to those raised above in cases where contemporaneous assistance payments are made to compensate for a loss on the sale or other disposition of a covered asset, although the legal analysis of the two transactions might diverge.

3. Reimbursed expenses

There is also an argument that expenses incurred but reimbursed by the FDIC should be deductible for tax purposes. Assume, for example, that an institution incurs legal expenses of $100 in connection with defending a claim relating to a covered asset and that these expenses are reimbursed by the FDIC. The institution has not, in reality, borne any expense in connection with defending the claim, but may nevertheless claim a deduction for the legal expense if the reimbursement is ignored for tax purposes.

In terms of the potential cost to the government, the deductibility of losses on the disposition of covered assets is much more important than the deductibility of reimbursed expenses. The policy considerations raised by the two issues, however, are quite similar.

B. Incentives

To the extent that tax deductions are allowed for losses on covered assets that are compensated by FDIC payments, institutions have a perverse incentive to hold covered assets and to minimize their value when sold. In the typical case, as long as an institution holds a covered asset, the yield guarantee protects the institution from any loss of income and on disposition the institution is guaranteed to receive book value through a combination of sales proceeds and FDIC payments. The FDIC, and not the institution, bears the economic burden corresponding to any reduction in value. Indeed, the institution and its affiliated corporations will tend to benefit as tax losses are enhanced. The institution therefore, has an incentive to minimize the value of covered assets in order to maximize its tax loss and the attendant tax savings. Similarly, to the extent that tax deductions are allowed for expenses that are reimbursed with FDIC payments, institutions have an incentive to maximize, rather than minimize, those expenses. Unless the tax rules are clarified to provide that covered losses and expenses are not deductible or such incentives effectively are reversed

through renegotiations, only the exercise of the FDIC's contractual rights to repurchase covered assets can stop the potential waste.

C. Current Law: Arguments For and Against Deductibility

In the case of the sale or write-down of a covered asset, the assisted institution generally receives compensation from the FDIC for any loss. Similarly, the FDIC generally is required under the assistance agreements to reimburse institutions for a variety of expenses. The deductibility of these losses and expenses turns on the appropriate tax treatment of the financial assistance paid by the FDIC. However, the tax law is not clear.[11]

I. Considerations generally applicable to covered losses and expenses

Legislative background

The question whether covered losses and expenses reimbursed by the FDIC are nevertheless deductible for tax purposes depends upon a construction of the provisions of old section 597, enacted in 1981. Under old section 597, money or property received from FSLIC pursuant to section 406(f) of the National Housing Act is excluded from the gross income of a domestic building and loan association.[12] A companion rule in old section 597(b) prohibits a reduction in the tax basis of the assets of an assisted institution on account of the receipt of exempt assistance. Prior to the enactment of old section 597, the tax treatment of a payment from FSLIC to a financial institution was unclear. The payment could be treated as gross income or as a nonshareholder contribution to the capital of the institution. If treated as a nonshareholder contribution to capital, the payment was not included in gross income,[13] but the institution was required to reduce the basis of its property by the amount of the contribution.[14]

When Congress enacted old section 597, it decided that assistance payments should be excluded from gross income and should not be subject to the basis reduction rules applicable to nonshareholder contributions to capital. The statutory rule prohibiting basis adjustments apparently was intended to ensure that the exclusion from gross income provided by old section 597 would be permanent rather than temporary. It also appears that the special tax rules that applied to the acquisition of troubled financial institutions were designed to make the net operating losses of those institutions available to acquirers in assisted transactions.[15]

In enacting the special tax rules applicable to the acquisition of troubled financial institutions, Congress intended to facilitate the provision of financial assistance by FSLIC and to encourage the merger of troubled financial institutions into stronger institutions. The legislative history, however, does not suggest that Congress explicitly considered the implications of the basis adjustment prohibition beyond this point.[16]

The fundamental goal of the exclusion of income and the elimination of basis adjustments found in old section 597 was to ensure that FSLIC (and subsequently FDIC) assistance would not be reduced by the imposition of income taxes. There is no indication that Congress believed that the deductibility of covered losses and expenses was necessary either to fulfill this purpose or to facilitate the resolution of troubled financial institutions. Moreover, we suspect that Congress would have expressed a contrary view if it had explicitly considered the deductibility of covered losses and expenses and the perverse incentives associated with the deductibility of those losses and expenses. At the time of their enactment, old section 597 and the accompanying legislation to facilitate mergers and acquisitions of savings and loan institutions were estimated to produce an annual revenue loss of approximately $5 million. Old section 597 and its legislative background fail to provide conclusive authority for the deduction of covered losses and expenses.

Deductibility of losses: the amount realized

Under current law, a taxpayer is generally required to overcome two hurdles in order to claim a deduction for a loss on the sale of an asset. The first hurdle requires the taxpayer to establish that a loss was realized on the sale. As a general rule, a taxpayer realizes a loss on the sale or other disposition of property to the extent that the taxpayer's adjusted basis for the property exceeds the amount realized on the sale or other disposition.[17] A taxpayer's adjusted basis for an asset is generally determined by the cost of the asset.[18] A taxpayer's amount realized from the sale or other disposition of an asset generally equals the amount of money received plus the fair market value of any other property received on the disposition.[19] Therefore, an assisted institution would not be entitled to claim a tax loss on the sale or other disposition of a covered asset if assistance payments made to the institution as compensation for that loss are included in the amount realized from the sale. This treatment arguably is the most reasonable as it characterizes the transaction for tax purposes in accordance with its economic substance by denying the selling institution a deduction for a loss that it does not bear economically.

Upon any acquisition of covered assets, the acquiring institution acquired both the asset and FSLIC's agreement to provide compensation for any loss on the disposition of those assets. Consequently, the right of an institution to receive assistance on the disposition of a covered asset may be considered an integral part of that asset. Indeed, this view is consistent with private rulings that the IRS has issued holding that the right to receive assistance with respect to covered assets is taken into account in valuing those assets for purposes of determining whether the built-in deduction limitation of the consolidated return regulations applies to those assets.[20]

Old section 597 does not appear to prohibit the inclusion of assistance in amounts realized. By its terms, old section 597 only excludes from gross income amounts that would be gross income but for the exclusion. The amount realized on the sale of an asset is included in gross income only to the extent it exceeds the basis of the asset sold.[21] Therefore, old section 597 can reasonably be read to exclude only amounts of assistance that otherwise would produce taxable gain on the disposition of covered assets. In addition, the basis adjustment prohibition of old section 597 applies only to assistance that is excluded from gross income under old section 597. Thus, if assistance paid as compensation for a loss on the sale of a covered asset were treated as an amount realized on the sale, old section 597 would not apply to the assistance to the extent that it merely reduced the tax loss from the sale.

Perhaps the strongest argument of the proponents of deductibility is that disallowing a deduction for covered losses and expenses is tantamount to taxing the assistance, thereby denying the permanent exclusion that Congress intended. Under this argument, the basis adjustment prohibition of old section 597 is viewed as a prohibition of any reduction of tax attributes that would have the effect of taxing FSLIC assistance. Assume, for example, that an assisted institution sells an asset with a book value and an adjusted basis of $100 for $60, and that the FDIC pays the institution $40 of assistance to compensate for the loss. If a deduction for the $40 loss reimbursed by the FDIC is disallowed on account of the assistance payment, the institution is in the same position that it would have been in if it had realized $40 of taxable income from the assistance payment and recognized a $40 taxable loss on the sale of the property. Notwithstanding the superficial appeal of this argument, we do not believe that Congress intended the provisions of old section 597 to require deductibility of the reimbursed loss in such a case. It is quite reasonable to view that provision as prohibiting the reduction of FSLIC or FDIC assistance through taxation without, at the same time, reading the provision to create tax incentives for increasing losses and minimizing value in assisted transactions.

General principles governing the treatment of compensated losses and reimbursed expenses

If, contrary to the above analysis, assistance received from the FDIC as compensation for a covered loss is not treated as an amount realized, the selling institution will be treated as realizing a loss from the sale for tax purposes. The fact that the institution has realized a loss for tax purposes does not, however, necessarily mean that a deduction for the loss will be allowed. In order to claim a deduction, the institution must clear a second legal hurdle. Under section 165(a) of the Code, a deduction is allowed for any loss sustained during the year only if the loss is not compensated for by insurance or otherwise. In other contexts, this rule has been interpreted to bar a deduction for a loss that is compensated for by tax-free assistance.[22]

Similar principles apply to the deductibility of covered expenses. Generally, the Code allows taxpayers to claim a deduction for the ordinary and necessary expenses incurred in carrying on a trade or business.[23] It is well established, however, that ordinary and necessary business expenses are not deductible to the extent that they are reimbursed, even if the reimbursement payments are excludable, under specific provisions of the Code, from the recipient's income.[24] Amounts that are subject to reimbursement are in the nature of advances on the credit of the party responsible for making the reimbursement.[25]

Therefore, unless the provisions of old section 597 are interpreted to require that assistance payments be ignored in applying the principles that generally govern the deductibility of losses and expenses, the better view is that no deduction should be allowed for covered losses and expenses because those losses and expenses are compensated for or reimbursed with assistance payments. The proponents of deductibility, however, argue that assistance payments made with respect to covered losses do not represent compensation "by insurance or otherwise" within the meaning of section 165(a) of the Code because the assistance payments are not payments in the nature of insurance, but rather are part of an arm's length bargain that induced the acquirer to enter into the assisted transaction.[26]

While it is indisputable that the capital loss coverage provided in many of the 1988/89 transactions was part of an agreed package of consideration, that fact is not dispositive. First, loss reimbursements paid by the FDIC may qualify as compensation for purposes of section 165(a) even if the payments are not in the nature of insurance.[27] Second, even if the

payments must resemble insurance, the assistance that FSLIC agreed to pay under the 1988/89 assistance agreements with respect to covered losses shifted the risk of those losses to FSLIC and, as such, bears a striking resemblance to insurance.[28] If, as part of one of the 1988/89 transactions, FSLIC had agreed to pay a third party to insure the assisted institution against some risk, would the fact that the insurance represented part of the consideration provided in connection with the acquisition of the assisted institution cause the insurance to be characterized as something other than insurance for tax purposes? We think not and cannot readily distinguish such a fact pattern from the one at hand.

Other considerations

The only existing administrative guidance explicitly addressing the deductibility of covered losses and expenses is an IRS technical advice memorandum.[29] This memorandum concludes that the assisted institution may deduct losses and expenses that are reimbursed with assistance payments from FSLIC. A technical advice memorandum, however, generally is not considered authoritative guidance.[30] Nonetheless, this ruling provides some support for the position of those arguing that covered losses and expenses are deductible.

Assisted institutions may also argue that the deduction of covered losses and expenses is supported by legislation enacted subsequent to the enactment of old section 597. For example, Congress enacted legislation in 1986 providing that an otherwise allowable deduction would not be disallowed under section 265(a)(1) solely because it is allocable to income that is exempt from tax under old section 597.[31] Generally, section 265 of the Code disallows a deduction for any expense that is allocable to exempt income. The purpose of section 265 in disallowing deductions for expenses incurred to earn exempt income is to prevent taxpayers from deriving a double tax benefit from an exclusion from income.[32] It may be argued that the legislative decision to exclude assistance exempt under old section 597 from the ambit of section 265 represents a decision to approve a double benefit analogous to the allowance of a deduction for covered losses and expenses, and that this decision supports the conclusion that Congress had a similar result in mind when it enacted old section 597.

As a matter of statutory interpretation, however, the situations in which postenactment expressions of intent by a subsequent Congress are relevant in ascertaining the intent of a prior Congress are limited. We believe that, in this case, the actions or intent of the 99th Congress in enacting statutory provisions related to old section 597 should not be accorded any weight in assessing the intent of the 97th Congress, when it enacted old section 597, regarding the treatment of covered losses and expenses since the 99th Congress did not directly consider the treatment of those losses and expenses.

Similarly, in 1988, Congress amended old section 597 to reduce the tax benefits associated with the exclusion of assistance payments from income.[33] This legislation, in general, required that certain tax attributes of an assisted institution be reduced to the extent of 50 percent of any assistance that is received by the institution and is excluded from gross income under old section 597 (the "attribute reduction rule"). Proponents of the deductibility of covered losses assert that this legislation indicates that Congress believed that covered losses and expenses are deductible because otherwise the attributes reduction rule would have the effect of reducing an assisted institution's tax attributes for assistance payments that provided the institution with no tax benefits. This argument, of course, assumes that the attribute reduction rule would apply to reimbursements of covered losses and expenses. The rule would apply, however, only if those reimbursements represent gross income that is exempt from tax under old section 597. If those reimbursements are treated either as an amount realized on the sale of an asset or as compensation for a loss, they would not be treated as gross income that is subject to exemption under old section 597.

In sum, while the subsequent legislative developments involving old section 597 do provide some measure of support to those asserting the deductibility of covered losses and expenses, that support is not determinative because Congress, when it enacted the subsequent legislation, did not provide a specific and official expression of its intent regarding the treatment of covered losses and expenses. Furthermore, we are impelled, once again, to state that, in our view, it seems likely that if Congress had specifically considered the issue, it would have expressed a contrary view.

2. Special considerations applicable to write down of covered assets

When an institution is ordered to write down a covered asset, the FDIC is generally required to make an assistance payment to the institution in the amount of the write-down. If the covered asset is a loan (*i.e.*, a covered loan), the issue is whether the institution may claim a bad debt loss on the write-down of the loan.[34]

Under the Code, a taxpayer is allowed a deduction for any debt that has become wholly or, to the extent provided in regulations, partially worthless during the year.[35] It is likely that assisted institutions will argue that they are entitled to claim a bad debt loss when they are ordered to write down covered loans. Under Treasury regulations, loans made by a bank or other regulated financial institution are conclusively presumed to be worthless to the extent that they are written off on the institution's books in response to an order of the institution's supervisory authority.[36] Arguably, the order to write down a covered loan represents an order that triggers a conclusive presumption under Treasury regulations that the debt is worthless to the extent of the write-down.

It does not appear, however, that a write-down ordered pursuant to rights granted under an assistance agreement should trigger the conclusive presumption of worthlessness. The purpose of the conclusive presumption is to conform tax and regulatory standards to the extent possible.[37] When an institution is ordered to write down a covered loan in accordance with the requirements of an assistance agreement, the write-down does not reflect an exercise of regulatory standards by the institution's supervisory authority in its capacity as such. Rather, the write-down is a product of rights and obligations created pursuant to an arm's length transaction between the institution and FSLIC.

If the conclusive presumption of worthlessness does not apply, all "pertinent evidence," including the value of the collateral and the condition of the debtor, are taken into account in determining worthlessness.[38] A taxpayer is not entitled to claim a deduction for a bad debt loss if the taxpayer has a reasonable prospect of being made whole of the loss.[39] Accordingly, it is appropriate in valuing a covered loan to take into account the institution's right to receive assistance compensating it for any loss on the disposition or write-down of the loan.[40]

D. Clarifying the Tax Treatment of Reimbursed Losses and Expenses

The RTC Report identified the acceleration of covered asset dispositions as one of the best options available for reducing the overall cost of the 1988/89 transactions.[41] The RTC Report also recognized the severe adverse impact that the deduction of covered losses and expenses could have on the cost of the 1988/89 transactions, stating that clarification of this issue is "vital." [42]

From the point of view of sound tax and financial policy, taking into account both the costs to the government and the appropriate economic incentives for assisted institutions, it is clear that assisted insitutions should not be allowed to deduct losses or expenses that are reimbursed by the FDIC. Unfortunately, as a legal matter, the deductibility of covered losses and expenses under existing law is less clear. Although the IRS has never taken a published position allowing these losses, it has issued at least one technical advice memorandum holding that the covered losses and expenses are deductible. In addition, IRS personnel apparently conveyed informally both to FSLIC and to potential acquirers that covered losses and expenses would be deductible. Material provided by FSLIC to prospective acquirers explicitly indicated that such losses would be deductible, although that same material indicated that the economic benefits of such deductions would flow to FSLIC and not the acquirers.[43] Under these circumstances, acquirers in the 1988/89 transactions regard the deductibility of covered losses as part of the consideration they received in connection with the acquisition of the troubled financial institutions involved in those transactions.[44] We are cognizant that denying institutions deductions for losses and expenses that are reimbursed by the FDIC will be perceived by some as a repudiation of the government's agreements.

Nonetheless, the Treasury Department has concluded that assisted insititutions should not be allowed to deduct losses and expenses that are reimbursed by the FDIC. In reaching this conclusion, the Treasury Department has carefully weighed the costs to the government of allowing institutions to deduct reimbursed losses and expenses against the costs of creating a perception that the government is not adhering to its bargain. The costs to the government of allowing assisted institutions to deduct covered losses and expenses is considerable. The costs of the perverse incentives that would accompany the deductibility of covered losses and expenses would likely dwarf the cost of the tax benefits associated with those deductions. Such perverse incentives are not only financially costly, but they also create the perception that the government is incapable of soundly managing the savings and loan failures. That the government may be perceived as reneging on its deal is unfortunate, but the costs of avoiding that perception are unacceptable.

Under these circumstances, the Treasury Department does not and should not feel bound by one technical advice memorandum and informal advice conveyed to acquirers by government personnel. The acquirers in the 1988/89 transactions were generally represented by sophisticated counsel who know well that they are not entitled to rely on informal advice either from the IRS or other government agencies or on technical advice

memorandums or on private letter rulings issued by the IRS to other taxpayers. The failure of acquirers, for whatever reason, to obtain private rulings or closing agreements confirming the deductibility of their covered losses and expenses represents an assumption of the risk that the government might someday challenge those deductions. The Treasury Department does not believe that the American people should bear the burden of exculpating those taxpayers from their assumption of this risk. The IRS is prepared to challenge and litigate, if necessary, the deductibility of covered losses and expenses.

While the Treasury Department has determined that assisted institutions should not be allowed to deduct covered losses and expenses reimbursed by the FDIC, our decision does not settle the issue. Our view will surely be challenged in the courts and that litigation could drag on for a number of years. The uncertainty that this environment creates will make it very difficult for the RTC to implement measures to reduce the cost of the 1988/89 transactions. Therefore, congressional clarification of this issue is extremely desirable, if not essential. We do not believe that Congress, when it enacted the special tax benefits that were available in the 1988/89 transactions, intended to sanction the deductibility of covered losses and expenses. But, if so, Congress should tell us now so we can avoid costly litigation. Otherwise, Congress should enact clarifying legislation disallowing deductions for covered losses and expenses.

V. TREATMENT OF YIELD MAINTENANCE

A. Overview

In the 1988/89 transactions, FSLIC generally guaranteed the acquirer a minimum return or yield on the book value of covered assets. FSLIC agreed to pay yield maintenance to induce acquirers to purchase the assets (and thereby avoid the burden of purchasing those assets itself) because it believed that the acquiring institutions were better positioned to manage the assets properly. The guaranteed yield are based on a specified base rate (*e.g.*, the Texas Cost of Funds) plus additional amounts ranging up to 275 basis points. In most transactions, the additional basis points decline over the term of the assistance agreement. The guaranteed yields was set so as to provide the acquiring institution with sufficient income to cover high funding and operating costs, including the costs of managing the covered asset portfolio. In most cases, the guaranteed yield is significantly higher than the institution would receive on a market investment of an amount equal to the book value of the covered assets.[45]

B. Clarifying Tax Treatment of Yield Maintenance

Guaranteed yield maintenance has created incentives for institutions to engage in behavior that will tend to increase the costs to the government of the 1988/89 transactions.[46] First, yield maintenance gives the assisted institution an incentive to delay disposition of covered assets since the institution cannot readily replace the high tax-free guaranteed yields with comparable taxable yields. Second, the assisted institution has an incentive to minimize actual yield on these assets. This results in larger tax-free yield maintenance payments, thereby minimizing the taxable income of the institution or increasing tax losses that may be used to offset its other income or income of affiliated entities.[47] Apparently, the adverse incentives attributable to yield maintenance are being compounded by the fact that some assisted institutions are taking the position that actual yield on covered assets is not taxable to the assisted institutions, on the grounds that these institutions collect actual yield as agents of the FDIC.[48] This view, which in substance treats actual yield as if it were tax-free assistance, is at odds with both the language and purpose of old section 597(a). That provision defines assistance as amounts received from FSLIC (or the FDIC) pursuant to section 406(f) of the National Housing Act. The actual yield earned by an institution from its investment is not "received" from the FDIC and is therefore not received "pursuant to" section 406(f) of the National Housing Act.[49] The RTC Report recommends that appropriate authorities clarify that only the net difference between guaranteed and actual yield constitutes tax-free assistance income.[50] The Treasury Department will issue an administrative pronouncement holding that the actual yield on assets covered by a yield maintenance guarantee is taxable to the assisted institution. This result is sufficiently clear under present law that confirming legislation is not necessary.

FOOTNOTES

[1] *See Report to the Oversight Board of the Resolution Trust Corporation and the Congress on the 1988/89 Federal Savings and Loan Insurance Corporation Assistance Agreements* (RTC Report).

[2] *See* RTC Report (vol. I) at 9 and 68.

[3] For a more detailed discussion of the assistance provided in the 1988/89 transactions *see* RTC Report (vol. I) at 30–49.

[4] *See* RTC Report (vol. I) at 3–4.

[5] Old section 597 was enacted pursuant to the Economic Recovery Tax Act of 1981.

[6] *See Report to the Congress: Thrift Resolutions*, United States General Accounting Office (September 1990). For a more detailed discussion of the tax rules applicable to troubled financial institution *see* Staff of the Joint Committee on Taxation, *Current Tax Rules relating to Financially Troubled Savings and Loan Associations* (February 16, 1989).

[7] In the 1988/89 transactions, the assistance agreements generally require the assisted institutions to share a portion of their tax benefits with FSLIC. *See* RTC Report (vol. I), at 6, 47–49. Many assisted institutions that have entered into tax sharing arrangements with FSLIC are members of an affiliated group of corporations that files consolidated federal income tax returns. In many of those cases, the tax benefits that are subject to sharing are used by an affiliate of the assisted institution, rather than by the institution itself. In some cases, the other members of the affiliated group are not reimbursing the assisted institution for their use of its tax benefits. The RTC Report expressed concerns regarding these tax sharing arrangements and recommended that the FDIC and the Office of Thrift Supervision review the tax sharing arrangements to ensure that they are consistent with sound banking practices. *See* RTC Report (vol. I), at 118–120. As this does not raise issues of tax policy, this report does not address the issue.

[8] *See* I.R.C. §1001.

[9] *See* I.R.C. §593 and Treas. Reg. §1.593–7(b)(2).

[10] *See* I.R.C. §166.

[11] Many of the legal arguments discussed below are raised in one of the consultant's reports prepared and submitted to the RTC in connection with the preparation of the RTC Report. *See* RTC Report (vol. I), Appendix V. Contrary arguments have been presented by the law firms Skadden, Arps, Slate, Meagher & Flom and Johnson & Gibbs, which represent taxpayers who acquired thrift institutions in 1988. *See* letter dated November 6, 1990, from Skadden, Arps, Slate, Meagher & Flom to Kenneth W. Gideon, Assistant Secretary (Tax Policy); letter dated December 18, 1990, from Johnson & Gibbs to Michael J. Graetz, Deputy Assistant Secretary (Tax Policy).

[12] This exemption was extended to FDIC assistance to banks in 1988. *See* §4012(b)(2) of TAMRA.

[13] *See* I.R.C. §118.

[14] *See* I.R.C. §362(c).

[15] First, the exclusion of assistance payments from income without requiring a reduction in the acquired institution's net operating losses prevents those losses from being absorbed or otherwise reduced as a result of the assistance payments. Second, the special reorganization rules that were applicable to the acquisition of a troubled domestic building and loan association in an assisted transaction allowed the limitations of section 382 to be avoided in cases where it would have been impossible to do so otherwise.

[16] *See* H.R. Rep. No. 215, 97th Cong., 1st Sess. 283–4 (1981). *See also* Staff of the Joint Committee on Taxation, *General Explanation of the Economic Recovery Tax Act of 1981* 151–3 (December 29, 1981).

[17] I.R.C. §1001.

[18] I.R.C. §1012.

[19] I.R.C. §1001(b).

[20] *See, e.g.*, private letter rulings 8914021 (December 29, 1988) and 8914020 (December 29, 1988). There is little doubt that a payment received from the FDIC to purchase a covered asset constitutes an amount realized on the sale of the asset, at a minimum to the extent of the fair market value of the asset. As noted previously, because all FDIC payments with respect to covered assets arguably constitute "assistance" for purposes of old section 597, institutions may take the position that they are entitled to claim a tax loss equal to the entire tax basis of a covered asset when they sell the asset to the FDIC. The portion of the payment that does not exceed the fair market value of the covered asset, however, clearly represents consideration paid for the asset and must be treated as an amount realized for tax purposes.

[21] Under section 61(a)(3) of the Code, gross income includes gains derived from dealings in property. Under section 1001(a) of the Code, a taxpayer recognizes gain on the sale or other disposition of property only to the extent that the amount realized from the sale exceeds the basis of the property sold.

[22] *See* Rev. Rul. 76–144, 1976–1 C.B. 17 (disaster losses compensated for by tax-exempt disaster relief payments were not deductible). *See also Shanahan v. Commissioner*, 63 T.C. 21 (1974); Treas. Reg. §1.165–1(d)(2)(i). In addition, *see* note 24, below, for analogous authority regarding the deductibility of reimbursed business expenses under section 162 of the Code.

[23] *See* I.R.C. §162.

[24] *See, e.g., Manocchio v. Commissioner*, 710 F.2d 1400 (9th Cir. 1983) (flight training expenses were not deductible to the extent reimbursed by tax-free veterans assistance); Rev. Rul. 80–173, 1980–2 C.B. 60, 61 (similar facts, but stressing that in such a case a taxpayer "suffers no economic detriment and incurs no expense"); *Wolfers v. Commissioner*, 69 T.C. 975 (1978) (expenses for increased rent, moving costs and professional fees were not deductible to the extent reimbursed by tax-free relocation assistance); Rev. Rul. 78–388, 1978–2 C.B. 110 (moving expenses were not deductible where taxpayer had a fixed right to reimbursement with tax-free relocation assistance).

[25] *See, e.g., Manocchio, id.* at 1402, quoting *Glendinning, McLeish & Co. v. Commissioner, 61 F.2d 950, 952 (2d Cir. 1932).*

[26] This argument relies, in part, on *Idaho First National Bank v. Commissioner*, 95 T.C. 185 (1990), where the Tax Court stated that "[t]he FDIC insures depositors, not banks, and an FDIC assistance payment is not an insurance payment." Two points should be noted when considering the quoted passage. First, the passage appears in the opinion's findings of fact without any legal analysis and does not appear to be a finding that was required for the court to reach its decision. Second, the assisted transaction at issue in that case did not require the FDIC to reimburse or otherwise compensate the assisted institution for any losses incurred on the disposition of its assets. The FDIC assistance provided in that transaction took the form of a contribution to the assisted institution immediately prior to its acquisition. Under these circumstances, we do not believe that the Tax Court's decision in *Idaho First National Bank* should be accorded any precedential value with respect to the issue under consideration.

[27] *Compare Forward Communications Corp. v. United States*, 608 F.2d 485, 501 (Ct. Cl. 1979) (insurance is merely "one example" of the forms of compensation that will prohibit a deduction for a loss under section 165(a)) *with Shanahan v. Commissioner, supra* (the only form of compensation that will prohibit a section 165(a) deduction is compensation that is similar to insurance).

[28] The resemblance should be sufficient for capital loss coverage to be considered similar to insurance for purposes of section 165(a). *See, e.g. Estate of Bryan v. Commissioner*, 74 T.C. 725 (1980) (reimbursement of amounts embezzled from client out of trust fund maintained through annual contributions required of all practicing attorneys treated as compensation

similar to insurance for purposes of the estate tax counterpart to section 165(a)).

[29] *See* technical advice memorandum 8637005 (May 30, 1986). We also understand that the deduction of reimbursed covered losses was permitted in one closing agreement entered into by a taxpayer and the IRS.

[30] Generally, a technical advice memorandum (or private ruling) is not precedent and may be relied upon only by the taxpayer to whom it is issued. *See* I.R.C. §6110(j)(3); Treas. Reg. §301.6110-7(b).

[31] *See* §904(c)(2)(B) of the Tax Reform Act of 1986. Congress subsequently amended section 904(c)(2)(B) by striking out "Section 265(a)(1)" and inserting in its place "Section 265," thereby providing that the provision applied to all of section 265. *See* §4012(c)(2) of TAMRA.

[32] *See, e.g.*, Rev. Rul. 82-3, 1983-1 C.B. 72, modified by Rev. Rul. 87-32, 1987-1 C.B. 131.

[33] *See* old section 597(c), as amended by TAMRA.

[34] In the case of covered assets other than loans or covered loans with respect to which bad debt losses may not be claimed on the write-down, the issue is whether the assistance payment made in connection with the write-down is taken into account in determining whether the institution is entitled to claim a loss on the subsequent disposition of the asset. Therefore, in those cases, the tax considerations implicated by a write-down of the asset are similar to those raised where contemporaneous assistance payments are made to compensate for a loss on the sale or other disposition of a covered asset.

[35] I.R.C. §166.

[36] *See* Treas. Reg. §1.166-2(d)(1).

[37] *See* Rev. Rul. 80-180, 1980-2 C.B. 66.

[38] *See* Treas. Reg. §1.166-2(a).

[39] *See e.g., Aerotron Grantor and Stockholder Trust v. Commissioner*, 56 T.C.M. 789 (1988); *Exron Corporation v. United States*, 7 Cl. Ct. 347 (1985), *rev'd and remanded on other grounds*, 785 F.2d 277 (Fed. Cir. 1986). *See also* Treas. Reg. 1.166-2(b). *But see* Rev. Rul 80-24, 1980-1 C.B. 47, 48 (which relies on *Zeeman v. United States*, 275 F.Supp. 235 (S.D.N.Y. 1967), *remanded on other grounds*, 395 F.2d 861 (2d Cir. 1968)), for the proposition that a creditor may deduct a bad debt loss on a note, regardless of whether the creditor has a reasonable prospect of succeeding in a suit against the seller of the note for rescission of the sales contract, where the rescission suit does not deal with "the debt owed by the debtor to the creditor or with collateral, guarantees or indemnity contracts directly related to the debt as such". The FDIC's obligation to reimburse an institution for any loss on a covered loan, however, effectively constitutes a guarantee of that loan and, as such, should be taken into account in determining whether the loan is worthless.

[40] The IRS has taken into account an institution's right to assistance in valuing covered assets for other purposes. *See* authority cited at note 20, above.

[41] *See* RTC Report (vol. I), at 72.

[42] *See* RTC Report (vol. I), at 117-118.

[43] *See Information and Instructions for the Preparation and Submission of Proposals for the Acquisition of one or more Savings Institutions in the Southwest* (prepared by the Federal Home Loan Bank Board and FSLIC).

[44] Acquirers of troubled thrifts also take comfort from a statement by the Joint Committee on Taxation suggesting that such losses are deductible, even though that statement was made in February 1989 and therefore obviously not relied upon by taxpayers. *See* Staff of the Joint Committee on Taxation, *Current Tax Rules Relating to Financially Troubled Savings and Loan Associations* 38-39 (February 16, 1989).

[45] *See* RTC Report (vol. I), at 33-34 and 72-73, for a more detailed discussion of yield maintenance.

[46] *See* RTC Report (vol. I), at 73-74.

[47] Although assistance agreements provide for a declining yield spread over time, this has not yet materially reduced yield maintenance payments, and, therefore, has not thus far tended to mitigate the adverse incentives. *See* RTC Report (vol. I), at 74.

[48] *See* RTC Report (vol. I), at 116-117.

[49] *See, e.g.*, §406(f) (1) and (2) of the National Housing Act, 12 U.S.C. §1729(f) (1) and (2) (FSLIC is responsible for determining the terms and conditions of assistance received pursuant to section 406(f)).

[50] *See* RTC Report (vol. I), at 116-117.

[From the Wall Street Journal, July 10, 1991]

LEFT IN LIMBO: THRIFT-RESCUE PLAN IN SOUTHWEST CREATES NEW GROUP OF VICTIMS

(By Christi Harlan)

AUSTIN, TX.—It is summertime, and the living should be easy for the 500 homeowners at the Circle C Ranch: To take the edge off the Texas heat, there is an Olympic-size swimming pool. For golfers, a championship course. And for the 1,180 elementary-school students who spent the past school year crowded into a building designed for 700, the prospect of a new school.

Unfortunately, the pool is open only because homeowners took up a collection to get the water flowing this summer; the golf course is still $400,000 away from completion, and the school, whose plans were begun in early 1989, won't open until September 1992 at the earliest.

Residents of the suburban enclave are furious. Beginning in 1987, they paid an average of $120,000 for their homes and expected to be enjoying the promised amenities well before this summer. "We're going to end up with mortgages on our homes that are higher than the value of the property," says a seething Susan Hoover, a Circle C homeowner for three years.

Such is life in a "covered asset"—a term coined by the federal government in 1988 in devising the so-called Southwest Plan for salvaging Texas thrift institutions by combining many defunct institutions into a few healthy ones. To lure buyers for the new thrifts, regulators offered to cover the losses on much of the institutions' bum real-estate loans through "yield maintenance" payments. Hence, the term "covered asset."

Although such inducements did persuade reluctant investors to buy the reconstructed thrifts, the Southwest Plan's many critics contend that they also encourage the buyers to simply sit on their covered assets and do little or nothing to improve the properties before the agreements expire in 1998. With taxpayer covering losses on operations and on eventual sales, a thrift institution is almost guaranteed a profit from its lucrative management fees and tax breaks. So why would a profit conscious thrift expend time and money to improve and market a project that, left alone, generates a guaranteed income stream?

The result: Throughout the Southwest, a lot of real estate, ranging from day-care centers to office buildings, is sitting in limbo. And these properties have created a new group of savings-and-loan victims. However sound financially the reconstructed thrifts' tightfistedness may be, it doesn't help people who live in or do business in the properties involved and who now see the value of their homes and businesses being strangled by a once-supportive lender and, by extension, by the government.

At Circle C, the target of the homeowners' anger—regularly expressed in news releases, letter-writing campaigns and meetings in the high-school cafeteria—is First Gibraltar Savings Bank, one of the products of the 1988 plan. That institution was created when Gibraltar Savings Association failed and was sold, along with four other defunct Texas thrifts, to a group of investors led by Revlon Inc. Chairman Ronald O. Perelman in December 1988.

Since then, Circle C residents estimate, First Gibraltar has collected at least $73 million in yield maintenance on their subdivision alone. The bank won't discuss Circle C, citing litigation with the developer.

"I think if average taxpayers understood how yield maintenance worked, they'd really be irate," Ms. Hoover says. "If you look at the numbers, this is a big ripoff for taxpayers."

As of Dec. 31, in fact, the government had doled out $14.5 billion in yield maintenance to the 1988 thrifts, in addition to billions of dollars in tax credits. The thrifts, now at least 2½ years into their 10-year government agreements, still hold $12.46 billion worth of covered assets.

The thrift owners argue that critics, including Congress, wrongly see yield maintenance as pure profit and don't consider that the payments offset losses on some spectacularly poor investments by the defunct thrifts and reimburse the new owners for managing and marketing the properties. "We would lose everything on one lousy piece of [repossessed property] if we didn't have yield maintenance," says Mark Mesec, general counsel for Amwest Savings Association, a Southwest Plan thrift.

Nevertheless, the size of the yield-maintenance payments and other breaks prompted Congress to call for renegotiation of Southwest Plan deals as a provision of the thrift-overhaul legislation of 1989. Now, 23 months later, the Resolution Trust Corp. is finally beginning those renegotiations, buying back notes issued to shore up the institutions' net worth and trying to trim fat off the payments for covered assets. But the latter maneuver hasn't been easy. One thrift, Bluebonnet Savings Bank, sued in Dallas Federal court early last month to protect its 1988 agreement, and other thrift owners have dropped thinly veiled threats that they, too, will go to court to protect their agreements.

Meanwhile, many homeowners and office-building tenants are wondering where all that money is going. In many cases, they complain, it certainly isn't going into keeping up the properties or marketing them aggressively. Punitive measures written into the agreements were supposed to prevent lackadaisical management, but the use of those measures has been spotty at best, mostly because oversight of the '88 thrifts has already passed through three agencies. In fact, the RTC has spent $4.6 million on legal and accounting advice on how to restructure the '88 thrift deals but is still trying to invent a yardstick for measuring the institution's efforts to sell covered assets.

Bluebonnet's marketing effort could be questioned under almost any measure. The bank has attracted congressional scrutiny because of the lobbying by a former aide to President Bush on behalf of the eventual buyer, James Fail. The Phoenix investor put up just $1,000 in cash to acquire Bluebonnet and borrowed another $35 million toward the purchase price.

Bluebonnet collected more than $177 million in yield maintenance last year alone. But the Dallas-based savings bank didn't list its $1.3 billion portfolio of covered assets with real-estate brokers for more than two years. Before that, it had tried to market its Texas properties with in house personnel and very little luck, according to brokers. The bank declines to discuss its government agreement.

Among Bluebonnet's holdings are 41,000 square feet in a strip shopping center in the Dallas suburb of Garland. The only tenants are a travel agency and a dry cleaner, separated by an abandoned photography studio. Several other tenants also have fled. The center is called Towngate Plaza, but you wouldn't know that from driving by: There is no sign except for the leasing agent's. "We had hoped that things would be a lot different than they are," says Debbie Day, fiscal operations manager for All About Travel Inc.

Prospective tenants have told the travel agency employees they can't persuade Bluebonnet to finance the finish-out of the vacant space, a fairly common arrangement in

commercial real-estate deals. And while Towngate languishes, neighboring strip centers are filling up. "It's a shame because we know of people who want to move in," Ms. Day says.

A sales agent who represents Bluebonnet and other Southwest Plan thrift institutions says their unwillingness to finance improvements of vacant properties is driving away the "mom and pop" retailers whose presence could spur property sales. But a leasing agent says the thrifts simply want to reduce their risk. "The tenants who tend to gripe or tend to complain, it's usually because they don't have the credit to justify a finish-out," he adds.

That wouldn't seem to describe Larry Walker, owner of Walker Marine in Garland, who says his clean credit record was of little help in negotiating a finish-out of an abandoned cafeteria where he wanted to open a second sport boat dealership. Mr. Walker says he first sought to buy the building (originally financed for $1.2 million, now listed at $150,000), but gave up after several tries at renegotiating the appraised value. When he decided to lease instead, negotiations for $50,000 of remodeling dragged on for months, partly because the thrift needed government approval for the remodeling loan.

Not all Southwest Plan thrift institutions are as tight with a dollar, however. Amwest Savings sought and won government approval to spend $1.1 million on finishing out the Atrium at Collin Ridge, a five-story office building in Plano, another Dallas suburb. Just 22% of the glass and marble building was leased when Amwest took it.

But the Atrium also illustrates why the Southwest Plan deals appear so lucrative. The building was financed for $35 million by its original lender; it now is appraised at $8 million, according to Amwest's Mr. Mesec. The government will reimburse Amwest for finish-out costs and also pay the thrift the difference between the sale price and the original loan amount when the building is sold. "It's not profit," Mr. Mesec says. "It's recognizing a loss" from previous years.

By spending government money to attract tenants, Amwest hopes to raise the Atrium's occupancy rate and appraised value—and fulfill its contractual requirement of maximizing its value for the government, Mr. Mesec says. "There will still be a loss one of these days," he says, "but it will be less of a loss."

In many cases, however, '88 thrifts seem to have decided to play it safe and just collect their fees. Southwest Plan critics often single out First Gibraltar, whose tax breaks have been widely criticized. The institution held $1.23 billion in covered real-estate assets as of Dec. 31, 1988, the day it was created. It says that as of March 31, it had reduced its real estate assets 13.6%, to about $1.07 billion. Last year alone, First Gibraltar collected $198.9 million in yield maintenance, the largest amount of any Southwest Plan thrift.

First Gibraltar Chairman Gerald Ford (who isn't related to the former U.S. president) contends that the bank has done well in its sales of covered assets. "We want to sell," he says. "We're not hanging onto a piece of land so we can get yield maintenance for another year."

Mr. Ford and officials at other Southwest Plan thrifts say government approval for all marketing and management plans remains one of the biggest hurdles in the sales of covered assets. Mr. Ford says First Gibraltar would be willing to renegotiate its covered-asset agreement in exchange for more leeway from the government. "We're not wedded to a yield-maintenance concept," he says. "There probably is a better way to do it."

At Walden on Lake Houston, an upscale residential development northeast of Houston, First Gibraltar has yet to begin marketing property even though it foreclosed on the subdivision 18 months ago, according to a thrift executive's testimony in the Circle C bankruptcy proceedings. Nor is First Gibraltar selling any of its 2,000 available home lots there, according to real-estate brokers. New construction stands paralyzed. A First Gibraltar spokesman says a mangement company hired by the bank has been actively marketing individual home lots at Walden on Lake Houston, although the development as a whole hasn't been marketed.

Circle C residents, in voluminous correspondence with federal officials, accuse First Gibraltar of ignoring offers to purchase the subdivision while reneging on agreements to finance amenities such as the poolside snack bar, golf course and streets to the new elementary school. But most of the homeowners' energy is directed at pressuring federal thrift overseers into forcing First Gibraltar to revive construction at Circle C. With only 500 homes built out of a planned 8,000, residents face potentially crippling assessments for utilities, such as water and sewer lines, already in place.

First Gibraltar has told the homeowners that it isn't required to honor financing agreements struck by the defunct Gibraltar Savings, especially since the developer, Gary Bradley, defaulted on his loans. Mr. Bradley, in turn, blames the thrift for prematurely cutting off financing that would have allowed him to develop Circle C further and pay off the debt.

The lender-borrower dispute has landed in bankruptcy court in Austin, where Mr. Bradley's company sought refuge last fall when First Gibraltar moved to foreclose on Circle C. The Circle C homeowners have waded into that fray, too, petitioning to be in the disposition of the subdivision.

Federal regulators, though expressing sympathy for the homeowners, say they are satisfied with First Gibraltar's handling of Circle C. In a Feb. 15 letter to homeowners, Mary Creedon, an associate director of the Federal Deposit Insurance Corp., said the thrift and the agency "have an interest in maintaining and preserving the value of the collateral to prevent further loss, but we have no interest in funding capital improvements or acting as a developer unless such expenditures would realize more than a dollar-for-dollar return upon sale of the collateral."

Ms. Creedon's letter didn't mollify the homeowners, who are lobbying the FDIC and First Gibraltar to negotiate a settlement with the developer, Mr. Bradley, based on the bankruptcy court's assessed value of the property. In a reply to Ms. Creedon, Ms. Hoover wrote: "With the structure of the assistance agreement with First Gibraltar and the continuous funds that the FDIC must pay them to hold these notes [for Circle C], it is simply not possible that you will ever be able to maximize return on the investment."

The letter was signed by Ms. Hoover on behalf of the residents' association, the Organization of Unified Circle C Homeowners, better known as Oucch.

[From the New York Times, July 29, 1991]

U.S. RENEGOTIATES SOME S.&L. DEALS TO REDUCE COSTS

(By Leslie Wayne)

With an angry Congress complaining, Federal regulators have begun renegotiating some of the biggest sales of failed savings and loans to private investors and have started to withdraw many financial breaks granted to other investors.

The Government says it is trying to save taxpayers billions of dollars. Exercising some of its options has already produced savings of more than $1 billion, the regulators say, and the renegotiations could produce as much $2 billion more in savings.

But the investors, who put up millions of dollars to buy moribund savings and loans, say the regulators are violating the spirit of the sale agreements and could push some of them into insolvency.

Even though the Government is empowered under the contracts to take these actions, many investors say they never figured the regulators would have the will—or the cash—to do so.

ALWAYS A BUSINESS RISK

"There was always a business risk that the Government would buy back assets," said Richard K. Kneipper, a lawyer at Jones, Day, Reavis & Pogue in Dallas, whose clients have included investors in some Texas savings and loans. "But no one figured that they would actually do it."

Some investors question whether regulators are motivated by a desire to silence Congressional critics of the deals, which were completed in 1988. At that time a special Government insurance fund lacked enough money to close the growing number of failed savings institutions in the Southwest, so regulators offered investors generous monthly subsidies and high-paying Government notes to entice them to buy the institutions and keep them alive. About 200 deals were struck.

Critics in Congress and elsewhere have labeled these arrangements sweetheart deals that they say enriched the investors at the expense of taxpayers. The regulators at the time said the deals were the best available option, and the investors themselves say they answered the Government's call only to be roundly criticized ever since.

And now the investors say the Government's actions have had a chilling effect on further investment, making more people reluctant to do business with the Government.

"It looks to me like they are really trying to destroy this industry," said Joseph Matlock, chief executive of the Franklin Federal Bancorp in Austin, Tex., and chairman of the Texas Savings and Loan League. "They are making sure that no private capital comes into this industry again."

And Scott Shay, a managing director at Ranieri, Wilson & Company, which invested about $90 million in cash in Houston's insolvent United Savings Association, complained: "It's a modern-day witch hunt. This is going to bankrupt a good number of thrifts, and the costs to the Government are going to be higher."

Goverment regulators do not see it that way.

"This is being done because it saves taxpayer money," said William H. Roelle, director of the resolution and operations division of the Resolution Trust Corporation, the Government agency overseeing the savings and loan cleanup. "We are exercising rights we have under these contracts and we want to do it in a way that does not create insolvencies or damage these institutions to the point that their survival is at stake."

COST OF THE DEALS RISES

Since 1988, the price tag for the roughly 200 deals has grown to $65 billion, as the market value of the real estate in their portfolios

continues to fall, which weakens the value of the savings institutions' assets.

As the cost to the Treasury mounted, so did the criticism in Congress, which saw these deals as an example of Governments largess and investor greed.

Among the deals being renegotiated are those with Ronald O. Perelman, the financier who is chairman of the Revlon Group; the Bass brothers of Texas, one of America's richest families, and Lewis S. Ranieri, the former vice chairman of Salomon Brothers. These discussions have just begun.

"We're in negotiation with all the big transactions, and as time has gone on the discussions are more intense," Mr. Roelle said. One main area is a plan to exchange warrants that the Government received to buy stock in these savings and loans for a reduction in some benefits—tax breaks and cash subsidies—that the Government provided.

EFFORT TO REDUCE SUBSIDIES

Aside from trying to renegotiate some deals, the Government is also exercising two cost-saving options it has under most contracts. It is forcing institutions to write down, or reduce the stated value, of their real estate portfolios to current market values. That action, in turn, reduces the amount of government "yield maintenance" subsidies investors receive. And it is prepaying high-cost Government notes given to investors to help provide capital for these savings and loans.

So far, the Government claims to have saved taxpayers $1.07 billion through these two options. And the swiftness and decisiveness with which the Government has moved is believed to be bringing the big investors to the negotiating table.

The largest renegotiation involves the acquisition of First Gibraltar Bank in Dallas, a $13 billion savings and loan bought by Mr. Perelman's group. Gerald J. Ford, chief executive of First Gibraltar, readily acknowledges that his group is satisfied with its existing agreement. It agreed to renegotiate, he said, "because of political sensitivities."

TO GET ON WITH OUR LIVES

Mr. Ford said he expected the negotiations to "cost us some money." But he added, "We are prepared to do that to get on with our lives" and to get out from under a cloud of uncertainy that limits First Gibraltar's ability to raise capital.

"We know that in attempting to minimize the cost to the government it will cost us money," Mr. Ford said. The Government has already reduced by about $400 million the value of First Gibraltar's assets. This reduces the "yield maintenance" subsidy the Government must pay, which is based on the value of the assets.

At American Savings Bank, a Bass brothers investment where the Government recently prepaid a $748 million note, negotiations began only two weeks ago. "We're willing to sit down and restructure if it is beneficial to the Government and doesn't basically change the financial arrangement of the deal," said Owen Blicksilver, a spokesman for the Basses.

In Texas, among the hundreds of smaller savings and loans, the Government's insistence on reducing asset values and the note prepayments are being greeted with dismay—and disbelief.

"If you own a thrift here, you are treated like you've got leprosy," said Mr. Matlock of Franklin Federal.

So far, the Government has forced institutions to reduce the value of real estate assets by $6.6 billion, which cuts the amount of subsidies received by these savings and loans by $372 million. The Government's actions strikes at the heart of many deals: a promise by the Government to protect the buyer of the institution against losses as he tries to sell troubled real estate assets. But critics of the deals have complained that in the difficult Texas real estate market many savings and loans have failed to market these assets and have instead been content to simply hold onto them and collect a Government check.

RETURN OF 9 PERCENT OR MORE

The subsidies have generally provided a turn of 9 percent or more on the value of the assets left unsold—a higher return than what Texas savings and loans could earn on most other investments.

Under the contracts, the Government was empowered to buy many of these assets, or reduce their value, but to do so required cash that the Government did not have. Recently Congress authorized $22 billion to meet Government obligations for these deals, and the Resolution Trust Corporation began to move.

These write-downs present savings institutions a series of business dilemmas, they say. For one, they reduce their subsidies, but the overhead costs for managing these real estate assets remain the same. And, in a peculiar twist, the Government is obligated to provide the savings and loan with a one-time check equal to the amount of the write-down—in accounting terms, it means that the loss is recognized today rather than at some point in the future. The institutions say they would rather have the subsidies than the one-time payment, which they say they cannot reinvest at the same high rate.

SAME OVERHEAD, LESS INCOME

"We've still got the same overhead, but we've got less income," said James Jarocki, chief executive of Americity Federal Savings Bank in Dallas, which is facing a $50 million write-down. "They are exercising their rights under the agreement and I cannot fault them for that. They are doing the right thing for the taxpayer.

"But now we are going to reinvest this money in loans, and there's a bit of a scramble going on where people are now tripping over themselves to put out loans."

Thomas P. Vartanian, a Washington lawyer and former general counsel of the Federal Home Loan Bank Board, said he thought the Government was being motivated by "political as well as economic realities." He said the "jury is still out" on the 1988 deals and the institutions might eventually be revived by a rejuvenated marketplace rather than cash spent by the Government.

But Mary A. Creedon, an associate director at the Resolution Trust Corporation, disagrees. "To save money, we have to spend up front and for us, there are a limited number of ways to save money," she said.

Mr. ROTH. Let me end by saying that we are offering the House proposal, which is substantially the same as the one included in the Bush administration's budget. The effective date in this amendment is the date of the Treasury report, March 4, 1991, in an effort to be fair to those who felt they were misled by Congress and the administration. I believe we could go back further, but I am willing to leave that to the courts to decide when the IRS pursues this their normal course of auditing these S&L purchasers.

I hope everyone will support this amendment, with the idea that it is the right thing to do and represents good government. Let us put an end to the incentive some have to allow assets to decay and have Uncle Sam pick up the tab.

Mr. President, I yield the floor.

Mr. DURENBERGER. Mr. President, I rise in support of the amendment offered by the Senator from Ohio. This proposal, which was included in the President's budget, would eliminate the double dipping abuse by thrifts which receive Federal assistance for taking on the troubled assets or properties of failed savings and loans.

In an effort to quickly resolve failed institutions, the Federal Saving and Loan Insurance Corporation guaranteed buyers of failed institutions a certain level of return for these troubled assets. These guarantees would either make up the difference when the purchaser adjusted the loan values to reflect current value or would supplement a certain promised level of return on nonperforming loans.

The double dipping problem arose, Mr. President, when the purchasers of failed thrifts not only accepted Federal assistance on the troubled loans, but also took a loss for the devaluation of the property on their income tax returns—even if that loss had been compensated by the Federal Government. If left unchecked, this double dipping would cost the taxpayers and the Government nearly $1 billion over the next 5 years.

This amendment, which was recommended by the Department of the Treasury, place purchasers of failed thrifts on the same level as all other taxpayers. It clarifies that thrift purchasers are not entitled to a tax deduction on losses which are compensated from other sources, such as insurance or from the Federal Government.

Mr. President, this amendment represents both good policy and simple fairness. I urge my colleagues to join me in support of this amendment.

Mr. BRADLEY. I rise in support of the amendment offered by Senator METZENBAUM. My only regret is that we have to once again be facing this issue.

There is no justification for allowing savings and loans and thrifts to get two bites at the tax apple—taking the loss against their income and treating the assistance provided by the Federal Savings and Loan Insurance Corporation under loss protection and yield guarantee agreements as nontaxable. Our lack of oversight has already led to the huge costs faced by taxpayers in the savings and loan bailout. This measure will at least prevent the taxpayers from having to pay twice for a portion of that cost.

I was one of the very few Senators who voted against the bill which brought us to this point. In 1988, the

Senate passed the Technical and Miscellaneous Revenue Act of 1988. That bill required thrift institutions to reduce certain tax attributes by one-half the amount of financial assistance received from the Savings and Loan Insurance Corporation. The other half, of course, received the unjustifiably favorable tax treatment which we are trying to put an end to today. When this provision was repealed by FIRREA, the thrifts took it as a green light to take the loss and exclude the assistance. The fact remains that we should have clarified this issue in 1988. I argued against such double dipping in 1988 and I support this amendment today. I am gratified that this time the proposal has the support of the Treasury and the House of Representatives. I hope that this time we get the equation right.

Mr. BENTSEN. Mr. President, this particular amendment has no budgetary effect. It is identical to the House provision. It will not add to the conference. It will be an agreed item in the conference. Having checked with the minority and the majority, I find it acceptable to each and therefore do not object to the amendment.

The PRESIDING OFFICER. Is there further debate?

If not, the question is on agreeing to the amendment of the Senator from Ohio.

The amendment (No. 1716) was agreed to.

Mr. DOLE. Mr. President, I move to reconsider the vote.

Mr. BENTSEN. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. The Republican leader is recognized.

Mr. DOLE. Mr. President, as I understand, it is now our turn on this side, and the Senator SPECTER has an amendment. And while he is on his way to the floor, I wonder if it might be all right for Senator SYMMS to make a short statement. He is not going to offer the amendment—just going to make a statement and not offer the amendment.

The PRESIDING OFFICER. The Senator from Idaho [Mr. SYMMS] is recognized.

Mr. SYMMS. Mr. President, I thank the Chair, and I thank my colleagues.

I was hopeful that today Senator GRAHAM from Florida and I would be offering an amendment to make a minor modification to the Tax Code which would have a substantial, positive impact on our country's transportation policy, environmental policy, and energy policy.

Our amendment would simply remove the 25 percent inclusion of tax-exempt bonds issued to finance intercity high-speed rail facilities from the state private activity bond cap.

High-speed rail facilities may be financed under current law with tax-exempt bonds. There are two conditions, however. First, the private owner must waive any claim to depreciation on the property purchased with the proceeds from issuing tax-exempt bonds. And, second, 25 percent of each bond issued must receive an allocation under the State's private activity bond cap.

And that is where the problem lies with current law. The amount of capital that must be raised for these projects is enormous, even a fraction smaller than the current 25 percent of all tax-exempt bonds would exceed state caps.

It is a similar problem, Mr. President, that we have now out in the West, in Washington State, with public utility companies needing to issue tax-exempt bonds to finance various improvements in their facilities in large part to meet some of the standards of the Clean Air Act mandates. But the trouble is they need too much capital to fit under the State's cap.

I want to make it clear that we are not offering this amendment today, but we do hope to be able to offer this amendment before the year ends on a more appropriate vehicle. I think it is important that Senators become aware of this issue. We want to perfect the existing policy. This is not a debate whether or not high-speed rail facilities should be financed through tax-exempt bonds. That issue has already been decided. Let me say this again. Current law allows for the high-speed rail facilities to be financed through tax-exempt bonds.

Currently, however, only airports and ports in lakes, rivers, and oceans are exempted from the State activity bond cap. These major transportation projects are too expensive to fit under any State cap. That is why they are exempt. For precisely the same reason, the high-speed rail tax-exempt bonds must be exempted from the cap. Our amendment that we will propose sometime later this year will accomplish this goal. It will put high-speed rail on a level playing field with those other important high-cost transportation projects.

The distinguished junior Senator from Washington State, Senator GORTON, has discussed with me the issue of public versus private ownership of these facilities. This issue is of great concern to him. And, I think it is something that deserves consideration and that we would be willing to work out with the chairman and other Members of the Senate.

Currently, airports are owned by a public entity, and the facilities are then leased to the private airlines that use those facilities. There have been some proposals in some of the States for high-speed rail where those facilities would be privately owned. I personally think it would be better policy if the law would allow for both types of ownership, private or pubic. But I think that is an issue that can be, worked out because those facilities, if they are publicly owned, can be leased to the private entity and then operated as though the ownership were in private hands.

But I think that is an issue that we have not quite resolved, and it is another reason why I will not offer this amendment today. Some will argue that this exemption for State bond caps for intercity high-speed rail is not comparable to the exemption already provided in law for airports and seaports. But let's look at the facts:

My colleagues may know the last major airport built in the United States was the billion dollar Dallas/Ft. Worth airport, completed in 1974. That facility, like nearly every other airport before it, was financed primarily with tax-exempt revenue bonds.

The Nation's next major airport will be a $4 to $4.5 billion project in Denver, for which, according to my information, nearly $3 billion in tax-exempt revenue bonds have already been sold. Now, the State bond caps did not exist when DFW was built and, of course, the Denver project is not subject to Colorado's bond cap, but the point is that neither of these projects—vital to the Nation's modern transportation system—would have been possible had the tax-exempt revenue bonds been limited by State bond caps which simply cannot accommodate capital construction projects of this magnitude.

In addition to the tax-exempt revenue bonds, airports built today are eligible to receive direct Federal support through the Federal-aid construction grant program. This grant program is funded with revenues collected from airport users around the country. Although these grants are unlikely to constitute anything close to a majority of the necessary construction funds, they are an important, direct source of supplemental Federal support.

By comparison, the infrastructure for high-speed rail—the right-of-way, the rail bed materials, the bridges, and other structures—can also be built with tax-exempt revenue bonds and are also high cost transportation projects of tremendous importance to our modern transportation network. Unlike airports, however, there is no program providing direct Federal subsidies for high-speed rail construction and the tax-exempt revenue bonds sold for high-speed rail projects must be counted against a State's bond cap.

In other words, current law creates an uneven playing field between competing modes of high-speed transportation by making it nearly impossible to finance high-speed rail construction using tax-exempt revenue bonds.

Senator GRAHAM of Florida introduced legislation to allow high-speed rail out from under the State's cap last year. I am a sponsor of that legislation as are many of my colleagues in the

Senate. It is an important piece of legislation that I think is important in the total intermodal transportation system that we are trying to help develop in the United States, and we will have to address it with this type of legislation, in a revenue piece of legislation. So I hope we will be able to do it before the year is over.

Now I want just talk a little bit about some of the criticisms that have been raised in the last week about this proposal.

Opponents of the amendment have suggested we are trying to subsidize the construction of rolling stock—meaning railcars and engines—whereas airplanes are constructed with such public support. Mr. President, there is no suggestion to support rolling stock with any revenue bond sales; just for the infrastructure that the rolling stock and the engines ride on.

Let me remind my colleagues, this amendment does not change current law with respect to the applicability of tax-exempt revenue bond financing for high-speed rail. Tax-exempt bonds can only be issued for high-speed rail infrastructure, which does not include the rolling stock. Our amendment does not change the law in that respect.

Rolling stock, just like airplanes, must be built without Federal participation; only the infrastructure to support these competing modes of transportation can be built using tax-exempt bonds. Our amendment would put high-speed rail infrastructure on a par with airports by exempting the rail bonds from the State bond caps. That is what the issue will be about when the Senate faces it later this year.

Mr. President, there is a problem, and I understand and I respect those people, many of whom are very good friends of mine and people I have a great of respect for, that have raised some opposition in the Senate and sent letters to all of us. I do not blame anyone for trying to keep out the competition.

But I think it also is true we need to go into this with open eyes. High-speed rail offers people a very good alternative for traveling relatively short distances. But it is competition. And particularly, competition that is made possible by improvements in technology in high-speed rail. And that should be something that we in the Congress should work toward, always making it possible to improve the ability of technology to progress and improve competition. It has been and it should continue to be a principle of our national economic policy.

This brings me to another argument that I have heard raised against the amendment. There is concern about removing the caps from privately owned facilities, about which I spoke to a little bit earlier because under current law, only publicly owned facilities are exempted from the State private activity bond cap.

But I want to remind the Senate—and I think that this is an issue where there is room to work something out to make it agreeable to all parties—but as ranking member on the Senate Subcommittee on Transportation and coauthor of last year's transportation legislation, we talked a great deal about this in the legislation.

One of the principal themes of the intermodal Surface Transportation Efficiency Act is the need for increased private participation in the development of private transportation infrastructure. We tore down, in that legislation, existing legal barriers and tried to provide financial and other incentives to get private capital in the transportation facilities and services.

I think the days of looking at transportation as purely a government enterprise are behind us. We must learn to think in terms of privatizing the encouraging private participation and bring in capital for new and better ways to move the people in the modern world in the next century. It is good for our competitiveness nationally, and it is good for our competitiveness in the transportation business itself. Our tax policy needs to be modernized and makes these little amendments as we go along, slight movements, so we can catch up with the transportation policy in that regard.

There will be a small revenue loss when this amendment is offered. We hope to have an offset when it comes so that will be taken care of and it will be able to comply with the Budget Act and comply with the 1990 budget agreement. But even if this were a slight revenue loss, I point out to my colleagues, of slightly over $100 million, according to the numbers, we would actually be buying a multibillion dollar investment that will create a tremendous amount of taxable income with a relatively small amount of Federal participation. Billions and billions of dollars will be unleashed into transportation infrastructure and investment in rolling stock and then profits, hopefully, made from the operation of these units, which would more than return the revenue back to the Treasury over the long haul.

Some people may say what is a Senator from Idaho doing, being interested in high-speed rail when Idaho will not be the place where the first high-speed rail projects will be built? I want to say this to my colleagues so they will know it is partly a constituent interest. Idaho happens to be the home base of Morrison-Knudsen Corp. They have won the contract to build the Texas high-speed rail system connecting Fort Worth, Dallas, San Antonio, Austin, and Houston. And I am only sorry we do not have the population base to have it built in our State. It is going to create $6.7 billion. Over 12,500 jobs will be created, and 2,500 when the system is operating in the State of Texas.

But, I think, looking at the big picture where the Nation is concerned, for the long haul, we made a big step last year with the passage of the transportation bill. We need to make this step this year so, going into the next century, we can see these projects facilitated like the British and the French as well as the rest of the world.

I have a chart here for those who are interested, to look at some of the routes that are taking place in Europe today. I have had the opportunity to visit the high-speed train in France and visit the Euro Tunnel connecting England and France. I say to my colleagues, if any of them get the opportunity to see what is happening over there. That application of technology can be applied in the United States in many of the high-density population areas at a great savings of energy, time, investment, and space.

It is very interesting that the space needed to build a 600-mile high-speed train in terms of acreage is less than that of the Dallas-Forth Worth Airport. The high-speed train in France with 600 miles of track laid that is now operating is less than the Charles de Gaulle Airport in terms of infrastructure. So it is a great space-saving mechanism for the future.

We are always hearing about the U.S. international competitiveness. Here we are again debating whether the United States should move forward on a project that the rest of the world has in place. Japan has their bullet train and the entire European Community is covered with high-speed rail lines and working on more. This chart I have on the floor illustrates the development of high-speed rail in the European Community. Is this yet another project that the United States wants to let slide by—so that in 10 years we can say we should have pursued high-speed rail?

Studies have shown that throughout the U.S. major transportation infrastructure will be needed through the next century to accommodate population growth. I am not from Florida, but we found from the hearings in the EPW Committee last year in the Transportation Subcommittee, in Florida, some people are projecting that they will need to build a 44-lane highway from Miami to Orlando to carry the new population. I think our two colleagues from Florida can tell you there simply is not room; that is not practical; that is not going to happen; it will not work. There has to be some alternative methods and we need to make it possible for those States feeling the impact of the population growth to be able to accommodate the people so they can move those people in a comfortable, safe, energy-efficient fashion. High-speed rail offers exactly that, an energy efficient, safe, environmentally sound way to move people. As I said, you can save space. A 600-mile

high-speed rail system requires less space than the most recently built major airport. I think that is a phenomenal fact, when one looks at it.

Mr. President, I have a few more comments I wish to make on this. I will try to be as brief as I can with my colleagues, but I see some of my colleagues are on their feet. I cannot emphasize enough we are talking about a new transportation infrastructure that does not exist anywhere in the United States. This is probably the least amount of Federal participation in any major transportation system. Highways are, as we know, built with tax dollars and supported by the users of those highways. Airports are almost entirely funded by tax-exempt bonds.

I know some of my colleagues will be concerned about this amendment. They are going to say when it comes up, this will only benefit Texas. That is not the fact. It is true the first project ready to go happens to be in Texas, but there are about 10 high-speed rail systems that are being studied with the feasibility of these projects now. Some are:

A Chicago hub system linking Minneapolis, St. Louis, and Detroit;

A system linking Miami, Tampa and Orlando;

A Seattle hub system connecting Portland and Vancouver;

A System linking Pittsburgh and Philadelphia; and

A linkage between Las Vegas and Los Angeles.

In the past, every time one of these systems gets going in the United States, the financing breaks down. Access to capital is what has been holding back this technology from American consumers. If Congress does not pass this amendment this year, there will probably not be any high-speed rail systems in the United States until the turn of the century. These projects that I have just listed probably will not make it without something being done to adjust and conform our tax laws to make it possible to raise the capital.

This amendment has strong support. I might also say I clearly would predict to my colleagues that, if it does not happen down the road somewhere here in this Congress when people do finally decide it is the thing to do, it will cost the taxpayers a lot more money if direct appropriations are made to build these projects than if we allow private sector investment to be generated and matched and grown with it.

For example, in the Texas project, which is a $6.7 billion project, less than $2 billion of the project will be funded with tax-exempt bonds and the rest of it will be taxable bonds or straight out equity financing. So it is a very good mix. And I think it is very positive, and it is the best way to do it.

The environmental support is strong for this proposal. All of the major environmental organizations: Friends of the Earth, the National Audubon Society, the Sierra Club, the National Wildlife Federation, the Environmental Defense Fund, and the Natural Resources Defense Council.

The environmental groups support this legislation because high speed rail would get people out of their cars and into trains. Trains require one-third as much energy as cars and one-fourth as much as airplanes. And for every person traveling by high-speed rail rather than by car there would be enormous reductions in carbon monoxide, hydrocarbons, and nitrogen oxides.

CRITICISMS

I want to close by addressing two primary criticisms that have been raised against this amendment.

One is that this is a big tax subsidy. That is just not true. Even under current law, high speed rail may be funded using tax-exempt bonds. We are not changing that. The tax exempt status of these bonds is not at issue. What is at issue is whether 25 percent of those bonds are stuck under the State cap.

I want to repeat, again, in the first project to go, which will be in Texas if we make it possible here with what we do in Congress this year, over 60 percent of the bonds to be issued for the Texas project are taxable.

A second criticism is that the increased competition would cause current air carriers to reduce services to surrounding areas. That is nonsense.

Competition will cause air carriers to redirect their resources to provide more services to other markets. When a business loses market share in one market it looks to other markets. This makes particular sense in the West where air travel should be concentrated on longer trips.

Mr. President, I will have a lot more to say about this later as the year progresses. But I just want to say in conclusion that I hope my colleagues will look at this with a very broad view and a long-range view for a small change in our tax policy to make a very positive step forward in what we can do to offer a new, high-technology, safe, efficient way to move people.

This amendment is good economic policy, good transportation policy, good energy policy, and good environmental policy—and good tax policy, and I hope my colleagues will support it.

For those reasons that is why Senator GRAHAM introduced the bill last year and it is good tax policy. So I hope when the time comes that the Senate will be in a position where we will be on a bill where we are shooting real bullets, as the saying goes, and we can address this issue and discuss it at length, or over a short period of time, and agree to the amendment. I thank the chairman for his indulgence. I yield the floor.

The PRESIDING OFFICER. The Senator from Texas.

Mr. BENTSEN. I speak with high esteem for the Senator from Idaho and his knowledge on this particular subject, his enthusiasm and expertise.

I previously suggested we hear from the Senator from Montana.

The PRESIDING OFFICER. The Senator from Montana is recognized.

Mr. BAUCUS. Mr. President, I want to make a few brief comments on this bill before we vote on it, hopefully later tonight, maybe tomorrow. The debate over the past 2 days has left me with a sense of disappointment.

Disappointment that what should have been a debate about improving the future competitiveness of our economy instead has been turned by some into what seems destined to be a futile exercise of partisan politics.

That is unfortunate, because the people of our country are hurting. They are hurting from a recession that stubbornly drags on. And they are hurting from an economy that has lost its competitive edge.

And if we are honest with ourselves, we know the root cause. In the 1980's, we went on a spending binge. Only it was not tax and spend, it was charge and spend. Government, business, individuals. None were immune from this siren call.

We did not invest, we spent. We did not save, we spent. The question now is: Have we learned enough from the dissolute, aimless 1980's to rebuild the economy into something sound and solid—not just for today, but for tomorrow as well?

The true measure of leadership requires a willingness to do the right thing. After all, the U.S. economy will outlast the November election.

Let us also remember that our greatness was built upon investment. Every major advance in our history, from the Louisiana Purchase to biomedical research, was the result of one generation having sense enough to leave the keys under the doormat for the next one.

Each generation made investment for the next.

Now it is our turn. And with this bill, we can take a first step of securing a better standard of living not just for ourselves, but for our children and their children as well.

The chairman of our committee, Senator BENTSEN, has worked long and hard on this bill, and I commend him for his work and that of the staff.

This is a bipartisan bill. Or rather, it should be. It includes seven of the items proposed by the President earlier this year. And it also includes provisions to spur investments and give some relief to the beleaguered middle-class families across the country.

Unfortunately, during the course of this debate, some have turned a blind eye to all this. Instead, they have pursued a course of political demagoguery. In my view, that is not what the coun-

try needs. It breaks faith with the majority of Americans who want us to stop the bickering and work for the common good.

Of course, this bill does not include everything I think it should. For instance, it does not make permanent some of the key tax credits, such as the R&D tax credit, the targeted jobs tax credit, and the low-income housing tax credit.

I also believe the time is overdue to provide the owners of farms and small businesses relief from the capital gains tax similar to that we currently afford to homeowners.

But in total, the bill will start us down the path of what is right for our country. It will broaden the availability of the IRA, the individual retirement account, as a means to increase long-term saving and help bring down the high cost of capital.

It will encourage investment in new, innovative companies through creative, and progressive, changes in the capital gains tax.

The bill will invest in people by expanding educational opportunities for those who seek a college education. And it helps relieve some of the hardship of those paying off student loans by making the interest on them tax deductible.

The bill also makes some important advances in providing more affordable health care for small businesses and those with preexisting conditions.

Finally, America's middle-income families are bearing the brunt of the current recession. Many of them live from paycheck to paycheck. They pay their bills. Save what they can, and they need help. The chairman's bill provides it with a $300 per child tax credit.

Furthermore, the bill pays for all the investment incentives and middle-class benefits by making millionaires and other very wealthy people shoulder a fair share of the tax burden. In all, it would raise taxes on the richest 1 percent of all taxpayers.

Mr. President, the key to our economic future is pretty simple, It is people, It is investment. It is saving. And it is discipline. Those are the budget priorities that matter.

This bill is not perfect. No compromise ever is. But it is a step in the right direction, and I hope the Senate will shortly approve it, either later tonight or first thing tomorrow.

Mr. President, I yield the floor.

The PRESIDING OFFICER. Who yields time?

The Senator from Florida [Mr. GRAHAM].

Mr. GRAHAM. Mr. President, I ask unanimous consent to proceed as in morning business.

The PRESIDING OFFICER. Without objection, it is so ordered.

The Senator from Florida is recognized.

Mr. GRAHAM. I thank the Chair.

(The remarks of Mr. GRAHAM pertaining to the introduction of S. 2350 are located in today's RECORD under "Statements on Introduced Bills and Joint Resolutions.")

Mr. GRAHAM. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. SPECTER. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER (Mr. SHELBY). Without objection, it is so ordered.

Mr. SPECTER. Mr. President, I have sought recognition to first make a relatively short statement about the pending legislation and then in an arrangement worked out by the majority and Republican sides to offer an amendment.

At the outset, Mr. President, I express my concern about the procedures which have been followed in reaching the point where we are in terms of the very substantial delays of the governing in addressing the very serious problems of the economic recession. I had stated back in November that I thought Congress should stay in session in January and also December to address these issues. After the President's State of the Union speech on January 28, I took the floor a few days later in January and expressed the view that I thought we ought to be working solidly through the February and March recesses.

I am glad that we are in session at the present time, as we have been scheduled for a recess, to address these issues. But it would have been my decisive preference that the Government would address these serious problems of the recession at a much earlier date because of the tremendous economic problems facing America as a result of a recession.

I note from my extensive travels in my own State of Pennsylvania the very serious problem of so many people being out of work. I know unemployment is replicated across the country. It is obviously a problem which requires corrective action to the extent it can be taken by the Federal Government.

Mr. President, it is my view that the problems which we face today did not start last year or the year before but have been growing over a very long period of time as a result of lack of productivity, as a result of lack of savings, as a result of lack of investment, and that these are very serious structural problems which really have to be addressed.

Mr. President, may I request that the Senate be in order?

The PRESIDING OFFICER. The Senate will be in order.

Mr. SPECTER. Mr. President, I saw a few pages of advertisement not long ago which addressed the economic problems of the United States that said we have to look to the first quarter. There was a big date of January 1 and the year was 2025—looking to the first quarter of the next century. I believe that really has to be directed, in terms of efforts, at long-term savings, research and development, productivity, and education to make the United States No. 1.

In the short run, there are some things which can be done. I think they are being addressed in the revenue measures which are present today. However, I do not think that they go far enough.

The purpose of an amendment which I will soon be offering is directed to stimulating consumer purchasing power to take us out of this recession.

But I express the concern about the timeliness of the action—that it would have been much preferable to address these issues last November instead of this March. I express further concern at the partisanship which affects the Senate on both sides of the aisle.

What we are finding here, Mr. President, are party line votes, and it has been suggested that the Democratic proposal, which was adopted in the Finance Committee along strict party lines, will be adopted. The alternative proposal advanced by the Republican leader, Senator DOLE, was defeated largely along party lines.

Then when the bill has been vetoed, the governmental officials in the executive and legislative branch will sit down to some serious negotiations.

When will that occur, Mr. President? Well, no one really knows, but it looks like something in late March or early April. Or who knows when that will be. From the negotiations which occurred in 1990, it could be a very long time. I think that is a matter which is very unfortunate for the American people—that we have had these very, very long delays.

I would not be surprised, Mr. President, if the public response is a pox on all Houses, on the Congress, on the executive branch; a pox on the Democrats and the Republicans alike for failure to address the issues in a constructive manner, to try to bring some resolution; if it is to be a matter of negotiation, at an early date.

We cannot turn the clock back to last November or last December or last January or last February. We are here on March 12. It would be my hope, Mr. President, that we would see partisanship set aside, and an effort to deal with the differences between the Democrat proposal and the Republican proposal so that we could come to some terms.

Last week, a group of Pennsylvanians met with me, who were here for the National Association of Home

Builders convention. They were very anxious to see an economic recovery program put into effect so that they could move ahead with home building in America. The consensus of the group was that they preferred the Republican plan.

But they would rather have the Democrat plan as opposed to no plan at all because they wanted to see some help on passive losses; they wanted to get the $5,000 tax credit for new home purchases; and they wanted to move ahead with some form of a recovery program. I believe that their views reflect largely the views of America.

When I asked them about the increased taxes in the Democrat plan, they said they would prefer not to have those increased taxes. But if they had to take those taxes in order to get some congressional action, they would take that.

But here we are considering these two tax programs, passing like two ships in the night where it seems that we will pursue the course of having a partisan plan adopted by the Democrats in the Congress, have a veto by the President, have that veto sustained, and then perhaps we will get down to some serious negotiations.

I strongly feel that procedure is very much contrary to the public interest, and that the public is going to express its disdain and its dissatisfaction with what has gone on here in Washington on this important subject.

Mr. President, in taking a look at the serious economic problems last fall, I noted that there was a pending proposal for a so-called Super IRA which had been cosponsored by more than 70 U.S. Senators. The Super IRA contained a provision that the set-aside money would be used for items such as first-time home purchases, tuition, and medical expenses.

Noting the tremendous acceptance by more than 70 Senators who have cosponsored that concept, the thought crossed my mind that that might be a good approach to utilize the existing IRA funds and allied funds for such purchases. We could very substantially stimulate consumer purchasing power.

We faced a situation, Mr. President, where we had a straitjacket since we had a budget agreement where there could not be any additional Federal spending; that is, we cannot prime the pump.

But I took a look at the amount of money set aside in IRA's, and 401(k)'s, and Keogh, analogous kinds of plans, and there was some $800 billion set aside there in savings. This was in addition to the estimates provided to me that there were some $3 trillion set aside in other retirement programs.

The savings in IRA's and their allied kinds of plans were set aside as a matter for retirement, rainy day accounts. It seems to me that we have more than a rainy day on our hands.

I would suggest that we have a cloudburst out there with what was going on in the economic recession, and that that fund might well be used for the benefit of America by permitting some limited utilization of those IRA's to stimulate consumer purchasing power.

Senator DOMENICI and I conferred. Senator DOMENICI is the Republican expert on these budget matters. Together we crafted a proposal which we introduced in November as Senate bill 1984 which would allow middle-income Americans to withdraw from their IRA's $10,000, providing the funds were used within 6 months for the purchase of the three items which had gained such widespread approval as the super IRA proposal, plus new cars.

We defined middle-income Americans as individual taxpayers earning $75,000 a year, or married taxpayers earning $100,000. We structured legislation which would exempt any taxpayers from a penalty where they were under 59 years of age, which is ordinarily the case, and that we would then move forward and have no taxes paid in the year 1992. Taxes would be paid in the 4 succeeding years, or in the alternative, give the taxpayers an opportunity to replenish one-fourth of the amount withdrawn, or in the case of $10,000, to replenish their IRA with $2,500 in each year.

We offered that bill, Senate bill 1984, as an amendment to a pending appropriations bill, and we received a vote of about 61 in opposition and some 31 in support, which was a strong showing, considering the arguments by the chairman of the Appropriations Committee that we really ought not to legislate on an appropriations bill, and considering the opposition of the Finance Committee, which contended that this was not in accordance with the Constitution, because the revenue bills had to originate in the House.

Since the vote on S. 1984, as offered on the appropriations bill, the Finance Committee has come forward and has, in effect, adopted a key point of the proposals which Senator DOMENICI and I have made, in that the pending legislation provides that existing IRA's will be rolled over into the new super IRA's, and those funds may be used for the purchase of new homes by first-time home buyers, or tuition, or medical expenses. Whatever happens with this amendment, there will be some funds available for consumers to use existing IRA accounts to stimulate consumer purchasing power.

On what was a very pleasant surprise to me, Mr. President, the proposal which Senator DOMENICI and I had made was read about in the CONGRESSIONAL RECORD, which was quite a shock, that somebody actually reads the CONGRESSIONAL RECORD. One wonders how many people watch it on C-SPAN II, but wonders even more how many people pay attention to the CONGRESSIONAL RECORD.

But the CONGRESSIONAL RECORD was read by a man named Philip H. Geier, Jr., the chairman and CEO of the Interpublic Group of Companies, Inc., who wrote to Secretary of the Treasury Brady on December 24, 1991. Mr. Geier stated that his company thought the idea was a very unique one and a very worthwhile one, and had commissioned a survey, under a slight modification, on homes and new cars, and had found that the Specter-Domenici proposal would yield expenditures of about $120 billion, which would be estimated to be very, very helpful and stimulating to consumer purchasing power.

Last Friday, Mr. Geier and the Interpublic Group of Companies, Inc., placed a full-page advertisement in USA Today—which I am advised cost them something in the range of $57,000—a form of statement which is somewhat better read than the CONGRESSIONAL RECORD, and that that full-page ad sets forth the essence of the proposal and the essence of the argument in a rather succinct form.

I will read it, and show it to those who might be able to see it on C-SPAN II. In bold, black letters is the full-page ad. The survey of 1,000 people which they conducted probably cost in the range of $35,000, based on the surveys which I have seen for political purposes.

This is what the full-page ad in USA Today says:

> In the next 6 months, Congress can help Detroit sell more than a million more new cars, help builders sell more than 500,000 new homes, and American tradesmen improve millions of old homes, without costing the taxpayers a penny, and without waiting for a new tax bill.

Mr. President, on that score, I might say that this legislation could have come up separately, but that is difficult to do given the constraints of the calender. Senator DOMENICI and I have utilized the procedure, since we have a tax bill, and it is right in line with other matters in the tax bill, to offer it at this time.

Going on with the full-page ad in the USA Today, in the smaller print, it says this, referring to the legislative proposal:

> It is remarkable, it is immediate, and it is a conservative estimate, based on an independent market research response to an amended version of the Specter-Domenici bill, S. 1984. When asked whether they would use up $100,000 of their money currently in IRA's and/or 402(k)'s, if there were no penalty, for the purchase of a new home, to improve their current home, or buy an automobile or truck, Americans overwhelmingly answered yes.
>
> Indeed, 38 percent more people than are currently in the auto market said this would turn them from being bystanders into buyers. That is 4.8 million more people spending 65 billion new dollars out of a projected total of over $200 billion in purchasing power that this suggested amended bill could unleash. This does not include additional mortgage money generated, either.

Additionally, they understood the only time qualification was that they do this in the next 6 months, and return the money to their accounts within 5 years to reinstate tax-free benefits without a taxable event taking place. And because people did not plan on withdrawing the money anyway, there would be no loss of revenue to the Government from the loss of withdrawal penalties.

The ad goes on to say, referring to this legislative proposal:

It is a provocative idea, a practical idea, and an affordable idea. Judging from the response to the market research, it is an idea for jump starting the economy whose time has come.

Then, in bold, black letters at the bottom, it says:

Congress should support an amended Senate bill, S. 1984, Americans using their own money to invest in themselves and the Nation. This message paid for by Philip H. Geier, chairman, Interpublic Group of Companies, Inc.

Mr. President, the idea was presented to Chairman Alan Greenspan, Chairman of the Board of Governors of the Federal Reserve System, both informally, and at a hearing of the Banking Committee. Chairman Greenspan was asked for an evaluation, and he submitted one dated February 4, 1992, from the Board of Governors of the Federal Reserve System, Division of Research and Statistics, marked:

Subject of Senator Specter's proposal regarding penalty free withdrawals from retirement accounts:

In the course of this analysis, it was estimated that there would be a personal consumption expenditure in the range of some $40 billion.

Mr. President, it would be the preference of this Senator that we not spend money from the IRA's, that they stay in savings. But given the nature of the recession which we have here today, it is my judgment that it would be very useful overall to have this limited expenditure undertaken somewhere in the range of $40 billion, as the Federal Reserve System estimates, to $120 billion, as Interpublic estimates.

The stimulus to the economy will produce many new jobs, will produce much additional purchasing power, will produce much revenue for the United States, and will enable people to save considerably. How much is not easy to answer, but I think much more than the amount which would be withdrawn from the IRA's

When you talk about consumption, it is obviously an offset, a tradeoff, as to what the savings are. But as I take a look at the various proposals which are pending, the President's proposal, the Democrat proposal, the Republican proposal offered by Senator DOLE, there are useful items, but there is not an element which has an immediate likelihood of doing something which is significant today.

I suggest, Mr. President, that this idea would do just that, as the full page ad from the newspaper articulates and as the survey shows on what people would do if they had an opportunity to utilize their IRA's for a very, very limited purpose.

It may be that if the Democrat proposal is adopted and the old IRA's are rolled over into the new IRA's, that there will be a substantial body of consumer purchasing power which will be expended for homes, tuition, and medical expenses. But the addition of the automobiles is a very, very significant addition, and that would stimulate consumer purchasing power in many, many directions.

Mr. President, I filed this amendment on behalf of Senator DOMENICI and myself on March 10 as amendment 1707, and I have discussed informally with the Parliamentarian the issues relating to a point of order which might be raised, and I would make an inquiry of the Parliamentarian at this time as to—I understand it will have to be a reference, but I want to do this early on so we will have the figures if, as, and when a point of order is reached—what is the level of outlays attributable to amendment 1707, and I would make that parliamentary inquiry now.

The PRESIDING OFFICER. At this point the Chair has not received the official scoring of the amendment and is not aware of any budget points of order.

Mr. SPECTER. Mr. President, I ask the Chair, through the Parliamentarian, to make whatever inquiries are relevant so that those figures may be available.

I next make this parliamentary inquiry, Mr. President. Is it correct that amendment 1707 would not be subject to a point of order if it had no effect on outlays but only an effect on revenues?

The PRESIDING OFFICER. Would the Senator from Pennsylvania restate his question?

Mr. SPECTER. Would amendment 1707 be subject to a point of order under section 302(f) if there is no effect on outlays but there is an effect on revenues?

The PRESIDING OFFICER. The amendment at this point seems to be just an amendment to the Tax Code and would not involve spending. So any points of order that would lie would lie if the amendment caused revenue to be decreased below the revenue floor.

Mr. SPECTER. I was advised by the Parliamentarian informally, Mr. President, that a point of order lies under 302(f) only if it affects outlays and not if it affects revenues. My question is, Is the informal advice correct?

The PRESIDING OFFICER. Not the way the question has been stated. If the Senator wants to restate his question.

If the Senator will withhold, we will have the amendment scored. Then we will rule on it.

Mr. SPECTER. I asked that it be scored as to outlays and I ask that it be scored as to revenues, and while that scoring is being undertaken, I will restate a parliamentary inquiry: Is 1707 subject to a 302(f) point of order if it has no effect on outlays?

The PRESIDING OFFICER. If the outlays result in decreased spending, the Senator is correct.

Mr. SPECTER. If the outlays are the result of decreased spending, the Senator is correct, is that the answer?

The PRESIDING OFFICER. That is fine.

Mr. SPECTER. Well, there is to be no increased spending.

The PRESIDING OFFICER. If that is the case, then the Senator is right.

Mr. SPECTER. Then there is no point of order which lies under 302(f)?

The PRESIDING OFFICER. If that is the case that you state.

Mr. SPECTER. Fine. That is the case. There are no additional outlays. There would be an effect on revenues, which this Senator has been advised would be under $1 million. And the parliamentary inquiry is: Does a loss of revenues in the amount less than $1 million make 1707 subject to a point of order?

The PRESIDING OFFICER. The answer is "No."

Mr. SPECTER. I thank the Chair.

Mr. President, I had prepared a slightly modified version of 1707 to provide that there would be a change in the luxury tax on a specific item for a period of some 9 months to allow for additional revenues in the amount of $2 million, but I shall not submit that at this time. I am further advised that, in addition to the $3.5 billion above the revenue floor, there has been an additional $400 million added to that as a result of the acceptance of the last amendment. But in light of the rulings from the Chair on the absence of a point of order since there were no outlays, I will not proceed to modify 1707 in any way.

AMENDMENT NO. 1707

(Purpose: To provide an incentive for increased consumer spending and to provide a short-term economic stimulus by waiving the penalty under the Internal Revenue Code of 1986 on certain withdrawals from pension plans which are used to purchase first homes and new automobiles)

Mr. SPECTER. Mr. President, at this time, I call up amendment 1707 for consideration by the Senate.

The PRESIDING OFFICER. The clerk will report the amendment.

The legislative clerk read as follows:

The Senator from Pennsylvania [Mr. SPECTER], for himself and Mr. DOMENICI, proposes an amendment numbered 1707.

Mr. SPECTER. Mr. President, I ask unanimous consent that the reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

At the appropriate place, insert:

SEC. —. PENALTY-FREE WITHDRAWALS FROM PENSION PLANS THROUGH 1992.

(a) IN GENERAL.—In the case of any qualified withdrawal—

(1) no additional tax shall be imposed under section 72(t)(1) of the Internal Revenue Code of 1986 with respect to such qualified withdrawal, and

(2) except as provided in subsection (b), any amount includible in gross income by reason of such qualified withdrawal (determined without regard to this section) shall be includible ratably over the 4-taxable year period beginning with the taxable year in which such qualified withdrawal occurs.

(b) ELECTION TO RECONTRIBUTE TO PLAN.—

(1) IN GENERAL.—The amount required to be included in gross income for any taxable year under subsection (a)(2) shall be reduced by any designated recontribution.

(2) DESIGNATED RECONTRIBUTION.—For purposes of paragraph (1), a designated recontribution is any contribution to any plan described in subsection (c)(1)(B)—

(A) which the taxpayer designates (in such manner as the Secretary of the Treasury may prescribe) as in lieu of all (or any portion of) any amount required to be included in gross income under subsection (a)(2) for a taxable year, and

(B) which is made not later than the due date (without extensions) for such taxable year.

(3) NO DEDUCTION ALLOWED FOR RECONTRIBUTION, ETC.—For purposes of the Internal Revenue Code of 1986, a designated recontribution shall not be treated as a contribution for any taxable year.

(c) LIMITATION BASED ON ADJUSTED GROSS INCOME.—

(1) IN GENERAL.—Subsection (a) shall not apply to any taxpayer if the adjusted gross income of the taxpayer for the taxpayer's first taxable year beginning in 1991 exceeds—

(A) $100,000 in the case of married individuals filing a joint return,

(B) $50,000 in the case of a married individual filing a separate return, and

(C) $75,000 in the case of any other taxpayer.

(2) SPECIAL RULE FOR GRANDPARENTS AND PARENTS.—If a withdrawal is used to pay qualified acquisition costs of a first-time homebuyer who is the child or grandchild of a taxpayer, paragraph (1) shall be applied by reference to the adjusted gross income of the child or grandchild (and, if applicable, their spouse).

(d) QUALIFIED WITHDRAWAL.—For purposes of this section—

(1) IN GENERAL.—The term "qualified withdrawal" means any payment or disribution—

(A) which is made to an individual during 1992,

(B) which is made from—

(i) an individual retirement plan (as defined in section 7701(a)(37) of the Internal Revenue Code of 1986) established for the benefit of the individual, or

(ii) amounts attributable to employer contributions made on behalf of the individual pursuant to elective deferrals described in section 402(g)(3) (A) or (C) or 501(c)(18)(D)(iii) of such Code, and

(C) which is used by the individual for a qualified acquisition not later than the earlier of—

(i) the date which is 6 months after the date of such payment or distribution, or

(ii) the date on which the individual files the individual's income tax return for the taxable year in which such payment or distribution occurs.

(2) QUALIFIED ACQUISITION.—The term "qualified acquisition" means—

(A) the payment of qualified acquisition costs with respect to a principal residence of a first-time homebuyer who is the taxpayer or the child or grandchild of the taxpayer, or

(B) the purchase of a new passenger automobile.

(3) DOLLAR LIMITATION.—The aggregate amount which may be treated as qualified withdrawals under paragraph (1) with respect to all plans and amounts of an individual described in subsection (c)(1)(B) shall not exceed $10,000.

(4) DEFINTIONS AND SPECIAL RULES.—For purposes of this subsection—

(A) QUALIFIED ACQUISITION COSTS.—The term "qualified acquisition costs" means the costs of acquiring, constructing, or reconstructing a residence. Such term includes any usual or reasonable settlement, financing, or other closing costs associated with such qualified acquisition costs.

(B) FIRST-TIME HOMEBUYER; OTHER DEFINITIONS.—

(i) FIRST-TIME HOMEBUYER.—The term "first-time homebuyer" means any individual if such individual (and if married, such individual's spouse) had no present ownership interest in a principal residence during the 2-year period ending on the date of acquisition of the principal residence to which this paragraph applies.

(ii) PRINCIPAL RESIDENCE.—The term "principal residence" has the same meaning as when used in section 1034.

(iii) DATE OF ACQUISITION.—The term "date of acquisition" means the date—

(I) on which a binding contract to acquire the principal residence to which this subsection applies is entered into, or

(II) on which construction or reconstruction of such a principal residence is commenced.

(C) SPECIAL RULE WHERE DELAY IN ACQUISITION.—If—

(i) any amount is paid or distributed from an individual retirement plan to an individual for purposes of being used as provided in paragraph (1), and

(ii) by reason of a delay in the acquisition of the residence, the requirements of paragraph (1) cannot be met,

the amount so paid or distributed may be paid into an individual retirement plan as provided in section 408(d)(3)(A)(i) of the Internal Revenue Code of 1986 without regard to section 408(d)(3)(B) of such Code, and, if so paid into such other plan, such amount shall not be taken into account in determining whether section 408(d)(3)(A)(i) of such Code applies to any other amount.

(D) DISTRIBUTION RULES.—Any qualified withdrawal shall not be treated as failing to meet the requirements of sections 401(k)(2)(B)(i) or 403(b)(11) of such Code.

(e) ORDERING RULES FOR INCOME TAX PURPOSES.—For purposes of the Internal Revenue Code of 1986—

(1) all plans and amounts described in subsection (c)(1)(B) with respect to an individual shall be treated as one plan, and

(2) qualified withdrawals from such plan shall be treated as made—

(A) first from amounts which are includible in gross income of the individual when distributed to such individual, and

(B) then from amounts not so includible.

Mr. SPECTER. Mr. President, I close with my statement that the amendment expands on the super IRA approach with the three items—new homes, tuition, medical expenses—by adding cars and makes a provision for utilization of stimulating consumer purchasing power as I have outlined during the course of my earlier remarks.

Mr. BENTSEN. Mr. President, will the Senator yield?

Mr. SPECTER. I yield.

Mr. BENTSEN. To give some peace of mind, the chairman of committee had no intent to make such a point of order and had already checked that point out very well. So we have no concern over that one.

Mr. SPECTER. I am sorry. I cannot hear the Senator.

Mr. BENTSEN. I am having trouble with my voice, having been through so many of these. But I said the chairman had no intention of filing such a point of order. We did not see the Senator in violation on that.

Mr. SPECTER. I thank the chairman for that comment. Anticipation of any problem is always a good idea, especially the way that matters proceed on issues of this sort. I just wanted to be sure of my legal standing. But I thank the chairman.

The PRESIDING OFFICER. The Senator from Missouri.

Mr. DANFORTH. Mr. President, I want to express my support for the amendment that has been offered by the Senator from Pennsylvania.

First, I think it must be emphasized that this is not an amendment that costs any revenue at all. It does not cost revenue and yet, as Senator SPECTER has pointed out, there have been various estimates as to how much economic activity would be triggered if the amendment became part of the law, estimates that have ranged from $40 billion on up to $120 billion. That is some effect from a single amendment. In fact, if the amendment accomplishes even a fraction of the lowest portion of that estimate, here would be an addition to the tax laws that truly would do some good in bringing the recession to an end.

I want to commend Senator SPECTER for the way in which he fashions this amendment. The ability to withdraw from IRA's under this amendment is limited in time. It would expire on December 31 of this year. This would not be a permanent addition to the law. This would be an effort to lead to consumer spending for the purchase of automobiles only during this calendar year.

Senator SPECTER said, and I agree, that I would prefer that people would keep money in their individual retirement accounts and not withdraw the money, except for two additional thoughts. The first is that when we think of the very heart of the recession in the United States, it is the automobile industry. There is no doubt that the U.S. auto industry is struggling now. It is struggling very, very badly and there is no doubt, for major areas in this country, a revival of the auto industry is the answer to a revival of the economy.

Second, with respect to the whole purpose of individual retirement accounts, I would argue that the effect of this kind of flexibility would be to in-

crease rather than to reduce the attractiveness and hence the utilization of IRA's.

If Congress indicates that it recognizes that at certain points in an economic downturn people are not going to be frozen into their decisions, but rather that they will have flexibility to make certain decisions relating to their families and relating to their lives, to me that is a way to encourage people. Rather than reduce the amount of the use of IRA's, it is a way to encourage people to use IRA's.

The way the amendment is written, people would be further encouraged, after making the withdrawal, to put the money back in and to put the money back in the ensuing 4 years in order to avoid the payment of the taxes incurred by the withdrawal from the IRA's. So it seems to me that this is a carefully tailored amendment, one that is limited in time, one that is limited to a particular type of product, the automobile, which is crucial to so many areas of our country with respect to the health of the economy, and one that would have the effect not of discouraging IRA's, but encouraging IRA's.

So I am pleased to add my support to this amendment. I commend Senator SPECTER for offering it.

Mr. SYMMS addressed the Chair.

The PRESIDING OFFICER. The Senator from Idaho.

Mr. SYMMS. Mr. President, I wanted to inquire of the author of the amendment—and I think I got the answer from the distinguished senior Senator from Missouri—but did I understand correctly that if you withdraw the $10,000 and you purchase what is allowed, automobiles, et cetera, with this money that you can put back up to $2,000 each year for the next 5 years and replace the money; is that correct?

Mr. SPECTER. The statement made by my distinguished colleague from Idaho is correct, with a minor modification: It is $2,500 year over 4 years. The impact is the same, just over a shorter period of time. But the taxpayer does have the opportunity to replenish his or her IRA in full in that manner.

Mr. SYMMS. So it gives them that incentive then to restore their capital base that they are withdrawing for the durable goods purchase.

Mr. SPECTER. Yes, the Senator from Idaho is correct. The opportunity would be present for them to spend the money now, which has the effect of giving a very substantial boost to consumer purchasing power, and then to replenish their IRA.

If I might just add, before the distinguished Senator from Missouri leaves the floor, I very much appreciate his comments. They are especially meaningful in the light of Senator Danforth's stature on the Finance Committee and on the Commerce Committee—the Commerce Committee which he Chaired for a period of time, and the Finance Committee where he had chaired significant subcommittees and is a recognized expert in tax law. I know Senator Danforth does not accede to withdrawals from savings very lightly. This is something that weighs very heavily on him, but it will have the benefit of stimulating purchasing power.

The hour is late, but before my colleague left the floor I wanted to extend my thanks to him.

I also thank my colleague from Idaho for allowing me to do that.

Mr. SYMMS. Mr. President, I want to compliment my colleague from Pennsylvania for his persistence in bringing this matter up.

I might ask a further question. Was there any estimate done when this amendment was drawn about how many new automobiles might actually be purchased?

Mr. SPECTER. Well, that is a very good question. I believe that the survey which was conducted by Interpublic would bear on that. We might have to do just a little bit of mathematics, but their full-page advertisement in USA Today says that:

> Indeed 38 percent more people than are currently in the auto market said this would turn them from being bystanders into buyers. That is 4.8 million more people spending 65 billion new dollars.

So it would be a matter of arithmetic to make that computation.

The distinguished Senator from Idaho, being an experienced businessman, could probably make that calculation faster than a mere lawyer could.

Mr. SYMMS. Do not count on it.

Mr. SPECTER. But it is some 4.8 million more people spending 65 billion new dollars. So if we average a new car cost at $15,000 into the $65 billion, you immediately have the answer, I say to Senator SYMMS.

Mr. SYMMS. Well, of course, they can only take out $10,000, so they would make a down payment on the car. But they would buy the new car, that is correct.

Mr. SPECTER. That is a very good observation.

Mr. SYMMS. Another fact, I do not think it has been said here on the floor, but one of the things that we found in the work in the Environment Committee this past year—I guess it was in 1990, as the years fly by during all of the hearings on the Clean Air Act—I know that Senator ROTH and others here have worked on trying to make it possible for people to be able to purchase new automobiles so that the so-called clunkers can be removed from the American highways. There is an enormous difference between a new car and a car that is 10 years old in terms of air quality and emissions.

I do know—and I think that is a point we here in the Senate who have passed these requiring pieces of regulatory legislation to require the cities to reach certain standards of air quality—that an upsurge of new automobile purchases will have an indirect benefit to the country in terms of upgrading the fleet, so to speak.

And it has an enormous downstream flow, although there are no automobiles produced in States like mine. The automobile industry, the second market industry, the service industry for automobiles, the distribution and sales, leasing and so forth, is a very, very important part of the economy.

I compliment the Senator from Pennsylvania. I normally would not be in favor of an amendment like this but in view of the situation with respect to sales in this country, the need to stimulate some growth, this is money that can be put into the economy. It is private money. And then those people in order to enjoy those benefits will have a great incentive to restore their savings and in putting that $2,500 a year back in may get in the habit of continued saving and then we will gain on this thing. I compliment the Senator.

Mr. SPECTER. I thank my distinguished colleague from Idaho, and just by way of a brief comment before yielding to the distinguished Senator from Tennessee who signalled interest in making an inquiry, when the Senator from Idaho raised a question about how many cars would be involved and I referred to the survey made by Interpublic, and they had pointed out that some 65 billion new dollars would be spent, that means that there would be 6,500,000 people buying new cars with $10,000.

It means further that in addition to the $65 billion which would be spent from the IRA's, if the average cost of the car was $15,000, there would be $65 billion coming from other sources. The $10 billion would be a downpayment. So the leveraging is already immediately perceptible.

I thank my colleague from Idaho for his comments. I know in his prior statements and from more than a decade of work with Senator SYMMS, how concerned he is about savings and how resistant he is to consumption in terms of savings being the long-range benefit for long-term economic growth. His judgment that the tradeoff is worth it here I believe is very significant. He, too, is a distinguished member, as is Senator DANFORTH, of the Finance Committee, who has dealt in these issues for at least the 12 years he has been in the U.S. Senate.

Mr. BENTSEN. Does the Senator yield the floor?

Mr. SPECTER. I do.

The PRESIDING OFFICER. The Senator from Texas.

Mr. BENTSEN. Mr. President, I have concerns about encouraging people to draw money out of their retirement accounts to buy a car. I think over the

long run it could have a deleterious effect. If you do it for a car then which amendment comes next that wants to do it for something else?

It may provide the short-term boost and the economy certainly needs a boost. But at a long-term cost. This is a lot different from withdrawing money to make that first home purchase. That is an investment in the life of those people who do so; or the withdrawals for education, which are a long-term investment in your children.

The Finance Committee bill allows penalty-free withdrawals to buy that first home, to send your children to college and, of course, finally for your retirement. That is what pays off in the long run for our country.

What we are trying to do is build these savings up so we can have the capital and the low interest rates. So we can compete with the Japanese and the Germans. So we can invest in new factories and increase productivity in our country.

We need good, long-term solid growth. And that is what our bill currently does by encouraging savings through the fully deductible IRA, not by depleting existing savings for further consumption, but by providing a permanent change in allowing those withdrawals for first home purchases and education expenses. These are permanent changes that are prosavings—that will encourage Americans to save for those purposes and not to deplete their retirement savings.

We have done some other things for the long term in this bill. We have encouraged our real estate sector. That is long term. We started down the path to affordable and accessible health care for all Americans. That is long term. We encouraged investment in venture capital enterprises that can create jobs in the long term.

The fact is there is no magic elixir. This bill lays a solid foundation for future economic growth. We must proceed carefully with ideas that may sound attractive for the next few months but that could hinder long-term economic recovery and could hinder the long-term retirement security of Americans. That car will not be there when those people retire.

We go down a slippery slope on this one. Retirement assets should not be depleted lightly. Where does it stop? It is one thing to allow withdrawals for investments like a home or education. But I am not sure buying a new Honda is a particularly effective long-term investment.

I want to point out the Senator has certainly improved his amendment from what he had last year. Originally the amendment of the Senator would have allowed withdrawals for all durable goods, including stereo equipment, VCR's, and furniture, and I am glad to see the Senator has now limited his amendment to cars.

I also want to emphasize that the Senator has added a provision that allows recontribution of the retirement savings. That is also a considerable improvement. But as a general rule, a car is not an investment. A home is an investment. An education is one of the best investments we can make. But there are not many cars that you can sell for what you paid for them.

I am also concerned about the impact of this amendment on some of the financial institutions. What kind of a run do you have if Americans start closing down their IRA's to make withdrawals to buy consumer goods? For this proposal to work as a stimulant for the economy, it would literally require a run on the banks, as people withdraw their IRA funds.

I am concerned that this amendment is a questionable retirement policy.

Mr. President, I move to table the amendment.

Mr. President, I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The question is on the motion to table.

Mr. SPECTER. Mr. President, I wonder if the Senator would withhold the motion to table. Senator DOMENICI is here, and he wishes to speak. He is a cosponsor of the amendment. I also have a few additional remarks to make. I am not sure how long it will last but I would ask the Senator to withhold.

Mr. BENTSEN. The Senator has been speaking for some time now. We have a whole series of amendments waiting in the wings, and we are doing our utmost to see if we cannot finish tonight. It is my plan to proceed to table amendments expeditiously as we go through the evening. So I moved to table the amendment.

Mr. DOMENICI. Mr. President, will the Senator agree to an amount of time? Can the Senator have 10 minutes?

Mr. BENTSEN. I will be glad to do that if we have a limitation on the time. If I have a consent agreement that we limit it to 10 additional minutes I will withhold my motion to table. Do I have that agreement?

Mr. SPECTER. This Senator makes no agreement.

If the Senator from Texas wants to file a motion to table when there are Senators who wish to speak for a very brief period of time, I am surprised. I have not seen in my 12 years here a Senator denied an opportunity to speak when someone wants to make a tabling motion.

Mr. DOMENICI. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. BENTSEN. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. BENTSEN. Mr. President in further consideration, and discussing this with the leadership, the management on this side is prepared to take the amendment.

The PRESIDING OFFICER. The motion to table is pending. It has to be withdrawn.

Mr. BENTSEN. Mr. President, I ask unanimous consent that the motion to table be withdrawn.

The PRESIDING OFFICER. Without objection, it is so ordered. Is there further debate on the amendment?

Mr. DOLE. Mr. President, I want to indicate the temporary manager on this side, in Senator Packwood's temporary absence, has cleared the amendment. I have discussed it with the distinguished Senator from Pennsylvania, and I thank my colleague from Texas.

The PRESIDING OFFICER. The Senator from Pennsylvania.

Mr. SPECTER. Mr. President, very briefly, I thank the chairman for his acceptance of the amendment. I had intended to make a very brief comment in response to what the Senator from Texas had said. I thank him for his comments that it is an improvement over the former amendment.

It builds upon legislation which the Senator from Texas had introduced on the three items: homes, tuition, and medical expenses, and makes one addition, the automobile. I think the acceptance of the amendment is very good. It will put the matter in conference. I believe that there is support building for this concept. I had not made this comment in the earlier statement, but I think at this juncture it is relevant to say that I have had a chance to discuss the issue with the President, who made no commitment on it but was favorably disposed when he asked how much it would cost and was told it would cost nothing.

Michael Boskin liked it. I think Chairman Greenspan had some favorable comments. With its acceptance and moving into conference, I believe we will have a chance for further consideration, and I thank the manager and the leader on the Republican side for its acceptance.

Mr. DOMENICI. Mr. President, Senator SPECTER and I are sponsoring an amendment which we believe will provide a needed short-term economic stimulus to the economy. Our legislation would allow individuals with incomes under $75,000 to withdraw up to $10,000, one time, from an IRA, 401k, or other elective income deferral plan. The withdrawal would be penalty-free provided the money is used to pay for a purchase of an automobile.

As is typical in business cycle downturns, our economy currently is

suffering from too little consumption. Everyone agrees: More consumption now will energize the economy, particularly here in the next few months when we enter the traditional holiday buying season.

There are many ways to spur consumption; one of the most popular solutions, judging from what many of my colleagues are advocating, is a tax cut. Under certain circumstances, I support a tax cut that will not add to the long-term debt of this country. But, Mr. President, a tax cut that raises the Federal debt in order to provide economic stimulus is the last thing we need. The financial markets' nervousness at even the hint of tax cut discussions is testament to that.

The beauty of this proposal is that it would result in more consumption without materially affecting the Federal debt. New consumption will come from private, not public, savings. As many as 500,000 more cars could be purchased because of this proposal.

The current feeble consumption in our economy is a result of both long-term and short-term influences. The long-term influence is a response to the over-consumption and under-saving in the 1980's. I have repeatedly argued that there needs to be a long-term realignment of consumption to address the excessive debt that has resulted from too little saving. I would further argue that this realignment is healthy and should not be distorted by new long-run policies that favor consumption.

The short-term influence is the effect of poor consumer confidence. Currently, people apparently do not feel good about their personal financial situation for a variety of reasons, including an increase in unemployment and poor income gains over the past year-and-a-half. This situation is a direct result of the business cycle downturn. The Specter/Domenici amendment aims at reversing this short-term influence by shoring up confidence. This proposal frees up trapped savings. Consumers will feel that their economic situation is improved, have more cash available, and increase consumer expenditures in the near term.

There is a lot of money out there in retirement accounts. In 1990, IRA assets were nearly $455 billion. Keogh assets were $110 billion. In 1988, the latest data we have, there was $277 billion in 401k accounts. But let me make it clear, Mr. President. It is not our intention to have individuals raid their retirement accounts in order to pay for frivolous purchases. We simply want to make some of this money available to those who could really use it.

Neither is it my intention to distort the consumption versus saving decision over the long term. Rather, this legislation would provide the economy with a needed shot in the arm, without materially affecting the Federal deficit.

Individuals who withdraw money from their retirement accounts will not face a penalty under this proposal. They may pay regular income tax on that money, over a period of 4 years. Or they may instead replenish their retirement accounts and avoid income tax altogether.

Mr. President, this is good short-term stimulus that protects retirement saving over the long run. We should adopt it and get this economy on the upswing.

The PRESIDING OFFICER. Is there further debate on the amendment? If not, the question is on agreeing to amendment No. 1707.

The amendment (No. 1707) was agreed to.

Mr. BENTSEN. I move to reconsider the vote.

Mr. SPECTER. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. REID addressed the Chair.

The PRESIDING OFFICER. The Senator from Nevada.

Mr. REID. I would like, through the Chair, to make inquiry to the manager of the bill, the chairman of the Finance Committee.

The Senator from Nevada would ask if it is the intention of the Senator from Texas to offer a committee amendment, or would the Senator wish the Senator from Nevada to proceed with his amendment?

Mr. BENTSEN. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant bill clerk proceeded to call the roll.

Mr. BENTSEN. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

AMENDMENT NO. 1717

(Purpose: To make the 100 percent deduction for health insurance costs for self-employed individuals permanent)

Mr. BENTSEN. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The assistant bill clerk read as follows:

The Senator from Texas [Mr. BENTSEN] proposes an amendment numbered 1717.

On page 711, line 17, strike "25 percent" thru the period at the end of line 21 and insert the following: "74 percent for taxable year beginning during 1992)".

(b) CREDIT MADE PERMANENT.—Section 162(l) is amended by striking paragraph (6).

Mr. BENTSEN. Mr. President, my amendment will make the 100 percent deduction for self-employed health insurance premiums permanent. It is a proposal that was included in the Better Access to Affordable Health Care Act that I introduced earlier this year. I am offering it now because we must control the amendment process. This amendment has the support of the NFIB, Small Business United, Small Business Legislative Council, and all small business groups.

Today, small business is at a disadvantage. Corporations can deduct 100 percent of health insurance premiums, but the owner of a hardware store can only deduct 25 percent, and that is just not fair to millions of small business owners. This amendment will increase that deduction to 100 percent.

This amendment includes the permanent extension that we originally proposed. We had to cut that back in the committee because of costs, but we have the funds available now in the budget, and under the legislation.

You have 3.1 million self-employed currently buying health insurance that would benefit immediately. There are a total of 12.4 million self-employed and their dependents, many of whom should benefit from this change. Eighty percent of the insured work in small businesses or are dependents of employees of small businesses. Twenty-two percent of self-employed are uninsured, compared to 16 percent of all workers. We have seen a serious decline in coverage, especially for dependents.

When I go back to Texas, the thing I hear time after time from businessmen and business women is that they just cannot afford health insurance. But to let the presidents of the big corporations have their health insurance 100 percent deductible and yet the small business person not have the full deductibility is just not fair.

It is important that we try to establish balance in this, and this brings fairness to the system. So I strongly urge its support.

Mr. REID. Mr. President, I rise this evening to offer an amendment in which all Members of this Congress have a stake, a matter which all Americans really have a stake. My amendment will eliminate the source tax. The source tax, of course, is an odd name, and let me explain. Citizens are forced to pay taxes in States in which they do not reside.

Mr. BENTSEN. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. BENTSEN. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

AMENDMENT NO. 1718

(Purpose: To make the 100 percent deduction for health insurance costs for self-employed individuals permanent)

Mr. REID. Mr. President, I did not realize that there was an amendment pending. I ask that this amendment be considered as it is sent to the desk. This is a second-degree amendment.

The PRESIDING OFFICER. Does the Senator intend to offer a second-degree amendment?

Mr. REID. The Senator has offered a second-degree amendment.

The PRESIDING OFFICER. The clerk will report the amendment.

The assistant bill clerk read as follows:

The Senator from Nevada [Mr. REID] proposes an amendment numbered 1718 to Amendment 1717.

Mr. REID. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

In lieu of the matter proposed to be inserted insert the following: "75 percent: for taxable years beginning during 1992)".

(b) CREDIT MADE PERMANENT.—Section 162(l) is amended by striking paragraph (6).

Mr. REID. Mr. President, this amendment makes permanent the deduction for business health insurance premiums. I would ask for the chairman of the committee to respond, if there is further explanation required.

The PRESIDING OFFICER. The Senator from Texas.

Mr. BENTSEN. Mr. President, this does not require much explanation. It is one that small businessmen have been fighting for years.

This is one that we put in the original affordable and accessible health care legislation and then found we did not have the funds to cover it. We now do. We were phasing it in.

We are now talking about putting it in at 100 percent and putting it in permanently.

I strongly urge the passage and the support of the amendment.

Mr. REID. I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

Mr. DOLE addressed the Chair.

The PRESIDING OFFICER. There is not a sufficient second.

The Senator from Kansas.

Mr. DOLE. Mr. President, I hope we might avoid the yeas and nays on this amendment, but I do know a number of my colleagues on this side support the amendment. Is there any objection they be added as cosponsors?

Mr. BENTSEN. We would be delighted.

Mr. DOLE. I would add the Senator from California, Mr. SEYMOUR, and maybe others I will add at a later time.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. REID. I withdraw the request for the yeas and nays.

Mr. METZENBAUM addressed the Chair.

The PRESIDING OFFICER. The Senator from Ohio.

Mr. METZENBAUM. These amendments are coming at a rather rapid pace at the moment. Some of us are not aware of what is in them. I therefore suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. BENTSEN. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. BENTSEN. Mr. President, I urge adoption of the amendment.

The PRESIDING OFFICER. Is there further debate on the amendment? If not, the question is on agreeing to the amendment of the Senator from Nevada, No. 1718.

The amendment (No. 1718) was agreed to.

Mr. DOLE. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. BENTSEN. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. The question now occurs on amendment No. 1717, as amended.

The amendment (No. 1717), as amended, was agreed to.

Mr. BENTSEN. I move to reconsider the vote by which the amendment, as amended, was agreed to.

Mr. DOLE. I move to lay that motion on the table.

The motion to lay on the tale was agreed to.

Mr. REID addressed the Chair.

The PRESIDING OFFICER. The Senator from Nevada.

Mr. REID. Mr. President, I would be happy to yield to the minority leader.

Mr. DOLE. Would this be the second amendment of the Senator from Nevada?

Mr. REID. This is the first amendment. I did not offer the first amendment. We were interrupted.

Mr. DOLE. Following that, there would be an amendment by the Senator from Arizona, two amendments?

AMENDMENT NO. 1719

Mr. REID. Yes. It is my understanding, for those Senators watching, that I am going to offer this amendment, and following me, Senator MCCAIN is going to offer an amendment.

I rise tonight to talk about an amendment and to offer an amendment on behalf of myself and Senator BRYAN which all Members of Congress have a stake in; in fact, I think, a matter in which all Americans have a stake.

My amendment will eliminate the source tax. Let me explain. Citizens are forced to pay taxes to States in which they do not reside. Retirees pay taxes on their pensions. These pensions were all or partially established in the States where they spent all or part of their working years, and, despite the fact they no longer live there and do not participate in the programs which their taxes are funding, they do not participate in any of the programs that the State offers—medical assistance programs, senior centers—nor do they use the roads or public parks that these taxes are helping to fund. Most important of all, they do not even get to vote in their former State of residence. Yet they are still being forced to pay taxes to these States.

It has been said many times, and I would agree, this is clearly taxation without representation.

I would like to relate some examples of what is taking place in Nevada and every other State in the country. An older woman, for example, lives in Fallon, NV, has an annual income of about $12,000. This, of course, includes her pension. She is not rich, but she is surviving. One day the mail carrier delivers a notice from California that says that she owes taxes on a pension, plus the penalties and interest on those taxes. She cannot believe it, but, being an honest person, she tells California that she has never paid these taxes and asks why she is being assessed at this time. To make a long story short, California Franchise Tax Board went back to 1978 and calculated her tax to be about $6,000. This woman's own income is only $12,000 a year.

Another case is equally illustrative. After 27 years of service in the State of California, a widowed man retires. Listen to this. Subsequently, he marries a woman from New York and because she is still working in New York he moves there with her. After moving, this man discovers that California is claiming he owes them taxes on his pension income. However, the problem is he must pay those taxes based not only on the income that he is receiving from California, but based on all of his income and his wife's income. In addition, because New York allows tax credit for taxes paid to other States, it is missing out on revenues they could be paying for the services the State of New York provides this couple.

Mr. President, most citizens pay their taxes honestly and without much complaining. This is the voluntary system we have. But when they are taxed by a State where they do not reside, they begin to get upset with the system, to say the least.

This case, the one I am going to talk about, also illustrates this problem. In 1971, a Washington State resident went to work at the Federal penitentiary at McNeil Island, WA. He had already spent significant time in the military, none of which was in the State of California. In the late seventies, this man, who is employed by the Bureau of Prisons, learned that the Bureau of Prisons was going to close the facility where he worked and reduce, of course, the staff. It goes without saying. This left the man with two choices. He could resign and forfeit 9 years of retirement or transfer to a Federal center in San

Diego. He chose the latter and went to work in San Diego. As of a year ago he was still working there.

When this man retires, he plans to return to the State of Washington where he still owns a home. He wants to be near his children and grandchildren because they still reside in Washington. The State of Washington has no State income tax. But this man learned last year that he will be subject to California's source tax when he returns to Washington.

This man was prodded by the system to move to California because the Federal Government closed down the prison where he worked, the Federal prison. In order to maintain his income and continue building his pension, he moved, always intending to move back to his roots, to his family, in the State of Washington.

Without elaborating, this man is upset. He is mad. He is angry. Let me read part of letter that he wrote:

The so-called source tax appears to be grossly illegal and contrary to the rights guaranteed by our constitution. That being the case, I am amazed that our Congress does not take immediate action to abolish such totally illegal state levies. I am sure you understand that people employed by the federal government could serve in numerous states throughout their careers before retiring to their home states. It is absolutely ridiculous, insidious and downright illegal for those states to levy an income tax against a nonresident. It is mind-boggling that a federal retiree (or any other retiree) living in a state that has no income tax could be paying income tax to as many as 13 other states.

* * * (Couple this tax) with the ridiculously high cost of medical care, hospitalization and other fast-rising consumer costs, and it should be quite evident that people will not be able to survive on retirement incomes.

Mr. President, this issue was brought to my attention several years ago by a Nevadan by the name of Bill Hoffman. He told me about these cases and a multitude of other cases. He informed me that retirees were being harassed by States where they used to live for this tax, commonly called a source tax. He heard so many complaints that he and his wife, Joanne, organized Retirees to Eliminate State Income Source Tax [RESIST], truly a grassroots organization.

RESIST was founded in July 1988 in Carson City. In less than 4 years since the beginning, the membership has grown to tens of thousand of members. They are in everybody's State that serves in this body. It is a nonprofit grassroots organization which operates entirely through the work of volunteers. There are no paid or salaried members.

The credibility of this group has convinced other long established organizations, such as the National Association of Retired Federal Employees, NARFE, the National Association for Uniformed Services, with 60,000 members, to make a commitment to the prohibition of the source tax.

I ask unanimous consent that a partial list of the organizations that have joined RESIST of America in a coalition, be printed in the RECORD. It represents millions of people.

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

Partial list of organizations that have joined RESIST of America in a coalition, which represent millions of people:

Air Force Association.
Air Force Sergeants Assn.
Air Line Pilots Assn.
Amer. Assn. of Foreign Service Women.
American Payroll Assn.
AMVETS.
Assn. of Military Surgeons of U.S.
Assn. of the U.S. Army.
Commissioned Officers Assn. of the U.S. Health Service, Inc.
COSSO (Council of Sacramento Senior Organizations).
CWO & WA Assn., U.S. Coast Guard.
Federal Managers Assn.
Fleet Reserve Assn.
Marine Corps League.
Marine Corps Reserve.
McDonald County Unit of the Retired Teachers Assn.—MO.
NARFE (Nat'l Assn. of Retired Federal Employees).
Nat'l Assn. of Uniformed Svcs.
Nat'l Assn. of Postal Supervisors.
Nat'l Guard Assn. of the U.S.
Nat'l Military Family Assn.
Nat'l Taxpayers Union.
Naval Reserve Assn.
Navy League of the U.S.
Nevada Taxpayers Union.
Non-Commissioned Officers Assn.
Pactel.
Reserve Officers Assn.
SCAN (Senior Co-operative Alert Network).
Society of Medical Consultants.
The Retired Enlisted Assn.
The Retired Officers Assn.
U.S. Army Warrant Officers Assn.
U.S. CG & Chief Petty Officers Assn.

Mr. REID. Mr. President, this list includes the Air Force Association, Air Force Pilots Association, Air Line Pilots Association, and approximately 35 other organizations. The Senior Cooperative Alert Network, Society for Medical Consultants, Retired Enlisted Association, Navy League of U.S., National Guard Association, National Association of Postal Supervisors, Retired Federal Employees. On and on with this list.

In addition, the Fund for Assuring an Independent Retirement, or FAIR, as it is called, also lent its support to the cause.

I ask unanimous consent that this list also be printed in the RECORD at this time.

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

FAIR

(Fund for Assuring an Independent Retirement)

Vincent R. Sombrotto, Chairman.
Frederick H. Nesbitt, Secretary.
Patrick F. Smith, Treasurer.
American Federation of State, County and Municipal Employees.
American Foreign Service Assn.
American Postal Workers Union.
American Psychiatric Assn.
Assn. American Foreign Service Women.
Epsilon Sigma Phi.
Federal Executive/Professional Assn.
Federal Managers Assn.
Federally Employed Women.
Graphic Communications Int'l Union.
Nat'l Assn. of Fire Fighters.
Int'l Federation of Professional and Technical Engineers.
Int'l Union of Operating Engineers.
Military Sea Transport Union SIU.
Nat'l Assn. of Air Traffic Specialists.
Nat'l Assn. of ASCS County Office Employees.
Nat'l Assn. of Federal Veterinarians.
Nat'l Assn. of Gov't Employees.
Nat'l Assn. of Letter Carriers.
Nat'l Assn. of Postal Supervisors.
Nat'l Assn. of Postmasters of the U.S.
Nat'l Assn. of Retired Federal Employees.
Nat'l Federation of Federal Employees.
Nat'l Labor Relations Board Union.
Nat'l League of Postmasters of the U.S.
Nat'l Postal Mail Handlers Union/LIUNA.
Nat'l Rural Letter Carriers Assn.
Nat'l Treasury Employees Union.
Organization of Prof'l Employees of the Dept. of Agriculture.
Overseas Education Association/NEA.
Public Employee Department (AFL-CIO).
Service Employees Int'l Union.

Mr. REID. This list is as long and as illustrative and as important as the last list; American Federation of State, County and Municipal Employees, National Association of Retired Federal Employees, National Association of Postal Supervisors, National Association of Federal Veterinarians, National Association of Fire Fighters, Federal Managers, list after list of organizations that say this tax is unfair.

In the beginning, this issue affected mostly retired Government employees because of easy access to their records. As economic times became tougher and the State budgets are straining for revenues, the source tax is becoming an ever more popular revenue.

I have copies from the Ford and Rockwell Companies dated last year. They were sent to their retired employees telling them they must report tax liabilities in the State that collects source taxes. Other companies are following suit.

As a result, Mr. President, the American Payroll Association has recently joined the coalition that wants to prohibit this tax. They represent 9,000 professionals, payroll professionals responsible for issuing approximately 4 billion paychecks a year to over 100 million people in the United States work force. Here is what they have to say:

In instances where an employee has worked in several states during his or her career, employers will not have adequate records to identify the earnings or years an employee was employed in a particular state.

Without this information it will be impossible to determine an equitable calculation of the portion of pension that would be taxable in a particular state. Any attempt at developing the ability to determine this

through computer systems would be cripplingly expensive.

We are all aware of the increased mobility that Americans have come to know. Many people today plan to retire in places other than in the area they worked. The recent growth of Nevada is ample evidence of this.

There are many reasons for it. People might want to live in a warmer climate or a cooler climate, or possibly their families have moved and they want to join them. They may want to live part of the year here and part of the year someplace else. They spent their work years saving enough to be able to move to their chosen areas. You can imagine their shock and then their dismay when they receive notification that back taxes, along with interest and penalties, are owed to their old State of residence. The shock is from a tax for which they receive no services and no representation. The dismay, from the inability to pay a sometimes enormous tax, when one lives on a fixed income, is apparent in this issue.

Mr. President, it is also important to note that, as I mentioned in the case of the newlyweds living in New York, the State deriving the source tax is collecting the income not just based on the amount of pension income for the year, but on the entire income. Income that includes the amounts earned in the current State of residence. Income that could be used to fund the services that the State of residence is providing. In fact, of the States responding to a Federation of Tax Administrators [FTA] survey completed in May 1991, Maine and Utah do not provide a tax credit for source taxes paid to another State. Hence, someone living in one of these States that gets hit with a source tax would have to pay taxes on the same income to both States, or would be double taxed.

Mr. President, while the source tax may be bringing in revenues to one State, it can actually decrease the revenues to another State. As I just mentioned, there are only a couple of States that do not allow a tax credit for taxes paid to another State. Most States allow for it. The tax credit is fair as it prevents double taxation, but it means the State of residence is losing out on revenues. If I retire from California to Oklahoma, and California taxes my pension, Oklahoma will grant me a credit for the amount I owe California. But Oklahoma will still be the State providing me with services. Services such as medical assistance when I will most likely need it. Parks when I will have the opportunity to use and enjoy them. Senior services for me to participate in. As well as the streets I drive to get to these places. Not to mention, the right to vote. And Oklahoma will be providing these programs at so-called bargain basement prices because my tax dollars will be going to California.

To prohibit this unethical practice, I am offering an amendment which prohibits States from taxing pensions or retirement income of nonresidents. States are crossing State lines, collecting taxes from nonresidents, and offering nothing in return. State residents who conscientiously pay taxes on their pension have the privilege of voting in that State, and have access to all State funded services. Nonresidents just pay with no benefit of the services.

Mr. President, the bill that I introduced to prohibit this tax currently has 30 cosponsors. (See attachment C.) The list includes Senator SEYMOUR from California and Senator D'AMATO from New York. California and New York are the strongest proponents of the source tax. In addition, testimony has been heard at the Finance Committee, both at the full committee and subcommittee levels.

There is no cost to the Federal Government to prohibit the source tax. In fact, if anything, the prohibition will increase revenues to the Federal Government. Currently, those people who itemize deductions can use State income tax as a deduction. If someone moves to a State like Nevada, which has no State income tax, or a State with a lower income tax than the one they moved from, the State income tax deduction would either be reduced or nullified.

Some argue that my amendment is an infringement on State's rights. CRS has looked into this issue and determined that there is jurisdictional basis for this legislation. A memorandum written by them in June says:

> While there has been controversy of late with respect to the extent of congressional power to regulate the States as States, there is none about the power to displace state law in its impact upon private conduct. The precedents reviewed thus uniformly support the validity of S. 267.

Mr. President, I had a gentleman's agreement with the manager, the chairman of the committee, that I would use 35 minutes. I ask if the desk has kept track of how long I have spoken?

The PRESIDING OFFICER. I am advised the Senator used 13 minutes.

Mr. REID. I thank you very much.

Mr. President, according to the FTA survey of the States, there are currently 13 States with the authority to impose a source tax. Of those 13 States, 8 of them actually attempt to impose it. According to CRS there are 40 States that currently impose a State income tax. Conceivably every one of them could easily start to impose a source tax. And why wouldn't they?

The reason we are here today is because of the very difficult economic times this country is experiencing. We are here to debate the merits of a tax package that gives to some and takes away from others. However, we are held accountable for the choices we make. If our constituents don't like the way we vote, they have the opportunity not to vote for us. Would it not be ideal if we could find a revenue source from someone that did not vote?

I would like to have everyone here recognize that this is fairness. That is what we are talking about, basic fairness. And I respect and congratulate publicly Senators D'AMATO and SEYMOUR, two States that have the State tax, and they recognize the unfairness of this and they stepped forward and agreed to cosponsor this legislation.

AMENDMENT NO. 1719

(Purpose: To prohibit a State from imposing an income tax on the pension or retirement income of individuals who are not residents or domiciliaries of that State)

Mr. REID. Mr. President, I at this time send the amendment to the desk.

The PRESIDING OFFICER. The clerk will read the amendment.

The bill clerk read as follows:

The Senator from Nevada [Mr. REID], for himself, Mr. MURKOWSKI, Mr. STEVENS, Mr. DECONCINI, Mr. MCCAIN, Mr. BUMPERS, Mr. SEYMOUR, Mr. WIRTH, Mr. DODD, Mr. ROTH, Mr. GRAHAM, Mr. MACK, Mr. AKAKA, Mr. INOUYE, Mr. CRAIG, Mr. SYMMS, Mr. GRASSLEY, Mr. LOTT, Mr. BRADLEY, Mr. BURNS, Mr. BRYAN, Mr. RUDMAN, Mr. SMITH, Mr. BINGAMAN, Mr. DOMENICI, Mr. D'AMATO, Mr. BURDICK, Mr. HATCH, Mr. ADAMS, Mr. GORTON, Mr. KASTEN, and Mr. SIMPSON proposes an amendment numbered 1719.

Mr. REID. Mr. President, I ask unanimous consent that the reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On page 1084, between lines 8 and 9, insert the following:

SEC. . LIMITATION ON STATE TAXATION OF PENSION OR RETIREMENT INCOME.

(a) IN GENERAL.—Chapter 4 of title 4, United States Code, is amended by adding at the end the following new section:

"§ 114. Limitation on State income taxation of pension or retirement income

"(a) No State or possession of the United States, or any political subdivision of either, may impose an income tax (as defined in section 110(c)) on the pension or retirement income of any individual who is not a resident or domiciliary of such State, possession, or political subdivision.

"(b) For purposes of subsection (a), the term 'State' includes the District of Columbia.".

(b) CLERICAL AMENDMENT.—The table of sections for such chapter 4 is amended by adding at the end thereof the following new item:

"114. Limitation on State income taxation of pension or retirement income.".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 1991.

Mr. REID. Mr. President, I reserve the remainder of my time.

The PRESIDING OFFICER. The Senator from New Jersey.

Mr. BRADLEY. Mr. President, I rise in support of this amendment, and I compliment the distinguished Senator

from Nevada for proposing and articulating the need for this amendment.

It is not a problem of Nevada alone. It is a problem of many States, including my own, where there are countless citizens who have worked in New York, or Pennsylvania, and who then live in New Jersey when they retire. A little known fact, New Jersey has one of the highest senior citizen populations in the country and they draw pensions from the companies in New York, or Pennsylvania.

And the thing that has happened, that has just irritated thousands of my constituents, is that they are then taxed on the pension that they received; they are taxed by New York State, or Pennsylvania, or wherever was the source of their pension.

I think this amendment is enormously positive. It would say to senior citizens who receive pensions that they cannot be taxed by the State which was the source of their pension but only by the State in which they reside.

I think this is a very positive amendment. I know it affects many senior citizens in the State of Nevada. And all of those senior citizens tonight should express a debt of gratitude to Senator REID for proposing this amendment.

It will be good news for senior citizens in Nevada as well as in New Jersey. And this inequitable treatment will be ended by this amendment and I am very pleased to be a cosponsor.

The PRESIDING OFFICER. Is there further debate on the amendment?

The Senator from New York.

Mr. MOYNIHAN. Mr. President, like any measure that comes to the floor at this hour I might say to my distinguished friend from Nevada that one would wish this had been considered in the full committee. A hearing was held. I want to be clear in that regard.

On pure policy grounds this amendment ought not be adopted. It makes it impossible for States to obtain a tax on time and benefits which they have provided and which they had reason to expect would be taxable. It makes very, very difficult the avoidance of a collusive arrangement whereby partners in a large law firm arrange for their last 5 years' income to be put into a retirement fund and then immediately move to a State with no income tax, which happens and which has been litigated with differing outcomes.

On the other hand, the Senator from New York can count. There are only eight States which do this. The State most affected is California.

And at this late hour to demand a rollcall I think would be unavailing. If it is agreeable to the distinguished Republican leader we would be willing to accept this amendment. It is conferenceable. It is not in the House provision and would have to be decided in conference.

Mr. DOLE. Accept it.

Mr. MOYNIHAN. I see the junior Senator from Nevada has risen.

The PRESIDING OFFICER. The Senator from Nevada.

Mr. REID. If it is cleared with the minority, we would certainly have no objection. I would ask that there be time allowed for my colleague from the State of Nevada, Senator BRYAN, to be allowed to speak on this matter.

Mr. MOYNIHAN. Of course. I yield the floor.

The PRESIDING OFFICER. The Senator from Ohio.

Mr. METZENBAUM. Mr. President, I do not know anything about this amendment. I am not sure too many other Members on the floor know anything about this amendment. It was my understanding there were not going to be a whole host of amendments and it was not going to be a Christmas tree bill. I rise not to oppose the amendment because it may have a lot of merit to it, but it was not considered as I understand it in the Finance Committee, and——

Mr. REID. Mr. President, will the Senator yield?

Mr. METZENBAUM. I yield.

Mr. REID. I would indicate to the Senator from Ohio we had two hearings before the Finance Committee on this matter.

Mr. METZENBAUM. The Senator had two hearings in the Finance Committee?

Mr. REID. That is right.

Mr. METZENBAUM. Then I would have to say I guess it would be the Finance Committee which would have to explain to this body why after two hearings they did not see fit to include this amendment on the bill that is before us and yet is now going to be accepted on the floor of the Senate.

Again I want to say I am not opposed to the amendment. I do not know what it is. I do not understand enough about it. I think it takes many of us by surprise. And I think at 8:30 at night we get an amendment of this kind that was apparently considered by the Finance Committee, not included in the Finance Committee, and then to be accepted—I do not have any particular strong feeling whether it should be or should not be. But I raise the point.

I just heard Senator SPECTER'S amendment which was accepted, and I am not opposed to that, and I am not addressing myself to the merits of that. I am aware of the fact that the Senator from Ohio had an amendment that was accepted but it was fair too point out that the Senator from Ohio's amendment was well known as coming and that it was in the House bill and it was no particular surprise to anybody and was accepted.

I am raising a question only with respect to procedure, not in opposition to the amendment which very well may have much merit to it.

The PRESIDING OFFICER. Is there further debate?

The Senator from Nevada.

Mr. BRYAN. Mr. President, I yield to my distinguished colleague.

Mr. MOYNIHAN. Mr. President, I just make the point to the Senator from Ohio that I just said in my view this was not good tax policy. It comes as an amendment. I am not sure it would be accepted. I said I wished it were dealt with in the full committee. I mentioned there had been hearings. The Senators from Nevada have taken care to do that.

It would be something my State would not like. It precludes the States from dealing with collusive arrangements, whereby persons arrange to have their last 5 years' of income or whatever taken as pensions, and then paid to them after they moved to a State that does not have an income tax. It is not good federalism.

But this whole pattern is not good legislation in the first place. This bill is not going to be enacted. This bill is going to be vetoed.

I do not want to bring people away from home from their firesides, wives, loved ones, and dogs at this hour of night. I mean I thought we thought we were going to have no amendments and now we have nothing but. This is not serious legislation. We are going to have something, the only thing serious and I am sure the Republican leader agrees we must have this bill on the President's desk by March 20 so he can veto it.

Mr. DOLE. He can come up here.

Mr. MOYNIHAN. He can come up here and veto the bill. If we keep having rollcalls tonight we go past the point we have it on his desk so he can veto it by March 20. Accordingly I accept it. And it is good for Texas.

Mr. MITCHELL. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. BRYAN. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. BRYAN. Mr. President, let me endorse the comments made by my senior colleague and express my appreciation to the very able distinguished senior Senator from New Jersey for making the point that the amendment which is being offered this evening by a number of us has a far broader impact than just the State of Nevada.

Mr. President, I rise in support of the amendment offered by the senior Senator from Nevada.

Our amendment would eliminate an outrageous form of taxation without representation: State source taxation of pension income.

The bill we are debating today has two main purposes: tax fairness and economic growth.

The amendment we are offering directly addresses this issue of tax fairness.

A bill identical to this amendment, S. 267, currently has 31 cosponsors here in the Senate; similar legislation in the House of Representatives has over 200 cosponsors.

In both the House and the Senate, our bill has a broad range of support, spread across both the Nation and across the ideological spectrum.

As we all know, many individuals choose to retire to States other than that where they spent their working life.

In Nevada alone, we have an estimated 100,000 retirees who have moved to our State from California.

There are many reasons for such moves, and I think we all agree that retirees have the right to live whereever they choose.

Unfortunately, some State tax boards disagree, and have embarked upon a policy of relentlessly pursuing retired former residents across the Nation.

When these roving tax agents locate one of these retirees, often many years after they have retired and moved away from the State, they present their former residents with huge tax bills.

Considering the longer lives we all hope to enjoy, this fact becomes especially shocking.

Eighty-five-year-old retirees are no longer uncommon: such an individual may well be paying taxes to a State from which he has derived no benefit for the past 20 years.

Why should our investment in pensions tie us forever to any particular State? Many pensioners move to Nevada with no regard, or awareness, of the tax status of their pensions.

One of the most distressing examples of the effects of this tax policy has been recounted in several newspaper articles over the years.

Ms. Gertrude Eberly, now 75 years old, moved to Nevada after working for the State of California for 31 years.

Like most retirees, she assumed that her tax liability to California ceased when she moved out of the State.

Nine years after moving to Nevada, Ms. Eberly was hit with a tax bill for $4,000 in delinquent taxes.

Over the next few years, the amount she supposedly owed to California slowly increased—her balance now stands at over $7,000.

Given her $13,000 annual income, it is hard to imagine that Ms. Eberly will be paying off this balance in the near future.

In the meantime, what does Ms. Eberly receive from California? Any government services she receives are provided by the State of Nevada, or the city of Fallon, where Ms. Eberly lives.

While Nevada has no State income tax, we do have property, sales, and other taxes to pay for government services.

Ms. Eberly, like other victims of the source tax in Nevada, pays taxes in Nevada to support the services she receives.

Nevertheless, the State of California believes that it also has a claim on her pension income.

What if Ms. Eberly decides she does not like the way her tax dollars are being spent? If we are talking about her Nevada taxes, or her Federal taxes, she can voice her opinion through the ballot box.

As a voter in Nevada, she is also provided access to the State's elected officials.

What about California? She is denied access to the ballot box, and I suspect she has very little access to the elected officials in California through other avenues.

This source taxation of nonresident pension income is unfair on several counts.

First, it is clearly taxation without representation, a concept that is antithetical to the very foundation of our democracy.

Second, source taxation requires pensioners to pay for services they cannot ever receive.

The problem this amendment addresses is much broader than a simple dispute between California and Nevada.

Several years ago, an outraged Nevadan, Mr. Bill Hoffman, started to organize an organization to fight this unfair taxation.

Today, this organization, RESIST, has membership in the tens of thousands, with members in each of the 50 States and several foreign countries.

In many cases, this source taxation is even more onerous than a reasonable person might expect.

Consider the situation described in a letter received by RESIST from a taxpayer in Concord, NH:

> I formerly lived and worked in California, for a private company which now pays me a small pension.
>
> I am now a permanent resident of New Hampshire, but the California Franchise Tax Board expects me to pay them income tax for the rest of my life.
>
> My pension is so small that the tax on it alone would be eliminated by the personal exemption allowed nonresidents.
>
> However, the Franchise Tax Board has devised tax forms which require me to calculate the tax on my total income, as if I were a resident.
>
> That figure is then multiplied by the ratio of my California income to my total income.
>
> Although I pay less than a resident, the amount never gets down to zero because of the bias in the tax tables.
>
> Isn't that an ingenious way to collect extra money from citizens who are not allowed to vote?

I have heard similar complaints from many of my own constituents as well—California insists that non-resident pensioners include non-California sourced income in their calculation of California tax liability.

The unfairness of this situation is pretty self-evident.

A letter from Corpus Christi, TX, provides another example of the type of hardship the source taxation of pensions can cause.

> I'm a widow of a Long Beach, California Police Officer, he retired in 1969, died in 1971. * * * I've lived the last 11 years in Texas, never gone back to California since then. I only live off my pension. I'm 72, don't work, now they say I must pay income tax. Will you send me information on what I am supposed to do. * * *

By most accounts, the individuals affected by this tax are not what we would consider tax evaders.

For the most part, these retirees are unaware of their obligation to pay source taxes until they hear from the tax collector, at which point penalties and interest have already accrued on their purported tax liability.

By the time the tax collectors finally find these retirees, these bills are often so large that no ordinary pensioner can hope to pay them off.

Unfortunately, each of the examples I have described have involved the State of California.

While California is the State I hear about the most, largely due to Nevada's geographic proximity to California, it is not alone in collecting this unfair tax.

While it is difficult to track down exactly which States authorize the collection of source taxes on nonresident pensions, a study conducted by the Federation of Tax Administrators, an opponent of this legislation, can shed some light.

The FTA, in testimony last June before the Senate Finance Committee, reported that 13 States responding to its survey stated that their income tax statute would authorize collection of State income tax on nonresident pension income.

Three of these States reported that they have a program in place to collect such income.

From this account, it appears that only a few States impose this type of tax; with the increasing pressures on States' finances, however, it seems likely that this number will only increase.

The collection of source taxes on pension incomes is obviously a great burden on many retirees.

Less obvious, however, are the burdens these taxes create in other areas.

While retirees living in States that do not impose a State income tax bear the greatest burden of this misguided tax policy, other States also feel an impact.

For example, most States allow a tax credit against income taxes paid to other States.

This reduces the tax revenue available to the State in which the retiree has residence, even though this State is responsible for providing Government services to the retiree.

Other taxpayers in the State necessarily bear the burden of replacing this lost revenue.

Of particular concern to me is the burden these taxes will place on private businesses.

I have here two letters from businesses to their retirees: one from Ford, and another from Rockwell International. Both of these letters advise retirees that the companies' pension plans are being required to report pension payments to for each of the States where a retiree had worked.

To quote from the Rockwell International letter:

If you are a Rockwell retiree and worked in any of the above thirteen States during your working career with Rockwell (or its subsidiaries or predecessor companies), please check the appropriate box for each State in which you worked. * * *

Clearly, this source taxation has the potential to become a recordkeeping nightmare for companies that run pension plans.

It seems clear that if source taxation of pension income becomes the norm, businesses, or the companies administering their pension plans, will be required to construct detailed work histories of individuals showing when a person worked in each State, how much a person earned in that State, and how much of the retirees pension can be attributed to that income.

I do not think any business, large or small, is going to be enthusiastic about assembling this type of report for each retiree. This problem becomes even more acute when we consider the difficulties that might be encountered by retirees who had worked for more than one company during their career, a situation which in today's economy has become the norm. The potential cost to businesses of source taxation is the reason why the American Payroll Association has endorsed this legislation.

In addition, this legislation is supported by scores of employee, retirement, and tax fairness groups including such organizations as the National Association of Retired Federal Employees [NARFE], the National Association of Letter Carriers, the Retired Officers Association, the Retired Enlisted Association, the American Association of Foreign Service Women, the Air Force Sergeants Association, the Marine Corps League, the National Association of Postal Supervisors, the Naval Reserve Association, Common Cause, the National Taxpayers Union, the Federal Managers Association, the Airline Pilots Association, and the Air Force Association.

As a former Governor, I am well aware of the pressure on the States' finances.

I am also well aware of the need for the Federal Government to refrain from interfering in matters better left to the individual States.

Nevertheless, this is an issue that requires Federal action.

Nevada and several other States have attempted to take unilateral action to eliminate this unfair practice.

In 1989, the Nevada Legislature passed a bill, AB 154, which prohibits the seizure of property within the State of Nevada for the nonpayment of source taxes on pension or retirement income.

Washington and Florida have passed similar legislation, and Texas, Oregon, Alaska, Hawaii, Connecticut, and Arizona have bills pending in their legislatures which would accomplish the same purpose. Nevertheless, the Nevada law has not solved the problem for Nevada residents.

I have heard many accounts of retirees being harassed and threatened by collection agents working on behalf of out-of-State tax boards. As you may expect, these intimidation tactics often pay off, even retirees with knowledge of the Nevada law may be reluctant to place their property at risk when confronted by an aggressive tax collector.

This is a growing problem, one that can only get worse as States' fiscal problems continue to grow.

While I am always hesitant to interfere with States' rights, this is clearly a case where the only possible solution is Federal legislation.

Congress has placed limits on the States' ability to levy individual income taxes in the past.

For example, the Soldiers and Sailors' Relief Act of 1940 allows active members of the armed services to maintain their original State residency, and to avoid paying individual income taxes in the States in which they are stationed.

In more recent action, the 101st Congress, as part of the Amtrak reauthorization, prohibited States from taxing railroad workers and truck drivers who simply passed through their borders.

Both of these actions suggest that Congress, when it finds sufficient causes, can, and should, take action to limit States' ability to tax nonresident income.

The Congressional Research Service, in a report issued March 27, 1989, found that Congress did have the authority to enact such legislation.

Quoting the CRS Report:

Should Congress determine that, as a matter of sound public policy, allowing the States to impose taxes on the retirement income of individuals who do not reside in such States is undesirable, it may have constitutional authority to enact preemptive legislative forbidding the imposition of such taxes. Clearly, Congress does have some authority to limit State taxation of nonresidents.

In summary, this legislation is essential to provide fairness and protect the rights of thousands of retirees across the Nation.

While the taxes that could be collected from these pensioners is only a minor factor in the budgets of the States that collect them, they are a major burden for the retirees who are being harassed into paying them.

In the interest of fairness to retirees throughout the country, I urge you to vote in favor of the pending amendment.

I thank the Chair, and I thank my colleague from Nevada.

Mr. REID addressed the Chair.

The PRESIDING OFFICER. The Senator from Nevada is recognized.

Mr. REID. Mr. President, because of the quorum calls and intervening delays, it is not really definite how much time we had. The proposed unanimous-consent agreement that I made with the chairman of the committee is that we would have 35 minutes on this side and the chairman would control 25 minutes. I reserve the remainder of my time, which I estimate at about 5 minutes.

Mr. BENTSEN. I say to my colleague from Nevada, I only plan to use 2 or 3 minutes. I understand my colleague, the Senator from New York, has made the points. I would be delighted to have the Senator finish his time, and then I propose to move to table the amendment.

Has the Senator had enough time? If not, I will yield some of my time to him.

Mr. REID. If the Senator would allow me to complete my statement, and then I would look forward to the motion to table.

The PRESIDING OFFICER. The Senator from Nevada.

Mr. REID. The point that has been made by Senator BRADLEY, Senator BRYAN, and this Senator, is that this affects people in every State in the Union—thousands of people, tens of thousands of people—people who are being asked to pay money to a State where they do not live. This affects people who are pensioners—senior citizens. It does not affect people with large incomes. If it does, then there should be something else done to stop people who are cheaters. This does not affect that group of people.

State budgets are also experiencing economic hard times. It seems like every week I read or hear of another State that is either laying off State employees, or increasing taxes, or both. It won't take long for States other than the eight who impose a source tax to realize that taxing someone from another State is an easy way to increase revenues without paying the political price. In other words, unless we adopt my amendment to this bill, you can be sure that more and more States will begin to impose this unfair tax for which no one is held accountable.

The source tax is only scratching the surface of how States will go beyond their borders to collect revenues. A July 1991 article from the San Francisco Examiner points out that California is now taxing visiting pro athletes. I quote from the article:

The next time Roger Clemens steps up to the mound at the Oakland Coliseum, you can bet someone in Sacramento will be rubbing

his palms and smiling the way that only a tax collector can. It means the state treasury has just grown by $2,605.

The article continues:

Each time Michael Jordan takes the floor against the Golden State Warriors in Oakland, the State pockets another $3,285. And when Herschel Walker lines up in the Minnesota Vikings backfield at Candlestick Park, California will rake in a whopping $10,462.

According to the article California expects to collect $2½ million per year from out-of-State professional athletes. Wisconsin, Ohio, and New York pursue the same tax.

It seems that there is a new war between the States brewing on this issue. It is my understanding that Illinois recently instituted the out-of-State tax levy against athletes from any other State that collected such taxes. State Senator John Cullerton, the sponsor of the legislation, was quoted as saying, "The main purpose is not to raise money. This is about equity and fairness. Why should we be losing money to California."

It does not end here. Just last month an article in the San Diego Union-Tribune told of a California State Franchise Board proposal to broaden the State tax law in a way that could force military men and women stationed in California to pay State income taxes.

Another proposal I heard recently was a proposal to tax airline employees for the period of time they are flying within California's air space. There is literally no end to the possibilities.

By adopting my amendment to this tax bill we can not only prohibit the source tax, we can also diffuse this rampage of interstate taxation with a very clear message to the States that taxation without representation is not acceptable.

Mr. BENTSEN. Mr. President, I say to my two distinguished friends from Nevada, I sometimes would be concerned, but I do believe this is the type of legislation that would have a much better chance of becoming law, frankly if it was on a less controversial bill.

I would say, too, that this is one over which the Judiciary Committee would feel like it had jurisdiction, when we are talking about State laws.

So with that in mind, I now move to table the amendment.

The PRESIDING OFFICER. The question is on the motion.

Mr. REID. Mr. President, I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. If there is no further debate, the question is on agreeing to the motion to lay on the table the amendment of the Senator from Nevada.

The yeas and nays have been ordered. The clerk will call the roll.

The assistant bill clerk called the roll.

Mr. FORD. I announce that the Senator from Iowa [Mr. HARKIN] and the Senator from Hawaii [Mr. INOUYE] are necessarily absent.

The PRESIDING OFFICER (Mr. WELLSTONE). Are there any other Senators in the Chamber who desire to vote?

The result was announced—yeas 36, nays 62, as follows:

[Rollcall Vote No. 42 Leg.]

YEAS—36

Baucus	Gore	Moynihan
Bentsen	Hollings	Nunn
Bond	Jeffords	Pell
Boren	Johnston	Riegle
Breaux	Kennedy	Robb
Brown	Kerrey	Rockefeller
Chafee	Kerry	Sanford
Cranston	Leahy	Sarbanes
Dole	Levin	Sasser
Durenberger	McConnell	Shelby
Exon	Metzenbaum	Wellstone
Glenn	Mitchell	Wofford

NAYS—62

Adams	Domenici	Mikulski
Akaka	Ford	Murkowski
Biden	Fowler	Nickles
Bingaman	Garn	Packwood
Bradley	Gorton	Pressler
Bryan	Graham	Pryor
Bumpers	Gramm	Reid
Burdick	Grassley	Roth
Burns	Hatch	Rudman
Byrd	Hatfield	Seymour
Coats	Heflin	Simon
Cochran	Helms	Simpson
Cohen	Kassebaum	Smith
Conrad	Kasten	Specter
Craig	Kohl	Stevens
D'Amato	Lautenberg	Symms
Danforth	Lieberman	Thurmond
Daschle	Lott	Wallop
DeConcini	Lugar	Warner
Dixon	Mack	Wirth
Dodd	McCain	

NOT VOTING—2

Harkin	Inouye

So the motion to lay on the table the amendment (No. 1719) was rejected.

The PRESIDING OFFICER. The question now is on agreeing to the amendment of the Senator from Nevada.

The amendment (No. 1719) was agreed to.

Mr. REID. I move to reconsider the vote.

Mr. DOLE. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

AMENDMENT NO. 1720

(Purpose: To provide tax incentives for businesses locating on Indian Reservations, and for other purposes.)

Mr. MCCAIN. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report the amendment.

The legislative clerk read as follows:

The Senator from Arizona [Mr. MCCAIN] for himself, Mr. SIMON and Mr. DOMENICI proposes an amendment numbered 1720.

Mr. MCCAIN. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

At the end of the bill, insert the following new title:

TITLE VI—TAX INCENTIVES FOR ECONOMIC GROWTH ON INDIAN RESERVATIONS

SEC. 6001. SHORT TITLE.

This title may be cited as the "Indian Employment and Investment Act of 1992".

SEC. 6002. INVESTMENT TAX CREDIT FOR PROPERTY ON INDIAN RESERVATIONS.

(a) ALLOWANCE OF INDIAN RESERVATION CREDIT.—Section 46 (relating to investment credits) is amended by striking "and" at the end of paragraph (2), by striking the period at the end of paragraph (3) and inserting "and", and by adding after paragraph (3) the following new paragraph:

"(4) the Indian Reservation Credit."

(b) AMOUNT OF INDIAN RESERVATION CREDIT.—

(1) IN GENERAL.—Section 48 (defining the Energy Credit and the Reforestation Credit) is amended by adding after subsection (b) the following new subsection:

"(c) INDIAN RESERVATION CREDIT.—

"(1) IN GENERAL.—For purposes of section 46, the Indian Reservation Credit for any taxable year is the Indian reservation percentage of the qualified investment in qualified Indian reservation property placed in service during such taxable year, determined in accordance with the following table:

"In the case of qualified Indian reservation property which is:	Indian reservation percentage is:
Reservation personal property	25
New reservation construction property	33⅓
Reservation infrastructure investment	33⅓

"(2) QUALIFIED INVESTMENT IN QUALIFIED INDIAN RESERVATION PROPERTY DEFINED.—

"(A) IN GENERAL.—The term 'qualified Indian reservation property' means property—

"(i) which is—

"(I) reservation personal property,

"(II) new reservation construction property, or

"(III) reservation infrastructure investment, and

"(ii) not acquired (directly or indirectly) by the taxpayer from a person who is related to the taxpayer (within the meaning of section 465(b)(3)(C)).

"(B) QUALIFIED INVESTMENT IN QUALIFIED INDIAN RESERVATION PROPERTY.—The term 'qualified investment in qualified Indian reservation property' means—

"(i) in the case of reservation infrastructure investment, the amount expended by the taxpayer for the acquisition or construction of the reservation infrastructure investment; and

"(ii) in the case of all other qualified Indian reservation property, the taxpayer's basis for such property—

"(C) RESERVATION PERSONAL PROPERTY.—The term 'reservation personal property' means qualified personal property which is used by the taxpayer predominantly in the active conduct of a trade or business within an Indian reservation. Property shall not be treated as 'reservation personal property' if it is used or located outside the Indian reservation on any regular basis.

"(D) QUALIFIED PERSONAL PROPERTY.—The term 'qualified personal property' means property—

"(i) for which depreciation is allowable under section 168,

"(ii) which is not—

"(I) nonresidential real property,

"(II) residential rental real property, or

"(III) real property which is not described in (I) or (II) and which has a class life of more than 12.5 years.

"(E) NEW RESERVATION CONSTRUCTION PROPERTY.—The term 'new reservation construction property' means qualified real property—

"(i) which is located in an Indian reservation,

"(ii) which is used by the taxpayer within an Indian reservation predominantly in the active conduct of a trade or business, and

"(iii) which is originally placed in service by the taxpayer.

"(F) QUALIFIED REAL PROPERTY.—The term 'qualified real property' means property described in clause (I), (II), or (III) of paragraph (2)(D)(ii).

"(G) RESERVATION INFRASTRUCTURE INVESTMENT DEFINED.—

"(i) IN GENERAL.—The term 'reservation infrastructure investment' means qualified personal property or qualified real property which—

"(I) benefits the tribal infrastructure,

"(II) is available to the general public, and

"(III) is placed in service in connection with the taxpayer's active conduct of a trade or business within an Indian reservation.

"(ii) PROPERTY MAY BE LOCATED OUTSIDE THE RESERVATION.—Qualified personal property and qualified real property outside an Indian reservation shall be reservation infrastructure investment only if its purpose is to connect to existing tribal infrastructure in the reservation. Examples of property which may be described in this paragraph include roads, power lines, water systems, railroad spurs, and communications facilities.

"(3) REAL ESTATE RENTALS.—For the purposes of this section, ownership (or leaseholding) of residential, commercial, or industrial real property within an Indian reservation for rental shall be treated as the active conduct of a trade or business in an Indian reservation.

"(4) DEFINITIONS.—For purposes of this subsection, the term 'Indian reservation' means a reservation, as defined in—

"(A) section 3(d) of the Indian Financing Act of 1974 (25 U.S.C. 1452(d)), or

"(B) section 4(10) of the Indian Child Welfare Act of 1978 (25 U.S.C. 1903(10)).

"(5) LIMITATION BASED ON UNEMPLOYMENT.—The Indian reservation credit allowed under section 46 for any taxable year shall apply only in the event that the Indian unemployment rate on the applicable Indian reservation for which the credit is sought exceeds 300 percent of the national average unemployment rate at any time during such taxable year or in the immediately preceding taxable year. The requisite Indian unemployment rate shall be based upon those reservation Indians unemployed and able to work, and shall be certified by the Secretary of the Interior."

(2) LODGING TO QUALIFY.—Paragraph (2) of section 50(b) (relating to property used for lodging) is amended—

(A) by striking "and" at the end of subparagraph (C),

(B) by striking the period at the end of subparagraph (D) and inserting ", and," and

(C) by adding at the end thereof the following subparagraph:

"(E) new reservation construction property."

(c) RECAPTURE.—Subsection (a) of section 50 (relating to certain dispositions, etc., of investment credit property), is amended by adding at the end thereof the following new paragraph.

"(6) SPECIAL RULES FOR INDIAN RESERVATION PROPERTY.—

"(A) IN GENERAL.—If, during any taxable year, property with respect to which the taxpayer claimed an Indian reservation credit—

"(i) is disposed of, or

"(ii) in the case of reservation personal property—

"(I) otherwise ceases to be investment credit property with respect to the taxpayer, or

"(II) is removed from the Indian reservation, converted or otherwise ceases to be Indian reservation property, the tax under this chapter for such taxable year shall be increased by the amount described in subparagraph (B).

"(B) AMOUNT OF INCREASE.—The increase in tax under subparagraph (A) shall equal the aggregate decease in the credits allowed under section 38 by reason of section 48(c) for all prior taxable years which would have resulted had the expenditures taken into account with respect to the property been limited to an amount which bears the same ratio that the property was held by the taxpayer bears to the applicable recovery period under section 168(g)."

(d) BASIS ADJUSTMENT TO REFLECT INVESTMENT CREDIT.—Paragraph (3) of section 50(c) (relating to basis adjustment to investment credit property) is amended to read as follows:

"(3) SPECIAL RULE.—In the case of any energy credit, reforestation credit or Indian reservation credit other than with respect to or expenditure for new reservation construction property—

"(A) only 50 percent of such credit shall be taken into account under paragraph (1), and

"(B) only 50 percent of any recapture amount attributable to such credit shall be taken into account under paragraph (2)."

(e) BASIS ADJUSTMENT TO REFLECT INVESTMENT CREDIT.—Paragraph (4) of section 50(b) is amended by redesignating subparagraphs (D) and (E) as subparagraphs (E) and (F) and inserting new subparagraph (D) as follows:

"(D) EXCEPTION FOR RESERVATION INFRASTRUCTURE INVESTMENT.—This paragraph shall not apply for purposes of determining the Indian reservation credit with respect to reservation infrastructure investment."

(f) CLERICAL AMENDMENTS.—

(1) The caption of section 48 is amended by deleting the period at the end thereof and adding "; Indian Reservation Credit."

(2) The table of sections for subpart E of Part IV of subchapter A of Chapter 1 is amended by striking out the item relating to section 48 and inserting in lieu thereof the followings:

"Sec. 48. Energy Credit, reforestation credit; Indian reservation credit."

(g) EFFECTIVE DATE.—The amendments made by this section shall apply to property placed in service after December 31, 1991.

SEC. 6003. INDIAN EMPLOYMENT CREDIT.

(a) ALLOWANCE OF INDIAN EMPLOYMENT CREDIT.—Section 38(b) of the Internal Revenue Code of 1986 (relating to general business credits) is amended by striking "plus" at the end of paragraph (6), by striking the period at the end and of paragraph (7) and inserting ", plus", and by adding after paragraph (7) the following new paragraph:

"(8) the Indian employment credit."

(b) AMOUNT OF INDIAN EMPLOYMENT CREDIT.—Subpart D of part IV of subchapter A of chapter 1 (relating to business related credits) is amended by adding at the end thereof the following new section:

"SEC. 45. INDIAN EMPLOYMENT CREDIT.

"(a) AMOUNT OF CREDIT.—For purposes of section 38, the Indian employment credit determined under this section with respect to any employer for any taxable year is 10 percent (30 percent in the case of an employer with at least 85 percent Indian employees) of the sum of—

"(1) the qualified wages paid or incurred during such taxable year, plus

"(2) qualified employee health insurance costs paid or incurred during such taxable year.

"(b) QUALIFIED WAGES; QUALIFIED EMPLOYEE HEALTH INSURANCE COSTS.—For purposes of this section:

"(1) QUALIFIED WAGES.—The term 'qualified wages' means any wages paid or incurred by an employer for services performed by an employee while such employee is a qualified employee.

"(2) QUALIFIED EMPLOYEE HEALTH INSURANCE COSTS.—

"(A) IN GENERAL.—The term 'qualified employee health insurance costs' means any amount paid or incurred by an employer for health insurance to the extent such amount is attributable to coverage provided to any employee while such employee is a qualified employee.

"(B) EXCEPTION FOR AMOUNTS PAID UNDER SALARY REDUCTION ARRANGEMENTS.—No amount paid or incurred for health insurance pursuant to a salary reduction arrangement shall be taken into account under subparagraph (A).

"(c) QUALIFIED EMPLOYEE.—For purposes of this section:

"(1) IN GENERAL.—Except as otherwise provided in this subsection, the term "qualified employee' means, with respect to any period, any employee of an employer if—

"(A) substantially all of the services performed during such period by such employee for such employer are performed within an Indian reservation, and

"(B) the principal place of abode of such employee while performing such services is on or near the reservation in which the services are performed.

"(2) CREDIT ALLOWED ONLY FOR FIRST 7 YEARS.—An employee shall not be treated as a qualified employee for any period after the date 7 years after the day on which such employee first began work for the employer.

"(3) INDIVIDUALS RECEIVING WAGES IN EXCESS OF $30,000 NOT ELIGIBLE.—An employee shall not be treated as a qualified employee for any taxable year of the employer if the total amount of the wages paid or incurred by such employer to such employee during such taxable year (whether or not for services within an Indian reservation) exceeds the amount determined at an annual rate of $30,000. The Secretary shall adjust the $30,000 amount contained in the preceding sentence for years beginning after 1991 at the same time and in the same manner as under section 415(d).

"(4) EMPLOYMENT MUST BE TRADE OR BUSINESS EMPLOYMENT.—An employee shall be treated as a qualified employee for any taxable year of the employer only if more than 50 percent of the wages paid by the employer to such employee during such taxable year are for services performed in a trade of business of the employer. Any determination as to whether the preceding sentence applied with respect to any employee for any taxable year shall be made without regard to paragraph (4) of subsection (e).

"(5) CERTAIN EMPLOYEES NOT ELIGIBLE.—The term 'qualified employee' shall not include—

"(A) any individual described in subparagraph (A), (B), or (C) of section 51(i)(1),

"(B) any 5-percent owner (as defined in section 416(i)(1)(B)), and

"(C) any person who is neither an enrolled member of an Indian tribe nor the spouse of an enrolled member of an Indian tribe.

"(d) EARLY TERMINATION OF EMPLOYMENT BY EMPLOYER.-

"(1) IN GENERAL. —If the employment of any employee is terminated by the taxpayer before the day 1 years after the day on which such employee began work for the employer—

"(A) no wages (or qualified employee health insurance costs) with respect to such employee shall be taken into account under subsection (a) for the taxable year in which such employment is terminated, and

"(B) the tax under this chapter for the taxable year in which such employment is terminated shall be increased by the aggregate credits (if any) allowed under section 38(a) for prior taxable years by reason of wages (or qualified employee health insurance costs) taken into account with respect to such employee.

"(2) CARRYBACKS AND CARRYOVERS ADJUSTED.—In the case of any termination of employment to which paragraph (1) applies, the carrybacks and carryovers under section 39 shall be properly adjusted.

"(3) SUBSECTION NOT TO APPLY IN CERTAIN CASES.—

"(A) IN GENERAL.—Paragraph (1) shall not apply to—

"(i) a termination of employment of an employee who voluntarily leaves the employment of the taxpayer,

"(ii) a termination of employment of an individual who before the close of the period referred to in paragraph (1) becomes disabled to perform the services of such employment unless such disability is removed before the close of such period and the taxpayer fails to offer reemployment to such individual, or

"(iii) a termination of employment of an individual if it is determined under the applicable State unemployment compensation law that the termination was due to the misconduct of such individual.

"(B) CHANGES IN FORM OF BUSINESS.—For purposes of paragraph (1), the employment relationship between the taxpayer and an employee shall not be treated as terminated—

"(i) by a transaction to which section 381(a) applies if the employee continues to be employed by the acquiring corporation, or

"(ii) by reason of a mere change in the form of conducting the trade or business of the taxpayer if the employee continues to be employed in such trade or business and the taxpayer retains a substantial interest in such trade or business.

"(4) SPECIAL RULE.—Any increase in tax under paragraph (1) shall not be treated as a tax imposed by this chapter for purposes of—

"(A) determining the amount of any credit allowable under this chapter, and

"(B) determining the amount of the tax imposed by section 55.

"(e) OTHER DEFINITIONS AND SPECIAL RULES.—

"(1) INDIAN TRIBE DEFINED.—The term 'Indian tribe' means any Indian tribe, band, nation, pueblo, or other organized group or community, including any Alaska Native village, or regional or village corporation, as defined in, or established pursuant to, the Alaska Native Claims Settlement Act (43 U.S.C. 1601 et seq.) which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

"(2) INDIAN RESERVATION DEFINED.—The term 'Indian reservation' means a reservation, as defined in—

"(A) section 3(d) of the Indian Financing Act of 1974 (25 U.S.C. 1452(d)), or

"(B) section 4(10) of the Indian Child Welfare Act of 1978 (25 U.S.C. 1903 (10)).

"(3) WAGES.—The term 'wages' has the meaning given such term by section 51 except that paragraph (4) of section 51(c) shall not apply.

"(4) CONTROLLED GROUPS.—For purposes of this section—

"(A) all employers treated as a single employer under section (a) or (b) of section 52 shall be treated as a single employer for purposes of this section, and

"(B) the credit (if any) determined under this section with respect to such employer shall be its proportionate share of the wages and qualified employee health insurance costs giving rise to such credit.

"(5) CERTAIN OTHER RULES MADE APPLICABLE.—For purposes of this section, rules similar to the rules of section 51(k) and subsections (c), (d), and (e) of section 52 shall apply."

(c) CLERICAL AMENDMENT.—The table of sections for subpart D of part IV of subchapter A of chapter 1 is amended by adding at the end thereof the following new section:

"Sec. 45. Indian employment credit."

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to expenses paid or incurred in taxable years beginning after December 31, 1992.

Mr. MCCAIN. Mr. President, I propose this amendment on behalf of myself, Senators SIMON, DOMENICI, and others.

Mr. President, before I describe the amendment, I would like to describe why I am proposing this amendment, and I apologize to my colleagues for the lateness of the hour. I remind my colleague that last night I was ready, and all day yesterday to propose these amendments, and I apologize for any inconvenience this may cause my colleagues.

I think it is an important issue. We are talking about America's poorest citizens, and I think if we are going to provide relief and comfort and economic benefit to all other parts of our society, Mr. President, our Native Americans deserve some consideration.

Mr. President, in 1953, the great Indian law scholar Felix Cohen wrote:

> Like the miner's canary, the Indian marks the shift from fresh air to poison gas in our political atmosphere; and our treatment of Indians, even more than our treatment of other minorities, reflects the rise and fall in our Democratic faith.

Mr. President, if those words are correct, then I would have to tell you that our atmosphere is clearly poisoned in America today as far as our treatment of minorities and Native Americans are concerned.

Statistics do not reveal adequately the situations that exist on Indian reservations across the country today. Let me cite several statistics: Alcoholism, 438 percent higher than the national average; tuberculosis, 400 percent higher than the national average; diabetes, 155 percent greater than the national average; accidents, 131 percent greater; homicide, 57 percent greater; pneumonia and influenzas, 32 percent greater; suicide, 27 percent greater.

Conditions on Indian reservations today are appalling. I have a very modest measure, a measure that in some form or another I and several of my colleagues have been working on for many years now to try to stimulate economies on these Indian reservations to give them an opportunity for economic well-being, education, and frankly, a small chance to realize the American dream.

The purpose of this amendment is to provide a program of employment and investment incentives that can attract capital and make the private sector a vital and permanent source of economic development on Indian reservations. Specifically, this amendment provides for two Indian tax credits, an investment tax credit and an employment tax credit. The Indian employment credit provides a 10-percent credit to the employer based on the qualified wages and health insurance costs paid to an Indian who is an enrolled member of a federally recognized tribe.

As an added incentive, a significantly higher employment credit of 30 percent is offered to reservation employers having an Indian work force of at least 85 percent. The amendment is limited to those employees who do not receive wages in excess of $30,000. The credit, which focuses on job creation, would be allowed only for the first 7 years of an Indian's employment.

The amendment also provides for an investment tax credit targeted to Indian country. This credit is geared specifically to Indian reservations where Indian unemployment levels are unconscionable, the credit being limited in its applicability to Indian reservations having an unemployment rate exceeding the national average by at least 300 percent.

Let me repeat, the credit is limited in its applicability to Indian reservations having an unemployment rate exceeding the national average by at least 300 percent.

This particular credit offers a higher percentage credit from investment in Indian country than would otherwise be available under a nationwide ITC. This differential is absolutely essential in order to help mitigate the problems endemic to investing in Indian country, particularly the lack of infrastructure, which is not commonly shared by other depressed areas.

Without such a differential, an ITC would be essentially useless for reservation-based economic development since Indian country, both historically and at the present time, cannot successfully compete with other areas in attracting businesses due to double taxation, infrastructure deficits, and related problems.

Mr. President, there is a document called Applicability of Federal Tax Incentives to American Indian Reservations that was compiled by the National Indian Policy Center. I would

like to cite some economic statistics. The following statistics illustrates the current conditions for Indians both on and off reservations.

From 40 to 45 percent of reservation Indians and 22 percent of off-reservation Indians live below the poverty line. In 1985, the Bureau of Indian Affairs reported a 39 percent unemployment rate among its population. Fourteen percent of Indian reservation households, three times the rate for the United States as a whole, had an annual income under $2,500, and 25 percent of Indian reservation households are on food stamps.

Of the working-age population on Indian reservations only about 40 percent are employed more than 40 weeks of the year, and the majority of those who work earn less than $7,000 a year.

Among the reservation employed, 65.7 of Indian workers on reservations are employed in tribal, Federal, State, or local governments, and 20 percent work in tribal-owned business. Six out of 7 employable reservation adults have no regular contact with or experience in private enterprise. One-third of those who work must travel off reservation to work, et cetera.

Mr. President, I would like to point out that this amendment is strongly supported by the Navajo Nation in conjunction with the 130 American Indian and Alaskan Native villages who are members of the National Congress of American Indians.

A cost-benefit analysis of this amendment was issued on February 19, 1992. The study entitled "Investment In Employment Tax Credits For American Indian Reservation, Analysis of Benefits and Costs," prepared by Mr. William L. Stringer, former chief economist for the Senate Budget Committee, found in part because of conditions unique to Indian country a carefully targeted package of tax incentives for all reservation-based investments and employers would have a significant impact on tribal economies' employment and would do so at negligible cost to the Federal Treasury.

I would like to repeat that last sentence because I know there is going to be a budget point of order. According to the former chief economist for the Senate Budget Committee, this amendment would have "negligible cost to the Federal Treasury."

The same study, Mr. Stringer goes on to point out a broad macroeconomic stimulus package, without programs specifically targeted to the Indian reservation economy, will do little to improve their plight.

Mr. President, I harbor no illusions that this amendment is the panacea for all economic ills facing Indian reservations, but it does provide the opportunity to strengthen Indian reservation economies.

For over 200 years our Nation has influenced the course of human history. Our greatness, our progress, our honor, however, has been circumscribed by a persistent national failing. That failing is clearly evident in the longer and shameful story of abuse and neglect that is the record of our treatment of Native Americans.

Under our Constitution the Congress has ultimate authority for Federal Indian policy. For the better part of two centuries Congress so poorly exercised that authority that Federal Indian policy became infamous for its shortsightedness, inconsistency, and disruptive consequences.

Today we are faced with a litany of social problems on Indian reservations that have become depressingly familiar. I will simply recite a few of the basic statistics again.

The unemployment rate on reservations is typically in the range of 40 to 50 percent. On some of the poorer reservations it reaches 80 to 90 percent. A lack of jobs and economic opportunity on reservations is a major contributor to the high levels of alcoholism, high suicide rates, sense of helplessness, and other deep social problems that afflict all too many tribes.

The conditions on Indian reservations often more closely resemble a Third World underdeveloped nation than the mainstream economy in the society of the United States. I know that some in the Congress have been frustrated that earlier efforts to improve reservations conditions have not been as successful as we might have liked. But that is no excuse for inaction today.

Indeed, we have not only failed to intensify our efforts but spending by the Federal Government for Indian programs fell sharply in real terms over the last 15 years. One of the largest dropoffs was precisely in the area we are discussing: economic development. In constant 1990 dollars, BIA spending for economic development fell from $144 million in 1977 to only $36 million in 1990. A drop in real terms of 75 percent.

Mr. President, Senator INOUYE in his letter says, and I quote part of it:

> Tribal governments want to attain self-sufficiency and reduce the dependency of Indian country on Federal programs and services, but to do so tribal governments must attract businesses and jobs. These complementary investment and employment credits represent an innovative approach available to private sector developers and employers without establishing a new Government bureaucracy. These proposals hold the potential to stimulate at a modest cost the type of investment employment opportunities that are so critically needed on many Indian reservations.

I think it would be, and he says it at the end of his letter, a quote from Navajo President Peterson Zah, one of the truly great and outstanding leaders that I have had the opportunity of knowing:

> Helping American Indians to help themselves is neither a Democratic issue nor a Republican issue. It is not a conservative policy or a liberal policy. It is not even a special interest issue. Rather, it is a human issue that must and deserves to be addressed from a national perspective on a bipartisan basis and with a real sense of urgency warranted by the deplorable conditions existing in Indian country, conditions which are truly a national disgrace.

Those are the words of Navajo tribal President Peterson Zah.

There is no doubt in my mind that bold and innovative measures will be required to overcome the years of poverty, despair, and neglect that afflict the native American community. We have taken bold and innovative steps in the past to revitalize countries and continents the world over. In Europe it was the Marshall plan, in Puerto Rico it was Operation Bootstrap, and each year the Congress appropriates substantial funding to send foreign aid to a host of developing countries. It is time we made a similar commitment to native Americans.

Unlike past Federal approaches toward Indian policy, however, Indian tribal government itself must be closely involved in the development and implementation of programs intended for their well-being.

This amendment meets the threshold test of tribal government input. In this instance, this amendment is a result of recent efforts undertaken by the Navajo Nation to recommend Federal tax incentives which would provide Indian tribes with an additional economic tool to aid them in strengthening Indian reservation economies.

We believe for several reasons that a strategy of tax incentives such as this amendment proposes is the most effective way that the Federal Government can act to stimulate reservation economic development. Tax incentives do not depend for their effectiveness on the actions of Federal bureaucracies that are often slow moving and unimaginative. The incentives are usable only by viable businesses that expect to earn some profits and hence to have tax obligations against which credit and deductions can be used to diminish their tax obligation.

The Federal Government therefore does not spend anything until a real business is created on a reservation, and there exists real jobs and a real income generated for the benefit of reservation residents. Unlike direct spending programs, if there is no benefit, there is also no cost.

Similarly there is a minimum of Federal spending required for studies, planning impact analyses, and all the other ways in which substantial Federal funds can be exhausted and yet no businesses, no jobs, and no real economic development are in sight.

In all too many cases in the past, the real economic impact of direct Federal spending programs has been limited to the planning and other jobs connected to the Federal spending itself. This, or

course, disappears once the Federal spending is gone. No long-term viable economy results, certainly not one that can be sustained.

As we all know, the reason the Congress is currently developing an economic growth package is due to our concern that the national unemployment rate is too high. Yet for many Indian tribes, 8 percent unemployment would be a godsend.

As Senator INOUYE has stated on another occasion, and I quote:

> The unemployment rate on the majority of Indian reservations is simply incomprehensible to the average American. During the heights of the Great Depression in the 1930's unemployment averaged 25 to 30 percent. In 1989 the average rate in Indian country is 52 percent.

It is unconscionable, Mr. President, for the Congress to allow these conditions to fester within the borders of this Nation. Moreover, we cannot in good conscience call the final product a national economic growth package unless we include Indian reservations.

I point out again, I do not understand how you can come before the Congress and the people of the United States and call it an economic growth package without one single, not one single solitary benefit, or tax benefit or any other incentive to take care of the poorest of our citizens.

Mr. President, this amendment provides the opportunity to stimulate the development of viable economies on Indian reservations in 33 States, and I will not read all of those States.

I will point out, particularly the Senators from those 33 reservation States that I will make part of the RECORD, that it should come as no surprise that as a result of our failure to adequately support the development of viable reservation economies, that Indian tribes have turned to other revenue-generating activities, such as gambling and the consideration of proposals to locate commercial waste facilities on their lands.

I ask my colleagues, what other choice have we given Native Americans? What does it say about us as a nation when the only choices for revenue-generating opportunities on Indian lands have come down to gambling or garbage? What does it say about us as a nation when the only choices for economic activity on Indian lands run the risk of infiltration by organized crime, or that unscrupulous parties can exploit Indian lands in the apparent belief that they can degrade the environment without regard to established environmental standards?

I challenge those Members who are concerned about Indian gaming and the potential for the introduction of environmentally unsound waste facilities on Indian lands to support this amendment.

I also challenge my colleagues to carefully consider the other measures now under consideration before the Select Committee on Indian Affairs which provide Indian tribes with other economic tools they can use to improve the quality of life for their people.

Over the long and tragic course of America's treatment of them, Indian leaders have persistently urged the Federal Government to work with them to arrive at sensible solutions to their problems. In 1961, at a meeting in Chicago of over 400 tribal leaders, that request was eloquently renewed in this urgent appeal:

> The answers we seek are not commodities to be purchased. * * * When Indians speak of the continent they yielded, they are not referring only to the loss of some millions of acres in real estate. They have in mind that the land supported a universe of things they knew, valued and loved.
>
> With that continent gone, except for the few poor parcels they still retain, the basis of life is precariously held; but they mean to hold the scraps and parcels as earnestly as every small nation or ethnic group was ever determined to hold identity and survival.
>
> What we ask of America is not charity, not paternalism, even when benevolent. We ask only that the nature of our situation be recognized and made the basis of policy and action.

In sum, Mr. President, we have broken nearly every promise we have made to the Indian people. Though I abhor its occurrence, I am not astonished that frustration occasionally erupts into violence in Indian country. What I do find astonishing is the depth of the enduring devotion of Indian people to this country. Nowhere in America is love of country more in evidence than among Indian communities. As a percentage of their population, no other segment of our society has served in our Armed Forces in such great numbers. Their unsurpassed dedication has survived the indifference of their countrymen. For the most part, the country has ignored their outstanding contributions to our national defense.

Mr. President, the time for action is now. as the Senate considers this amendment, I urge my colleagues to take to heart the following words of Peterson Zah, the president of the Navajo Nation:

> Indeed, helping the American Indians to help themselves is neither a Democratic issue nor a Republican issue; it's not a conservative policy or a liberal policy; it's not even a "special interest" issue. Rather, it is a "human" issue that must, and deserves to be, addressed from a national perspective on a bipartisan basis, and with a real sense of urgency warranted by the deplorable conditions existing in Indian country—conditions which truly are a national disgrace.

Let us debate. Let us examine other alternatives. But let us not ignore the very real human suffering that has been plaguing Native American communities for too long.

I do not want to take too much more time, but let me say that I understand that the hour is late. I understand that it is not part of the package. And I also understand there will be some objection raised to this amendment. I have tried before to get this and other incentives for Native Americans to be brought through the normal process.

I have testified before the Finance Committee. I have written letters, letters that I have here, urging the Finance Committee to consider this very modest or other modest proposals to try and help Native Americans.

Mr. President, I wish that all of our colleagues could spend one Saturday night in Gallup, NM, where you find a situation of men and women on the streets of that town in deplorable conditions, where you find in the faces of those brave and noble people a sense of hopelessness and despair, which drives them to resort to alcohol and other substances. And the reason why there is hope and despair in their eyes, Mr. President, is because there is no opportunity, and it is my profound conviction to provide that to all of our citizens.

I mention again what we are seeing take place on Indian reservations. Because of the lack of ability to attract businesses and private investment, Native Americans have basically turned to two enterprises: One is gaming, of which there is enormous amount of controversy, and will continue to be. The other, of course, is serving as a hazardous waste site. The latter is particularly offensive and egregious, because if there is one thing Native Americans treasure and value above all, it is their land.

Now, because of economic desperation, they are forced to use the most treasured part of their culture and heritage as a hazardous waste dump site for non-Indian communities.

I suggest, Mr. President, that this is not a huge earth-shaking amendment. It may not turn tribal economies around. It may have very little impact in some areas. But, Mr. President, I think that how we vote on this amendment, in some respects, is an indication of what we are all about.

It brings me back to Felix Cohen's statement about the miner's canary. He said in 1953:

> Like the miner's canary, the Indian marks the shift from fresh air to poison gas in our political atmosphere; and our treatment of Indians, even more than our treatment of other minorities, reflects the rise and fall in our democratic faith.

I hope my colleagues will seriously consider granting this small amendment and give those people, who deserve it so much, an opportunity.

Mr. BOREN. Mr. President, I rise in support of the amendment offered by my distinguished colleagues, Senators INOUYE and MCCAIN, the chairman and vice chairman of the Senate Select Committee on Indian Affairs. As I understand it this amendment embodies the provisions of S. 2254, the Indian Employment and Investment Act of

1992, a bill which I have cosponsored. This important tax proposal, promoted by the Navajo Nation as well as the Cherokee Nation and other tribes in my State of Oklahoma, provides essential tax credits for businesses that provide employment and invest in equipment and other property on or near Indian reservations. I am proud to support this legislation because I firmly believe that it will ameliorate the deplorable conditions in Indian country. It will help stimulate the development of viable reservation and other tribal economies and more fully integrate them with the national economy.

I have been asked by the Cherokee Nation of Oklahoma to approach the sponsors of this important tax legislation with a perfecting amendment supported principally by the tribes in Oklahoma. I believe the amendment is technical in nature and would not significantly alter the basic purpose and structure of the original proposal, introduced as S. 2254. That proposal generally would allow the Indian reservation credit, which is an investment tax credit, only when the Indian unemployment rate on a reservation exceeds 300 percent of the national unemployment rate.

I am told that the 300-percent requirement was intended to limit the credit to reservations which face the most severe economic circumstances in part because of the isolated, insular nature of particular Indian tribes' reservations. There are other Indian tribes, however, such as those in Oklahoma, which do not have large, isolated reservations but reside in rural areas designated as former reservations. Their tribal economies may or may not be partially integrated into the surrounding non-Indian economies, but in nearly all cases these tribes in Oklahoma and other States still suffer intolerably high unemployment rates. So, even though the unemployment rates of tribes on former reservations in Oklahoma or on Indian lands elsewhere may not exceed the 300-percent threshold for the Indian reservation credit in S. 2254 or the pending floor amendment, the unemployment rate is nearly as staggering and deserving of ameliorative action.

Mr. President, I would like to ask the sponsors of the amendment if they would consider at the appropriate time a perfecting amendment that would extend the benefits of an investment credit to Oklahoma tribes and other tribes similarly situated, by allowing one-half of the otherwise available credit on Indian reservations whose unemployment rate is between 150 to 300 percent of the national average. A full credit would remain available whenever the 300-percent threshold is exceeded.

Mr. MCCAIN. I commend and thank the Senator from Oklahoma for his support of this floor amendment and his cosponsorship of S. 2254. Senator INOUYE and I would be happy to accommodate the request of the Senator and work out with him perfecting language that would ensure that the investment tax credit provisions will apply to the Cherokee Nation and other Oklahoma tribes.

Mr. BOREN. I thank the Senator for his commitment to work out perfecting language acceptable to the tribes in my State. I also offer my assistance in efforts to secure a revenue estimate for this critical legislation so that it can be duly considered and adopted by the Senate in the very near future.

In closing, I strongly urge all my colleagues to join me in supporting and voting for the floor amendment as perfected at the appropriate time in the future.

Mr. KASTEN. Will the Senator from Arizona yield?

Mr. MCCAIN. Yes.

Mr. KASTEN. I thank the Senator. First of all, I would like to ask him if I can be made an original cosponsor of the amendment.

Mr. MCCAIN. I ask unanimous consent that Senator KASTEN be added as a cosponsor.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. KASTEN. Let me just say that we in the State of Wisconsin have adopted enterprise zones, statewide, and we in the State of Wisconsin have State enterprise zones on Indian reservations in Wisconsin, and we believe that it is working. And the Indians believe it is working.

I simply want to commend the Senator on his amendment, particularly on his comments. I hope that his amendment will be agreed to this evening. It is an important step in the right direction.

I simply point out that where we have had the opportunity in Wisconsin to establish State enterprise zones, they have been established, and they are working on Indian reservations. This would be one more step. This would help us even more and help disadvantaged, economically, populations all across our State to continue to have the opportunities that the Senator refers to.

I thank him for his amendment, and I urge my colleagues to support the McCain amendment.

Mr. SIMON. Mr. President, I will speak very briefly. I think this is important legislation, and I speak specifically tonight at the request of Senator INOUYE, who is ill tonight and cannot be with us.

I commend the vice chair of the committee, Senator MCCAIN, for his leadership on this, as well as Senator INOUYE, who has done an absolutely superb job. Any of us who are impressed by his work on the floor, let me tell you, serve on that committee, and you will understand his sense of dedication and what he has contributed.

Indian unemployment, according to a report made last year by Senator INOUYE, averages 56 percent on reservations. And this proposal by Senator MCCAIN would say, Let us put some incentives out there to provide employment and jobs. And we provide those incentives only if unemployment is 300 percent times the national rate. We will not lose a penny if this does not work; if it works, everyone is ahead.

Late last year, we designated 1992 as the "Year of the American Indian." Let us make that more than simply a hollow gesture. Let us do something substantial to help American Indians. I hope we will pass this, Mr. President.

The PRESIDING OFFICER. The Senator from New Mexico is recognized.

Mr. DOMENICI. Mr. President, is there not a time limit on this amendment?

The PRESIDING OFFICER. There is no time limit on this amendment.

Mr. DOMENICI. I was going to ask the sponsor to yield time to me. I will not use too much time. I want to speak to this amendment because I have been working on this issue for a long time, and I think we are going to, at least tonight, hopefully, make a concerted policy statement with reference to the need for jobs on Indian reservations.

Mr. DOMENICI. I thank the Chair.

Mr. President, for anyone that has a large population of American Indians in their States with large land that is part of their reservation they know the desperate need. If Senators have been there and talked with the Indian people and seen how they live they are moved by the dire conditions, and if because of that knowledge they have grown to worry about the Indian people.

Most of the privileges that we as Americans think are most important, almost birthrights to Americans are not available to Indians. The opportunity to have a good job if you are qualified, and to earn a living for yourself; to create independence for yourself because you can earn a living are beyond the grasp of American Indians on reservations. These are fundamental values that we concern ourselves with. We educate our children because we want them to be fulfilled and employed. We want them to earn a living and become independent. We work as families so we will be strong enough to go out and support ourselves and earn a living and pursue some exciting humanitarian purposes in this great society. Whatever you look at that we want for our children as they mature and grow up, most Indian people do not have.

Frankly, I do not chose to lay blame here on the floor of the Senate to the U.S. Government for this seriously sad happenstance. The truth of the matter is it is a problem that came about for a lot of reasons.

The Senator from New Mexico has tried diligently for some 15 years to

have conferences on Indian lands with American businesses, to bring them there and talk about them moving there.

We have had training programs, saying maybe our Indian people need more training. Hopefully, then businesses will come there and hire Indians. Perhaps then Indian businesses, will flourish and hire their people. That has not happened—current policy is not working, and frankly it is too complicated to fix.

So I chose 4 years ago to say: Let us try to do something by way of incentive to invite businesses to locate on Indian lands. Then they will employ Indian people, either American business or Indian-American business that is owned by Indians, or a parts department that produces parts for Ford Motor Co., whatever it is.

But I have concluded that unless—unless—we change the economics on the Indian reservations by asking the tribes if they want development and jobs—do they want their reservation or reservation lands to be a piece of developed America nurtured by tax incentives? If not economic development will not come. I think their answer would be yes. In which case we invite business in with the special incentives included in this amendment.

No one around should be terribly worried about this law, because it is not going to put millions of people out of work, nor is it going to attract all the businesses from the surrounding States because we only have about 1.4 million Indians spread throughout America. We ought not to be worried about it. We ought to seize an opportunity.

Now, the approach the Senator from New Mexico has done heretofore is slightly different from this amendment. But I support it tonight because I hope for the first time we will indicate as the U.S. Senate that we want to try something significantly different for the livelihood of the American Indian, if they want it. We want to provide a tax incentive for business to locate on reservations and grow there and hire the Indian people there.

It seems to me that we have a model. We did this for Puerto Rico. I think we made a slight mistake in Puerto Rico because the section 936 tax provisions for Puerto Rico said go there and you get an income tax break on our corporate taxes. We are not doing that here. We say you get a break if you employ Indians. The tax break is based upon the employment to Indians and the salaries paid to Indians. It is a much more generous approach to businesses that will employ a large number of Indians instead of maximizing corporate profits. We hope that the incentives will also encourage capital investment too; but that would be perfect. But you will not get the maximum incentive if you just build a new building on the reservation with a couple of employees. In fact, you would not have much incentive to really do that. But if you employ Indian people, receive significant incentives.

There are a number of items not in this bill that I think eventually we will have to put in Indian policy, and I will tell you a couple of them. First of all, one of the problems with business moving to Indian country is the uncertain future of the taxes to be imposed by the tribal government. We all know that. We understand that they are a government and they can impose taxes. But American business will not invest there with extreme uncertainty about the future tax burden. They are frightened of it, and I must say with some justification.

Why not solve the problem instead of continuing to say it exists? I believe you must ultimately have in this policy—which I believe is a great first start—you must have, along with the agreement where the Indian policy say we want this, you have to have a provision that says when you get it, you do not raise the taxes on the business that came there. If you raise the taxes, you raise tribal taxes and diminish the value of the credit that the Federal Government provided.

So that cycle will have to be fixed some way or another. I do not think my friend from Arizona believes we are actually going to pass this amendment tonight, or even tomorrow.

We are trying to establish, and almost beg our fellow Senators go give consideration to a complete alternate Indian policy for America. Give it a try. That new policy is to try jobs for a change, try jobs, American style, on Indian reservations for Indian people.

If a tribe does not want jobs and economic development, they do not have to try it. If they try it and it works, it seems to me that we will have done a very, very positive thing for the most underprivileged group of Americans around. There can be no doubt about that. There are many well educated native Americans, earning a good living. But for the most part, our Indian people are having difficult economic times. They are having difficulty staying and preserving their culture. They are encouraged to leave from all sides.

And there we are, with islands of poverty and unemployment, in the midst of a growing and prospering Arizona and part of New Mexico. There is no question the Navajo reservation needs a lot of things, including roads, which we are prepared to give them as part of an economic development package on highways. If we now adopt policy changes into American law, and we can get out of the Indian Committee, we need some tax help for it. That is why we are here. We have a splendid Indian committee, the Committee on Indian Affairs. We did what we could. But we ran into a stone wall when it comes to incentives for jobs.

So let me repeat: There may be many ways to do this. Some may even be better, as we look through for the next few months, perhaps in preparation for a bill that is going to become final law. But for now, we ought to make a statement.

And for all of those who go home and say they want to be helpful to the Indian people in their States—and almost everyone tries that, and everyone works at it—I hope you do not go home to your State and not say to them: I voted to try a new policy, if you want it, which should lend itself to many new jobs for your young people right here at home, under your authority, to be located where you want it. They cannot destroy your reservations and your habitat of your community. But if you want economic development and jobs, this is the way to give it a try.

So, Mr. President, I congratulate the Senator from Arizona. I am pleased to join him. I thank Senator INOUYE for his great support with reference to the Indian people and hope we will give this a try tonight and at least send a positive statement of optimism to Indian leaders across the country and to their people.

Having completed my statement, I yield the floor.

Mr. MCCAIN addressed the Chair.

The PRESIDING OFFICER. The Senator from Arizona.

Mr. MCCAIN. Mr. President, I thank the senior Senator from New Mexico for not only his statement, which I think clearly lays out in compelling fashion the argument for the adoption of this amendment, but for more than 15 years the Senator from New Mexico has devoted thousands and thousands of hours of his life in trying to assist the native Americans not only in his State but all over this country. I think that his record of dedication is clearly reflected in the overwhelming support and appreciation that the native Americans in my State, as well as his, have extended to him time after time. I am very grateful to him.

I would also like to again echo his words about the distinguished chairman of the Indian Affairs Committee. I know of no American who is more committed to helping native Americans than our distinguished chairman. As we all know, he is not here tonight because of illness, and I know it is very difficult for me to speak as eloquently as he does on this or any other native American issue. But he has been an incredible role model, I think, to many of us in his willingness to give so much of himself for those native Americans who need it so much.

Mr. President, I will not go on too much longer. I do think it might be well to cite from the report of the Task Force on Indian Development, which report I think has some very important facts in it.

As is widely know, Indians living on many reservations have suffered from relatively

low incomes, high unemployment, high poverty rates and other adverse socioeconomic circumstances, compared with the U.S. population as a whole. While standard socioeconomic measures are more difficult to apply and interpret on many Indian reservations, the low measures of Indian socioeconomic status accurately indicate the relative lack of economic development of Indian reservations. As found in the 1980 census, 14 percent of all Indian reservation households had incomes of less than $2,500 per year, as compared with 5 percent for the U.S. as a whole. Only 6 percent of reservation households had incomes greater than $30,000 per year, as compared with 20 percent for the U.S. as a whole. * * *

Forty-one percent of reservation Indians were living in households with incomes below the poverty level, as compared with 12 percent for the U.S. as a whole. Further reflecting low reservation incomes, 22 percent of reservation households were receiving income from public assistance, as compared with 8 percent for the U.S. as a whole.

Because conventional published measures of unemployment do not account for "discouraged workers" (who have left the labor force entirely), these measures are less relevant to the circumstances of Indian reservations. Accordingly, the task force calculated a "total unemployment rate" equal to the number of all people without a job, divided by the total population. As shown in Table 2, for Indian reservation males ages 20 to 64, the total unemployment rate, as shown by the 1980 census, was 58 percent. This rate compared with a total unemployment rate for all U.S. males in this age group of 18 percent. For Indian reservation males ages 30 to 54, the total unemployment rate was 64 percent, compared with a corresponding figure for U.S. males of 11 percent. * * *

The anti-poverty programs and other increased expenditures to promote Indian economic development had a major impact on Indian reservations, but they generally failed to achieve one of their basic purposes. Already in the early and mid 1970s, reviewers were finding that little progress was being made in developing viable Indian reservation economies that could stand on their own feet without continuing infusions of Federal funds. Considerable effort and attention then shifted to a new strategy, development of Indian natural resources as a basis for promoting Indian reservation economic development. * * *

There are many reasons for the absence of a larger business sector on Indian reservations. Reservations are often isolated, have poor quality land, and have harsh climates. In many tribes individual entrepreneurship and the pursuit of private profit have not been a valued and encouraged form of behavior. Because of the lack of previous economic development, the labor force on many reservations is not highly trained and sometimes lacks the experience that would instill work habits sought by modern industry. If individual Indians find the motivation and discipline to overcome these obstacles, they face major difficulties in obtaining investment capital from sources other than the Federal government. * * *

The most important long run actions that the Federal government can take to promote Indian economic development may well involve improvements in Indian education. Beyond education and most critical initiatives must come from Indian tribes and from individual Indian entrepreneurs. Nevertheless, the Federal government still has important roles to play in promoting economic development on Indian reservations.

Tax incentives offer an attractive mechanism for luring business to reservations. Tax advantages are automatic and do not require administrative selection among a pool of eligible candidates, avoiding the extensive politicizing of economic development assistance that often results when many applicants must apply for a limited amount of administratively granted funds or other support. Tax advantages also promote the private profit-making sector, because tax reductions are of benefit only to parties that have some tax obligations. Many Indian leaders have concluded that tribal governments should be less directly involved in business, and that reservation governments should seek to promote individual Indian entrepreneurship. Tax advantages would serve this purpose in that they would tend to equalize the tax status of tribal businesses (which are tax exempt) and individual Indian and non-Indian businesses on reservations. * * *

Tax incentives to encourage business to locate in Indian enterprise zones should include a full exemption from corporate income taxes, an investment tax credit, and an employee wage and training tax credit. * * *

Obviously all of that last paragraph is not in this amendment and this proposal.

Mr. President, I ask unanimous consent to add Senator WELLSTONE as a cosponsor of this amendment.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. McCAIN. Mr. President, I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

Mr. McCAIN. Unless, of course, Mr. President, the amendment would be accepted. I would be more than happy if that were the case.

Mr. BENTSEN. I did not hear the Senator.

Mr. McCAIN. If the distinguished chairman would accept the amendment, I would certainly avoid that vote.

Mr. BENTSEN. Let me tell the Senator the dilemma he puts me in. This is the first time I have seen this amendment. I certainly sympathize with the concerns of the Senator from New Mexico and the Senator from Nevada insofar as the plight of the Indians on reservations and their problems and their concerns.

But I do not know what this is going to cost. I have no idea what it is going to cost. And if we are to consider the amendment for this bill, we need to know exactly what it is going to cost. We have no estimate on the revenue.

Now, I will say this. In looking at the amendment, I see that the incentives are quite generous in relation to other investment incentives.

I am sympathetic with what the Senator is trying to do. I wish I could be of help. If we take it here not knowing what it is going to cost—and we have virtually no cushion in the bill for this sort of thing—then you make the whole bill subject to a point of order. I have already checked, and I am so advised. I would be delighted to find out otherwise.

Mr. DOMENICI. Will the Senator yield to me—there is no time limit—and I will yield right back to him.

Frankly, were he not so serious, I was going to tell him kind of a delightful way to do it. I was going to suggest that we use the $3.5 billion that we have used three times already, just use it for the fourth time, because this bill will not cost anything like that. It is so small they cannot give you a number.

Mr. BENTSEN. Senator, we blocked out that $3.5 billion just to try to keep from having a whole series of things that we did not know how much they were going to cost. We have used that $3.5 billion.

Mr. DOMENICI. How many times has that been used?

Mr. BENTSEN. I tell you, when you fellows on the Budget Committee get through drafting some of those rules, it is quite difficult for me to understand.

Mr. DOMENICI. I see. Well, I think it has only been used three times.

Mr. BENTSEN. I am faced with a situation that I do not know what this is going to cost. Therefore, it could make the bill subject to a point of order, the entire piece of legislation. They tell me we have a minimal amount left in the bill. So with some reluctance, I am going to have to make that point of order.

The PRESIDING OFFICER. The Senator from Arizona.

Mr. McCAIN. Does the distinguished chairman yield?

Mr. BENTSEN. I am happy to yield.

Mr. McCAIN. May I make a couple points to the distinguished chairman. First, there was a letter sent to the distinguished chairman on February 26 which basically is exactly what this amendment is. It is a letter from myself, Senator DOMENICI and Senator INOUYE, asking for your strong consideration of S. 2254, the Indian Employment and Investment Act of 1992, for inclusion into your package.

So, although the distinguished chairman may not recognize this amendment, it was embodied in a letter to you dated February 26, 1992, which lays out exactly what this amendment entails.

Second, I am sure the distinguished chairman remembers the testimony before his committee, the testimony before his committee by Mr. Marshall Plummer, the vice president of the Navajo Nation, which took place, I believe, on February 19, although I am not positive.

Mr. BENSTEN. You are quite right. I remember his testimony well.

Mr. McCAIN. Mr. Chairman, the fact is that what he asked for and what he described in most eloquent terms is exactly what this amendment is. That was his exact testimony, his exact support of this legislation.

Also, if I might point out, as I did earlier in my statement, there is a study that was conducted, issued on February 19, 1992. This study is entitled "Investment and Employment Tax Credits for American Indian Reservations: An Analysis of Benefits and Costs."

That study was prepared by Mr. William L. Stringer, whom I believe the distinguished chairman is familiar with, former chief economist for the Senate Budget Committee. He found in part:

> * * * Because of conditions unique to Indian country, [a] carefully targeted package of tax incentives for all reservation based investments and employers would have a significant impact on Tribal economies and employment, and would do so at a negligible cost to the Federal Treasury.

I am sorry, I have lost the attention of the distinguished chairman, so when I have it back I will try it again. I yield to my colleague from New Mexico.

Mr. DOMENICI. Mr. President, might I have the attention of the chairman?

Mr. BENTSEN. I am now advised that I have to raise the point of order. I am advised of that.

Mr. DOMENICI. Let me see if I could suggest something. I understand the scorekeeping problem. I understand we could not in any way bind the scorekeeping here. But I wonder if we could consider a unanimous consent for a moment?

I would like to propose this kind of consent, if the Senator from Arizona would agree. I ask consent that it be in order after this amendment is adopted, if it is adopted, for the sponsor of the amendment to withdraw the amendment if anyone raises the point of order on the amendment before this bill is passed? I think that would do it.

Mr. BENTSEN. I am advised we have to raise the point of order. We cannot do it that way.

Mr. DOMENICI. We cannot do it that way?

Mr. BENTSEN. With some reluctance, I will have to do.

I thank the Senator. Has the Senator finished?

Mr. McCAIN. I have not, sir. I will be brief, though. I am sorry. I did not know any rules of the Senate require a budget point of order.

I want to make that perfectly clear. I know of no rule in this Senate that requires a budget point of order when we are trying to help the least privileged members of our society, the men and women who are suffering in poverty and agony. If there is any tax cut, any incentive that is justified in this Nation, it should go to them first.

I deeply regret that the chairman of the committee is compelled to lodge a budget point of order on what has been described in a study as a negligible effect. I quote from the former chief economist for the Senate Budget Committee. He found "it would do so at a negligible cost to the Federal Treasury."

There are 1.4 million of these people in this country who are experiencing unemployment rates of 80 and 90 percent in some areas. The cost is negligible. The chairman knows that. It is clear it is negligible.

If the chairman wishes to lodge a point of order, that is certainly his privilege to do so. I deeply regret—deeply, deeply, deeply regret he feels compelled to do so. Particularly in light of the fact that Marshall Plummer appeared before his committee advocating this particular legislation. A letter was sent to the distinguished chairman of the committee concerning this legislation. Clearly it is something that has been needed for many, many years.

I will make no further comment. I yield the floor.

Mr. BENTSEN. Let me say to the Senator I went to great lengths to make a place for Mr. Plummer to appear before the committee at the request of the other Senator from Arizona, and was pleased to hear his testimony.

Do I understand the Senator did not ask for an estimate from the Joint Tax Committee? Or he asked for one?

Mr. McCAIN. I might respond, Mr. Chairman. In a letter to you signed by Senator INOUYE and Senator DOMENICI and myself, I quote:

> We are also requesting your assistance in obtaining an expedited revenue analysis from the Joint Tax Committee.

It is part of the letter that was sent to the distinguished chairman.

Mr. BENTSEN. Unfortunately, we do not have knowledge of what that cost would be.

I make the point of order.

Mr. McCAIN. Mr. President, I move to waive the budget point of order. Mr. President, I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. Is there further debate on the motion? Senator BUMPERS.

Mr. BUMPERS. Mr. President, parliamentary inquiry. Is this a debatable point of order?

The PRESIDING OFFICER. The Senator is correct. The motion to waive the point of order is debatable.

Mr. BUMPERS. I am sorry?

The PRESIDING OFFICER. The motion to waive the point of order is a debatable motion.

Mr. BUMPERS. Are we still under a time agreement under control of the chairman?

The PRESIDING OFFICER. There is no time agreement.

Mr. BUMPERS. Mr. President, I just want to make this point. I will be very brief. I have worked in this Senate for 4 years to try to get the Senate's attention to one of the most pervasive disgraces in America, namely, the Mississippi Delta; 257 counties, from the southern tip of Illinois to the mouth of the Mississippi in New Orleans, both sides of the river, 257 counties with an average poverty rate of 40 percent.

That does not compare terribly favorably with some Indian reservations. We have already spent $2 million on a study, and the study did not reveal anything much that I did not already know. And that is, this pervasive poverty has existed for well over 100 years, since the Civil War, and it has been almost impossible to get anybody's attention focused on it.

These are people pleading for prisons. I talked the Bureau of Prisons last year into putting a very significant Federal prison facility in Forest City, AR, in the heart of the Arkansas Delta. It is going to be a tremendous economic stimulus. But you think about people pleading for prisons to create jobs, and they are tickled to death.

I have done a whole host of small things, but I am telling you, something like the Senator from Arizona is trying to do for Indian reservations; it is appropriate. I am not going to support the Senator because I do not know what it is going to cost. And I did not know he was going to offer it or I would have offered a second-degree amendment to cover the delta.

I would like to see investment tax credits in those 257 counties of the delta.

I would like to see all kinds of tax and other business incentives for any county that has had a pervasive poverty rate and unemployment rate of, say, over 10 percent for the past 2 years. Mississippi County—I made this speech during the base closing argument—Mississippi County, AR, where Eaker Air Force Base was located, is one of the 10 poorest counties in America and the administration said we are not taking economics into consideration on which bases to close. Mississippi County has not had less than a 10-percent unemployment rate in over 10 years.

So all I am saying is I think the thrust of what the Senator is trying to do makes some sense, but this ought to be thought out, it ought to have a cost figure on it and it certainly ought to include the delta. So for the time being, I am going to vote against this, even though I applaud the Senator for bringing it up. The kinds of poverty we have on Indian reservations in the area I am talking about ought not to be permitted in this great Nation of ours. I yield the floor.

Mr. McCAIN addressed the Chair.

The PRESIDING OFFICER. The Senator from Arizona.

Mr. McCAIN. Mr. President, I will be brief. The Senator from Arkansas had noted this investment tax credit would not apply unless the unemployment

rate on an Indian reservation exceeded the national average by 300 percent. I will match that, I say to the Senator from Arkansas, with any of his delta counties that have "10 percent unemployment." I am sorry that the Senator from Arkansas is not aware that the average unemployment on an Indian reservation is somewhere around 56 percent.

Mr. BUMPERS. Will the Senator yield?

Mr. McCAIN. I will be more than happy to have my amendment second degree with the caveat that it is triggered when it is 300 percent times the national average. And I would really like the Senator from Arkansas to come out West with me and my friend from New Mexico sometime and we will show him why it is so important that we try to help these people, and we certainly do want to help his. When we are talking about unemployment rates of 10 percent, we are not even in the ball park. I yield.

Mr. BUMPERS addressed the Chair.

The PRESIDING OFFICER. The Senator from Arkansas.

Mr. BUMPERS. Mr. President, I talked about a county that had over a 10-percent unemployment rate for 10 years. We have plenty of counties in my State with 15 and 20 percent unemployment, the kinds of unemployment the President of the United States did not see fit to even recognize. It took him over a year-and-a-half to even recognize this country was in a recession, and if the Senator wants to swap Indian reservations with some areas in my State, I will be glad; I will reciprocate. I will go look at Indian reservations and I will let him come down to the Mississippi, Arkansas, and Louisiana delta and show him some poverty.

Again, Mr. President, I state I am not going to support the amendment. I congratulate and applaud him for bringing it up.

The PRESIDING OFFICER. The Senator from Texas.

Mr. BENTSEN. Mr. President, this is the problem we run into on a tax bill, a situation where we are trying to preserve some discipline and we have some nonmeritorious and some meritorious amendments. We have some that we do not even know what the cost is going to be and we get into a feeding frenzy on some of these.

Reluctantly I have to make that point of order. Mr. President, the amendment is not paid for and it violates section 311(a) of the Congressional Budget Act and, therefore, I urge that we do not waive the Budget Act.

The PRESIDING OFFICER. The Senator from New Mexico.

Mr. DOMENICI. Mr. President, the argument of Senator BUMPERS would indicate somebody ought to have an amendment and have the whole country have a preferential treatment for anyone who wants to build anything there. It is absurd to talk about counties in Arkansas as if they had the impediments that an Indian reservation has.

Indian reservations are having trouble getting business because of the very nature of the trust land, and we are trying to create incentives to say let us try something different without having to declare them no longer American Indians.

With reference to the cost, I was in jest saying let us charge it to the $3.5 billion surplus. Now I will speak about it in seriousness. We have used it three times in the U.S. Senate: Twice on different unemployment bills and tonight to pay for insurance for the small businesses that have not been able to deduct health care. That is how we paid for it. That is three times. I think four times is just as good as three when the American Indians are at stake because it is all a sham.

The $3.5 billion is a sham. This bill will not cost $3.5 billion. I ask the Senate, what if they cannot even estimate the cost of this bill? Are we going to say the Indian people cannot have it? This situation is so different I would not trust the estimates of the Joint Tax Committee for more than 2 years.

How do we know? It may be one company; it may be none that try this. In fact, none of the Indian reservations might consent to it. Are we, nonetheless, to say with precision what it will cost or we ought to reject it tonight on a point of order? We will do that. We cannot get 60 votes.

We made our case, and I particularly want to thank the chairman, Senator BENTSEN, for the words he said about this. I thank him for it because I believe we will get a fair hearing even if we do not win tonight. At some point in the not too distant future, we will find some time before his committee. He will give it to us and we will bring some informed Indian people. We will make our case. Perhaps we can make it better there than we have made it tonight, but something like this is going to be tried or we are going to be neglecting these people. They are going to reach the point where they go well beyond saying we do not even think Christopher Columbus was a hero. They are beginning to say that because of their plight in life. They received nothing out of America, they are saying, and we ought to give them a chance. Let us vote.

The PRESIDING OFFICER. The question is on the motion to waive the Budget Act.

Mr. BENTSEN. I ask for the yeas and nays.

The PRESIDING OFFICER. The yeas and nays have already been ordered. The clerk will call the roll.

The assistant bill clerk proceeded to call the roll.

Mr. FORD. I announce that the Senator from Iowa [Mr. HARKIN], the Senator from Hawaii [Mr. INOUYE], and the Senator from Arkansas [Mr. PRYOR], are necessarily absent.

The PRESIDING OFFICER. Are there any other Senators in the Chamber desiring to vote?

The yeas and nays resulted—yeas 46, nays 51, as follows:

[Rollcall Vote No. 43 Leg.]

YEAS—46

Akaka	Durenberger	Pell
Bingaman	Garn	Pressler
Bond	Gorton	Sanford
Brown	Gramm	Seymour
Burdick	Grassley	Simon
Burns	Hatch	Simpson
Chafee	Hatfield	Smith
Coats	Helms	Specter
Cochran	Kasten	Stevens
Cohen	Lott	Symms
Craig	Lugar	Thurmond
D'Amato	Mack	Wallop
Daschle	McCain	Warner
DeConcini	McConnell	Wellstone
Dole	Murkowski	
Domenici	Nickles	

NAYS—51

Adams	Fowler	Metzenbaum
Baucus	Glenn	Mikulski
Bentsen	Gore	Mitchell
Biden	Graham	Moynihan
Boren	Heflin	Nunn
Bradley	Hollings	Packwood
Breaux	Jeffords	Reid
Bryan	Johnston	Riegle
Bumpers	Kassebaum	Robb
Byrd	Kennedy	Rockefeller
Conrad	Kerrey	Roth
Cranston	Kerry	Rudman
Danforth	Kohl	Sarbanes
Dixon	Lautenberg	Sasser
Dodd	Leahy	Shelby
Exon	Levin	Wirth
Ford	Lieberman	Wofford

NOT VOTING—3

Harkin	Inouye	Pryor

The PRESIDING OFFICER. Are there other Senators in the Chamber desiring to vote?

If not, on this vote there are 46 yeas and 51 nays. Three-fifths of the Senators duly chosen and sworn not having voted in the affirmative, the motion is not agreed to.

The amendment causes revenues to fall below the revenue floor, and so the motion is sustained.

The majority leader.

Mr. MITCHELL. Mr. President, may we have order?

The PRESIDING OFFICER. The Senate will be in order.

ORDER OF PROCEDURE

Mr. MITCHELL. Mr. President, Members of the Senate, it has become apparent that the Senate will not be able to complete action on this measure this evening, and will have to return to session tomorrow to resume action on this measure. Therefore, there will be no further rollcall votes this evening. There will be rollcall votes during the day tomorrow, beginning in the morning.

Mr. COATS. Mr. President, I wonder if I might inquire of the majority leader what his plans are for disposition of the bill during this week, or whether he intends to complete it tomorrow, or continue with the bill next week. Has he decided?

Mr. MITCHELL. It is not my intention to continue the bill into next week. My intention is to complete the bill this week.

There will be votes throughout the day tomorrow, and into the evening tomorrow, if necessary.

Mr. COATS. Until completion?

Mr. MITCHELL. If we can achieve that. Obviously, as we have seen over the past couple of days, any one Senator can prevent the Senate from acting.

Mr. COATS. Would the majority leader anticipate, if we were not able to complete the legislation tomorrow even if we go late into the evening, that we would be in session on Saturday?

Mr. MITCHELL. Yes.

Mr. McCAIN addressed the Chair.

The PRESIDING OFFICER. The majority leader has the floor.

Mr. MITCHELL. I yield to the Senator from Arizona.

The PRESIDING OFFICER. The Senators will cease audible conversation. It is very difficult to hear.

Mr. McCAIN. Mr. President, I ask the majority leader. It is my understanding that, since the previous two amendments by the Senator from Nevada, I had two amendments—does that mean I can bring my amendment up tomorrow morning?

Mr. MITCHELL. An inquiry, Mr. President, Did the Senator from Nevada have two amendments?

Mr. REID. To my friend from Arizona, I have two amendments; I have not offered one of them. I offered an amendment to a second-degree amendment on behalf of the committee. That was not mine. I was happy to do it.

Mr. BENTSEN. Let me say we had an agreement for two amendments on our side, and the understanding was Senator McCAIN would have two amendments. He only had one. And I would quite agree to have the first amendment for tomorrow, but that then would have to be followed by a Democrat and then a Republican.

Mr. McCAIN. I thank the Chair.

Mr. BENTSEN. Senator D'AMATO will be third under the agreement tomorrow morning.

Mr. MITCHELL. Mr. President, I yield to the Senator from Rhode Island.

Mr. CHAFEE. Is the distinguished majority leader able to inform us whether there are time agreements on these amendments? Is there any way?

Mr. MITCHELL. The manager and the distinguished Republican leader have been working for some time to prepare a list of remaining amendments on the bill, some of which have time agreements, some of which do not.

Mr. CHAFEE. Could we encourage people to reach time agreements?

Mr. MITCHELL. I encourage the Senator to encourage people to reach time agreements.

Mr. CHAFEE. I think if we all cooperate in that encouragement, we might get some results, hopefully.

Mr. MITCHELL. My experience has been that so long as a Senator is interested in doing so, he or she will be cooperative.

Mr. CHAFEE. What can we do to encourage cooperation?

Mr. DOLE. If the majority leader will yield, I hope that not only will we have shorter time agreements, but that we can eliminate some of these amendments. This bill is going to be vetoed and the veto is going to be sustained—unless you just want to practice. There is no need to offer these amendments on either side. My strategy from the start was to do this in wrapup at end of the day and get it out here and let the President veto it and sustain the veto, and we will see what happens. I hope we can work it out between now and tomorrow morning.

Mr. MITCHELL. Mr. President, as always, I think—not as always—but as often, I think the distinguished Republican leader has made good sense in that suggestion, and I regret that we are unable to have the Senate accept the suggestion. We are now moving toward the opposite extreme. I hope we can finish at a reasonable hour tomorrow. That is up to Senators. Everybody here knows what the cause of delay is, which is Senators. So we can proceed with dispatch, if Senators choose, or we cannot, as Senators choose.

Mr. President, we will come in at 9 and be back on the bill at 9:30 tomorrow. So Senators should be prepared for votes thereafter, after 9:30, and how rapidly we are able to complete action will depend upon Senators.

UNANIMOUS-CONSENT REQUEST

The PRESIDING OFFICER. The Senator from South Dakota.

Mr. DASCHLE. Mr. President, I ask unanimous consent that the following list of amendments that I shall send to the desk be the only remaining first-degree amendments in order to this bill, that they be offered to the committee substitute——

Mr. SEYMOUR. Mr. President, I object.

Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The Senator from South Dakota was propounding a unanimous-consent request. The Senator from South Dakota retains the floor. The Senator from South Dakota.

Mr. DASCHLE. That they be subject to second-degree amendments that are relevant to the amendment to which they are offered; and where a time limitation is indicated with respect to an amendment, the time be equally divided and controlled in the usual form, with an identical time limitation in place on any second-degree amendment offered to the underlying amendment; that no motion to recommit be in order and that no budget point of order is waived by the entering of this agreement; that debate on any debatable motion be limited to 20 minutes evenly divided and controlled in the usual form; and that if any substitute amendment offered from the floor is agreed to, it be considered original text for the purpose of further amendment.

I now send the list to the desk.

The PRESIDING OFFICER. Is there objection?

Mr. SEYMOUR. Mr. President, I object.

The PRESIDING OFFICER. Objection is heard.

Mr. WALLOP addressed the Chair.

The PRESIDING OFFICER. The Senator from Wyoming.

COAL RETIREE HEALTH BENEFITS

Mr. WALLOP. Mr. President, the role of a legislator is a constantly challenging experience. A primary goal is to effectively serve one's constituents without creating any new financial burdens. For many Members, that is the ultimate triumph, comparable to winning the gold at the Olympics. Other legislators, lobbyists, and political junkies always marvel whenever someone accomplishes this feat. This tax package contains an amendment which attempts to win the gold. But, for many of us, this attempt does not merit a 10. Rather, it should receive a 2. I would give it a zero, but effort should be recognized.

This amendment not only protects a lucrative benefit for a privileged class, but also forces others to bear much of the cost. I refer not to tax relief from capital gains or luxury taxes but to the so-called Rockefeller amendment which provides free health insurance to retired members of the United Mine Workers.

Many Members of Congress have expressed concern over the rising cost of health care and the availability of health insurance. Many proposals have been drafted in response to these problems. I am a cosponsor of one. But, there is a most universal consensus that reform should include the principle of player participation. For those who receive benefits, this involves the requirement for copayments and deductibles as a gate to ensure appropriate use of benefits.

Yet, this amendment asks the Senate to endorse a program that rejects this principle. The benefits are first dollar coverage with no payments required by the participant. It is the most irresponsible approach to health care that anyone could advocate. Yet, here it is in this bill before the Senate. How can we take this legislation seriously with such a provision.

Not only does the amendment violate the basic principles of health economics, but it also violates the principles of collective bargaining, and frankly, of fairness. The amendment requires coal companies and their employees to bear the burden of funding this benefit.

This includes coal companies which have never been part of the BCOA-UMW Agreement.

This is a new, perverse form of labor law reform. A lucrative benefit is negotiated, but it is deliberately underfunded. Companies not party to the contract are then forced by the Federal Government to fund this private agreement. And, these companies cannot force changes in the contract to require a more fiscally responsible benefit.

The purported rationale of this bill is that UMWA retirees are an industry-wide responsibility. And indeed, the original legislation proposed by the Senator from West Virginia was a $.75-per-man-hour tax imposed on all coal companies, across-the-board. However, the more palatable legislation we are now being asked to consider exempts subbituminous and lignite coal such as is produced in Texas.

And, the amendment obviously has another most proposed mistake in that it has excluded one western coal producing State, Montana. No one need wonder why these exemptions are required. Votes for the package is in the Committee. This is not directly counter to the original intent and rationale of the legislation? In other words, should the industry bear the responsibility of contract between UMWA and BCOA or should we exempt those sectors which have the appropriate political clout?

In addition to this American industry-wide tax, this legislation imposes on imported bituminous coal a per-ton premium obligation, equivalent to the domestic obligation. As United States trade negotiators work toward concluding the Uruguay round of the GATT, I am hard pressed to figure out how the Finance Committee majority can possibly hold itself to any acceptable standards. This legislation will raise question regarding our current GATT obligations; and it will raise questions regarding our commitment to concluding the Uruguay round and the NAFTA successfully.

Section 21 of this legislation states that

> A last signatory operator shall have no liability * * * if as of January 1, 1992 * * * (the signatory has) ceased all involvement in the production, sale, distribution, transportation, or use * * * of bituminous or subbituminous coal.

This a major new exemption: In essence, it reverses the "reach back" feature of the original S. 1989.

The reach-back rules generally require companies that were once a part of the UMWA/BCOA contract and whose retirees are receiving benefits to pay for those retirees benefits. But in the amended bill, a special exception from reach-back or other premium obligations was added for a company which as of January 1, 1992, has ceased all bituminous or subbituminous production. This new exception just so happens to benefit any company which now mines only lignite, such as certain Texas producers.

One such company that would appear to benefit is north American coal which I understand mines lignite in Texas. North American is exempted from the produce tax by the lignite exemption. It will now also be exempted from paying a premium for any beneficiaries it contributed to the trust fund. According to the BCOA, North American is responsible for contributing more than 1,500 beneficiaries to the UMWA health trusts, but now has no obligation to them.

This means North American was a major contributor to the orphan problem, yet it has carefully managed to relieve itself of any financial obligation. In the meantime, other companies that did nothing to create this problem are being asked to foot the bill for companies like North American. Won't this result in non-UMWA companies' having to pay even more proportionately because many former signatories will not be required to accept responsibilities for their own retirees?

One of the more outrageous sections of this bill gives the newly created corporation—of BCOA and UMWA—the power to adjust the amount of the premiums imposed when necessary. This particular provision effectively confers on BCOA and UMWA the Congress' own power to raise taxes. In analyzing the revenue effect, the Joint Tax Committee assumes that the tax on eastern coal would increase from $.99 to $1.45 by 1996, with no estimates thereafter.

Never mind that Congress would be delegating the authority granted to it by our Constitution, the ability of the corporation to increase these taxes means coal companies are subject to potentially significant fluctuations in their cost of doing business. The corporation has absolutely no incentive to economize on health care costs for retirees. When the option of turning to the industry for more money is so accessible to them why make honest decisions.

Since this legislation makes a significant demarcation between Eastern and Western States as far as the taxation on bituminous coal, the definitions of Eastern and Western in this bill is significant. For this legislation, the term Western includes States from Alaska to Arkansas, from California to Kansas, from Wyoming to Missouri. But where's Montana?

My home town of Big Horn, WY is just a 25-minute drive from the Montana border. In fact, many folks in Big Horn drive over the border to work in Montana mines. So how is it that Montana is not included in the definition of Western States? How is it that Montana is the only Western State which is totally exempt from any taxation on bituminous coal? No one could be so crass as to suggest an accommodation—exemption for vote.

Laying aside concerns about obligations that are being imposed on companies which were not party to past agreements, let's look now at future benefits. What kind of retirees will receive benefits from this point forward were all companies to begin paying into the corporation? Would it include only UMWA retirees or all coal industry retirees?

Another fascinating provision of this bill is the eligibility requirements provision. Specifically those who worked in the bituminous, sub-bituminous or lignite coal industries are eligible to receive retiree medical benefits from a health care plan. So, sub-bituminous and lignite coal companies will be exempted for contribution purposes but will be counted in for eligibility.

Additional irregularities/problems:

This legislation establishes a medical peer review panel which shall determine standard of quality for managed care provider systems. In other words, BCOA and the UMWA retain the right to force all signatory companies to provide any health care program which the review panel agrees on, regardless of cost.

This legislation includes a provision which guarantees that should a UMWA signatory company ever fail to provide benefits to its retirees, then the Government plan—read: non-UMWA companies—will pay for such benefits. This is the worst kind of Government mandate: Force companies which had no role in negotiations to financially support any result of those negotiations. It is disgusting.

With regard to the disposition of excess pension assets, this plan zeroes current deficits for BCOA, saving them at least $115 million which they owe under the guarantee clause but have not paid. Additionally, $50 million of current pension fund assets plus any leftovers will be added to general assets, meaning their own retirees' benefits, rather than transferring it to the Government plan to pay for the orphans benefits.

This legislation would also place a huge burden on the potential buyer of signatory companies or their assets. It would require that the buyer be liable to provide lifetime health benefits to UMWA members who worked for the seller, including individuals who never ever worked for the buyer, irrespective of whether the buyer operated the property or signed a UMWA labor agreement.

It is a rare kind of politics which does not even pretend to be fair. It is clear some politicians have paid their union dues but at what cost? Don't add it up, Mr. President, it is truly expensive.

The PRESIDING OFFICER. The Senator from Oklahoma.

Mr. BOREN. Mr. President, I compliment our colleague from Wyoming

for the concerns he just expressed about the amendment that is now included in this bill. It is my hope that, if the legislation moves forward and goes to the conference committee, a way will be found to correct this amendment and indeed to remove the essence of it from this bill.

It is as simple as this. We are here setting a precedent that companies that were not parties to a particular collective-bargaining agreement shall now have liabilities as a result of agreements that other parties entered into. It seems to me when we study contract law that one of the very fundamental things about the making of a contract or to taking on of an obligation is there has to be a meeting of the minds between the parties. An agreement is not binding to those who are not parties to it.

Here we are setting a terrible precedent, a terrible precedent, that parties who were not even subject to negotiations or to an agreement can be bound by an agreement that someone else entered into, perhaps entered into with an idea they would walk away from that agreement later on and hold other parties responsible.

Mr. WALLOP. If my friend will yield a minute, he is well aware of this cooperation between the United Mine Workers and Bituminous Coal Operators to provide these health benefits and they can on their own initiative without talking to any affected parties raise their contribution.

Mr. BOREN. The Senator is exactly right. That is the other principle violated by this provision. Not only are we violating a principle that a collective-bargaining agreement should bind only those parties who negotiated it, that an innocent bystander, who was not present at all during the negotiations, cannot now be bound.

Also, this particular amendment grants the authority to raise taxes to an entity not part of the Government of the United States, not elected by the people. This five-person commission established under this amendment will have the right to raise the tax on coal produced by parties that were not at all associated with this agreement, were not parties to the agreement.

Mr. WALLOP. Or can indeed not become a party to the agreement so they could defend themselves.

Mr. BOREN. Exactly.

We have an estimate now from the Joint Tax Committee that it will take a 99-cent tax on Eastern coal companies to fund these particular benefits this year. This tax is being collected, these fees being collected on companies that were not parties to the agreement. And the Joint Tax Committee estimated that by 1996, the commission will likely increase that tax to $1.45.

So here we have a provision that says that companies that were not parties to a collective-bargaining agreement, not parties to a contract, shall be bound by it. And a second provision that says an entity not elected by the people, not responsible to the Congress of the United States, shall have the power to increase taxes on private companies in this country.

So we have a violation of the principle that taxation should only be assessed by elected representatives of the people. We have the power to tax handed over to a quasi-private entity and we have a precedent set here that violates the principles of contract law: that parties who were not even part of the agreement process, not even present at the negotiations, are bound by agreements made by others.

This is a very, very dangerous precedent that we are establishing here. It should not remain in the law. I think there are a number of us who hope that the conference committee will act to remove this particular provision when the conference meets. At this point in time, we know it is very unlikely that this legislation will become law. But I think that if we visit this issue in the future, surely there is a better way of dealing with it.

All of us want to help those people who are in need of medical attention and health care. No one disagrees with that. In many ways these workers, retired workers who would have health needs, are the innocent victims of the process that was established. It is not their fault that companies entered into agreements that they now say they cannot keep. But it is also certainly not the fault of companies that were not participants in the negotiations that these agreements were entered into without an adequate mechanism for funding them.

Therefore, I think we need to go back to the drawing board, and find a way to deal with this problem. Yes, some of us have suggested transferring surplus pension funds of the companies affected to help take care of these health benefits. There are other avenues open to us as well, and it is my hope as we consider other legislation on this subject after the President's veto we will find a way to deal with this problem that will be fair, that will meet the needs of those that face these health emergencies and need this health care. But, we must also find a way that will not set a precedent, that, as far as I know, has never been set in this country before.

I do not know of my other instance in which people who are not parties to a negotiation, not party to an agreement, never entered into it, can be bound by two other private parties who entered into an agreement. And I am alarmed at the precedent of delegating to a private body the power to increase taxes on the private sector of this country without even requiring a vote of the Congress to ratify those tax increases. Surely there is a better way. And I certainly hope that when this matter does come before the conference committee, they will look at other alternatives.

Mr. WALLOP. I thank my friend from Oklahoma and I could not agree more. And worse still, this idea that somehow or another some companies who have contributed large numbers of retirees to this are now exempted from any obligation to contribute to those retirees' benefits, while those who had nothing to do with it are now forced to pay.

ALL MINERS AND COAL PRODUCERS DESERVE A FAIR SOLUTION

Mr. DOLE. Mr. President, while I have a great deal of respect for the distinguished Senator from West Virginia who has worked very hard to craft a solution to the coal retiree health benefits issue, I am opposed to his proposal which I believe sets a new standard in bad public policy.

No one disputes that we have a very difficult and serious problem here.

Nor does anyone dispute the very hard working conditions that these miners have endured and the great contribution that they have made in supplying this country with an essential domestically produced energy source.

On these matters we are in agreement, and that is why I voted present during markup on this issue.

What we disagree on is whether the legislation backed by the distinguished Senator from West Virginia is a fair solution to the problem.

And in this Senator's opinion unless the legislation is changed, it is not.

UNFAIR AND ANTIGROWTH

The legislation has nothing to do with tax fairness and economic growth. It discriminates against different coal employees depending on whether they are union employees; it discriminates against coal producers depending on where they are located and what type of coal they mine; and it discriminates against different geographic regions of the country with its arbitrary patchwork of special interest exemptions.

The taxes set forth in the bill are antigrowth and will produce job losses and higher utility prices for consumers.

Indeed, for me, the bottomline of this legislation is that it will create far more problems than it solves.

BCOA VERSUS NON-BCOA

The crux of the bill is that it relieves one group of companies—the Bituminous Coal Operators Association or BCOA—from contract obligations that they alone negotiated with the United Mine Workers.

Notwithstanding the fact that the 1988 reduction in fund contributions buy the BCOA created the current financial crisis, this legislation rewards the BCOA by rescuing them and sticking it to non-BCOA companies and nonunion employees who did not negotiate the contract, do not receive retiree

health benefits from the trusts, and whose only—and I repeat only—connection to this dispute is that they coincidentally mine coal.

EAST VERSUS WEST

In bailing out the BCOA companies, the legislation imposes a hefty tax of 99 cents per hour per worker on bituminous coal mined east of the Mississippi River and a tax of 15 cents per hour per worker on bituminous coal mines west of the Mississippi.

I might add that the hefty 99 cents tax will become even heftier down the road when the newly established Government Benefit Corporation—empowered with Congress' authority to tax—will have to raise taxes. Estimates prepared by the Joint Committee on Taxation put the tax at $1.45 per hour by 1996.

What is even more interesting, Mr. President, is that the list of Western States leaves out bituminous coal production in Montana so that the tax applies to all States and the District of Columbia except for Montana.

Last time I checked, Mr. President, our flag still had 50 stars on it.

Indeed, while I can think of no good policy reason for the Mississippi River being the great divide for the purposes of levying a coal tax, the exclusion of Montana seems even more arbitrary and more discriminatory. I would also be interested to know what States like Kentucky, Virginia, Tennessee, and Maryland think of getting hit with the 99 cents tax while western BCOA companies who are dumping their obligations will get by with a 15 cents tax.

DIFFERENT TYPES OF COAL PRODUCERS

Another very unusual feature of this legislation is that it discriminates against different types of coal producers and their employees.

When this legislation was first introduced as S. 1989 last November, it taxed all coal by 75 cents per hour per worker.

Now, the legislation excludes lignite which has the effect of excluding from the tax 99.4 percent of the coal production in Texas and 100 percent of the coal production in Louisiana and North Dakota.

Sub-bituminous coal production also magically disappeared from the scope of the tax since the bill was first introduced. This special interest exclusion has the effect of shielding 99 percent of the coal production in Montana.

As I mentioned earlier, the remaining 1 percent of coal production in Montana is protected by a geographic exclusion applicable to all production in the State.

THIS IS NOT A WORKABLE SOLUTION

Mr. President, I hope it is obvious to Members that this legislation does not represent a workable solution to the problem.

It enriches one group of companies and one group of workers out of the pockets of others.

It is a power grab plain and simple—shifting the burden of paying for benefits to a group that bears no responsibility for the problem.

We all want to find a solution so that retiree health benefits are protected for our coal miners. But the solution does not lie in bailing out those who are responsible for the financial condition of the trusts by levying taxes on innocent bystanders.

The PRESIDING OFFICER. The Senator from West Virginia.

Mr. ROCKEFELLER. Mr. President, I was not able to hear all the conversation that was produced by my colleagues from Wyoming and from Oklahoma. But I thought that I heard the Senator from Wyoming refer to these people who are retirees as a privileged class.

I found that interesting. Perhaps the Senator from Wyoming would like meet David Penell of Tulsa, OK. He is 78 years old. He has worked 24 years in the mines. He has black lung and he has arthritis. He takes 14 medicines before lunch alone. His daughter just had open-heart surgery. And they say they cannot make it without the benefits.

I was not born in West Virginia, but I have grown up there, so to speak. And if I know any one thing, it is that to work in the coal mines for 25 to 35 or 40 years, it puts you in a privileged class in terms of service to your country, in terms of building up this country. But to say that it puts you in a privileged class in what you have in resources and health is simply not understand what coal mining is all about.

The Senators from Oklahoma and Wyoming make a presumption that everybody in this country wants to take care of everybody else. I will only say, Mr. President, in defense of the bill which is in this tax package, and which is properly in this tax package, and which might not be in this tax package if one were to listen to those who are against it and believe what they had to say, it is not my presumption that people in this country are always disposed to take care of each other, and particularly those who are less fortunate.

Back after the Second World War, the President of the United States federalized the mines, sent the Federal troops into the mines. There was disruption and great chaos in the land. It was well understood that this was a crisis.

What happened, Mr. President, was that John L. Lewis, who was then the president of United Mine Workers, the father of the entire coal miner's history, and President Truman, in a sense, literally sat down and worked out an agreement. What they basically agreed upon that in return for the mechanization of the mines, allowing the mines to proceed to use fewer coal miners and more machinery which therefore placed hundreds of thousands of workers out of jobs, that there would be pension benefits and health benefits for these coal miners.

And up until this very day, Mr. President, the health benefits from that agreement has kept going, and it goes as we talk. But on April 13 it will stop, and for the first time in 45, 46, 47 years, there will be no more health benefits for the privileged class that my friend the Senator from Wyoming referred to.

These people, Mr. President, average 77 years old. They have sacrificed their lungs, their limbs, their lives, their health, in doing what is the most dangerous work under God's Earth.

All we attempt to do in this amendment is what ought to be done, is to put no burden on the U.S. Government, on the U.S. taxpayer, but to say that the coal industry, as has always been the case, should take care of its own. This has always been the case with the coal industry, and this should continue to be the case.

There are three classes, Mr. President, and I will only need to speak a moment.

There are retired miners who are being taken care of because they are retirees from companies that signed agreements with the United Mine Workers and that agreement is now in effect.

There is another class of companies that used to belong to those agreements but then went away and became nonunion. Nothing wrong with that. But they became nonunion and for the most part they simply dumped their retirees. They said we are not responsible for your retirement benefits and health benefits anymore, so you are on your own. They dumped them.

Then there is another class of people, that 75,000 people in this country who are orphans—we call them orphans because they belong to nobody, they are retired, they are on their own. There is no company to look out for them because the companies they worked for no longer exist, they are out of business, they went bankrupt, they went into something else. They are literally orphans. They are dependent for all of their health upon something called these health benefit trust funds.

So what we propose to do in our bill is to make sure that the coal industry does what it has always done and what it always must do: to take care of its own.

We have this saying, Mr. President, in the coal industry and in coal country, that the coal industry is required by Federal law to take care of the lands which it abandons, the lands surrounding the mines, the lands involving the coals mines. It has to take care of those mines. And we always say that if a company should have to take care of its abandoned mines and the lands associated with that, it certainly ought to take care of the miners who have been abandoned by so many of these companies.

And so we have set up a very simple mechanism in which all of the retirees, 120,000 of them, will be taken care of in a manner which is as equitable as we can see our way to. Is our mechanism perfect? No. But does it take care of the 120,000 retirees, these people who have given all these years? Yes, it does that.

And that is the point of the whole thing. The choice is there before us. Are we going to take care of these people who have been abandoned by others? Do we have that responsibility in America? Are we that kind of a country which walks away from these people because their companies have gone bankrupt and their agreement, all the way from the very beginning with Harry S. Truman, the U.S. Government, all cf this certified the Elizabeth Dole Coal Commission very recently under the Bush administration.

We do not abandon these people. We make sure they keep their health benefits.

I have letters here from across this country that would tear the hearts out of Senators if I were to go into them and read them.

They are from people who are utterly dependent upon the benefits that come from these health trust funds set up by the United Mine Workers and the U.S. Government.

We take no tax money from the people of the United States. We take no tax money from the States or the localities. We simply say to the industry: As you have in the past, so you shall in the future, take care of your own.

These people have built this country. These people have sacrificed their health, and now they are older. They are in their declining years. They are lucky to be alive. They are dying at the rate of 6,000 a year, Mr. President. They die at the rate of 6,000 a year. There were 132,000 2 years ago when we started working on this, now there are 120,000. They die at 6,000 a year. That quickly. They are so fragile.

And not once in all of this conversation did I hear anything about the sorry about these people. Well, I worry about them. It strikes me as our obligation as citizens.

And so our amendment, which is in the tax package, and properly so, simply does that. We make sure that they will have their health benefits.

People criticize: well, they say, they have Medicare. Medicare does not give prescription drugs. The person I just described takes 14 prescription drugs before lunch. These people live among pills and prescriptions, many visits to the hospital and the doctors. And, in fact, in the typical coal mining family where there is a retiree, all of the earned income which he may get from whatever pension is more than used up by his health benefits over and above what he or she gets from Medicare.

So we are doing the right thing here, Mr. President. We are taking care of people who have done the hardest work under God's Earth, and now they are old, and now they are being abandoned, and on April 13 of this year, they will be dropped off the edge of a cliff. They have nobody to turn to, so they turn to the Congress, not for money, but so that the Congress will reaffirm what has been the condition in the coal field for all these years that the industry will take care of its own.

I am proud of this legislation. I am proud to have a chance to stand up for retired coal miners in 47 States all across this land who are weak, who have nothing and nobody to speak for them, who on April 13 will have absolutely nothing unless the Congress intervenes.

I am proud to do that. And we have done that. And there are many of us who look forward, if there were to be a chance for a vote, to show our strength and our commitment and the emotional need that we have as representatives to stand up for these poor people. And they are all poor, and they are all sick, and they are all hurting, and they all need us, and we shall not turn our backs on them.

I thank the Chair and I yield the floor.

Several Senators addressed the Chair.

The PRESIDING OFFICER (Mr. CONRAD). The Senator from Kentucky.

Mr. FORD. Mr. President, let me just say to my good friend, and he is my good friend, the junior Senator from West Virginia, that I stand with him in being proud of the position we have taken to take care of these so-called retirees or pensioners that have given so much to this country working in the coal fields.

He knows and I know that this bill will not become law because of the veto. I want to take care of these people but I also want to be sure that their children have a job. When the unfairness of the tax rate on the various States come into view, then we find that my State, for instance, is 600 percent higher in tax rate than the same type of operation in the Western States. And then we escalate that charge. The charge on Western States never goes over 15 cents. Kentucky's charge starts at $1 and escalates in 3 or 4 years to $1.50. The West never rises over 15 cents, and that was the deal to get it out of the Finance Committee.

I remember the distinguished Senator from Louisiana said, "A deal ain't a deal unless I am part of it." I think we have to protect the operators in the various States to be sure they can remain competitive. My State will be anywhere from 22 to 46 cents more per ton.

I am on the Senator from West Virginia's side for taking care of the retirees. I intend to see that we pass legislation that will take care of the retirees, that those benefits will not miss a beat. But I think there is somewhat an unfair difference when one State is paying a tax rate and another State is paying 600 percent more and escalating to 700, 900, 1,100 percent. I think there is something wrong with that kind of legislation, as it relates to fairness.

If you put coal out of business, then there are no jobs. If you cannot compete under this tax, then you go out of business. You are just flat out of business, and there are no jobs.

So we take care of the retirees, while their children lose their jobs? There is something about that, as we say down in west Kentucky, "ain't right."

Tomorrow, I will have more to say on this, but I wanted to be sure that we have the ability to take care of these people, that we never falter from that. But also, in reaching that goal, that we not have some States bear an undue burden, like 600 percent more than other States, who are then put out of competition.

I yield the floor and thank my distinguished friend, Senator BYRD from West Virginia, for allowing me to have a few minutes.

The PRESIDING OFFICER. The Senator from West Virginia.

Mr. BYRD. Mr. President, is there an amendment pending at the moment dealing with the provisions of the bill that have been the subject of Mr. ROCKEFELLER'S remarks?

The PRESIDING OFFICER. The only amendment pending is the committee substitute.

Mr. BYRD. I thank the Chair. I will make my remarks very brief.

Mr. President, the focus of the debate in which the Senate is now engaged—the focus of the bill before us—is on taxes. For most, the key elements of this bill are the middle-class tax cuts, the upper-income tax increases, the savings and investment incentives, the capital gains tax reductions, and other tax-related provisions which it contains.

Yet, in my view, the most important provisions of the measure before us deal not with taxes. The most important provisions of this measure have not been the subject of numerous front page stories in the Washington Post or New York Times. No, the most important provisions of this measure are buried deep within the bill, found in three relatively obscure sections of the bill—sections 2281, 2282, and 2283. I do not doubt that many of my colleagues are probably unaware of what is contained in sections 2281–2283. Many are probably unaware of the critical importance of these sections of the bill. Yet, Mr. President, I say to my colleagues that no element of this bill is more important than these three easily overlooked sections, for the provisions contained therein would restore the financial integrity of the coal industry's retiree health care system.

Much has been said and written about the health care crisis that exists in America today. Health care costs are seemingly skyrocketing out of control. At the same time, millions of Americans have no health insurance that provides them access to affordable and adequate health care. And as we all know, our health care crisis is an economic burden that impairs our international competitiveness. Yet, unless we act to put the coal industry's retiree health care system back on sound financial ground, we will only be adding to the health care crisis that already exists in this Nation. We will be adding 120,000 more Americans to the rolls of those without private health insurance.

And who are these 120,000 Americans? They are retired coal miners—individuals who risked their lives to provide our Nation with the energy resources used to build America's industrial might. Mining coal is, and always has been, hard and dangerous work, posing great risk to both life and limb. Many mine workers never reached retirement. Their lives were cut short by accidents or ill health resulting from the work to which they devoted themselves. To turn our backs now on those who have reached retirement—those who have entered what we often think of as "the golden years"—after spending a lifetime toiling in the mines would be unconscionable.

Yet, if we do not act, and act quickly, to restore both the near-term and long-term solvency of the coal industry's retiree health care system, we will be turning our backs on retired coal miners across our Nation at a time of great need in their lives. The average beneficiary of the 1950 and 1974 United Mine Workers of America [UMWA] health benefit plans is 77 years old. Their health is often poor, certainly worse than that of those who did not spend years mining coal. For these retirees and their dependents, the importance of having adequate health care coverage cannot be overstated. Critics may charge that the UMWA health plans are excessive and overly generous. Yet, to the contrary, the broad coverage provided by the UMWA health plans simply attests to the importance that mine workers have historically placed on health care—a fact evidenced by their willingness over the years to accept lower wages and pension benefits in exchange for more comprehensive health benefits.

In years past, a promise was made to America's coal miners and their families—a promise of lifetime health care coverage. Now, the fulfillment of that promise is threatened by circumstances over which today's coal industry retirees have no control and for which they are in no way responsible. As we debate this bill today, the 1950 and 1974 UMWA health plans face large and growing deficits that threaten their ability to continue providing health care benefits. Absent action on our part, benefits could be cut off within a matter of weeks. The trustees of the funds have made clear that, without corrective action being taken, they are prepared to terminate benefits. In other words, if we let pass this opportunity to act, more than 120,000 retired miners, their wives, and their dependents could find their health benefits abruptly cut off.

If the bill now before the Senate, H.R. 4210, as approved and reported by the Senate Finance Committee, were to become law, however, the threat of a benefit cut off would be removed. The reason for this is that the bill before us contains a modified version of S. 1989, the Coal Industry Retiree Health Benefit Act, introduced by my colleague and good friend from West Virginia, Mr. ROCKEFELLER, last November, and the provisions contained in the bill now under consideration by the Senate would resolve the financial crisis that threatens the stability of the UMWA health funds. We urgently need to pass these provisions.

Mr. President, I am not entirely happy with the provisions of the bill approved by the Senate Finance Committee. On this particular issue, I regret that certain compromises had to be made to secure approval of the heart of S. 1989 by the Finance Committee. I am not happy that certain segments of the coal industry and certain regions of our country have been released from virtually any participation in helping resolve the crisis caused by a sharp rise in the number of orphan retirees, those coal industry retirees whose last employer is no longer in business and whose health care benefits are therefore not covered by any former employer. I am concerned about the impact the committee-approved provisions would have on coal operators, particularly small coal operators, in the East.

Yet, despite the reservations I have about some of the changes made in the Finance Committee, I stand here today in full support of the provisions that have emerged from the committee have been supported by my colleague, Mr. ROCKEFELLER, and are before us now. Despite knowing that this legislation is all but certain to be vetoed, I believe it is important that we preserve what the Finance Committee has agreed to with regard to the coal industry's retiree health care system. We need to act affirmatively on these provisions, if for no other reason than to send a signal that we are committed to helping resolve the financial crisis that threatens the health care benefits of retired coal miners across the Nation—benefits which they were promised long ago and on which they have come to depend. Even if this bill is unlikely to become law, I believe it is important that we, in the Senate, go on record in support of taking the steps necessary to avert a crisis.

In response to those opposed to S. 1989, and to the modified version of S. 1989 contained in the bill currently under consideration by the Senate, I believe one point must be made clear. Neither the purpose nor the effect of S. 1989, or of the relevant provisions of H.R. 4210, is to shift financial responsibility for retiree health benefits from one group of coal operators to another. In fact, the opposite is true.

What this effort is all about, and I commend my colleague for his hard work in bringing this legislation to the floor, is to ensure that those who are responsible assume their responsibility. Any company that is currently in business would be made to assume responsibility for the health care costs of its retirees, irrespective of whether it had previously succeeded in dumping liability for its retirees on others.

As to those coal companies that are not now, and never were, members of the Bituminous Coal Operators Association [BCOA] or signatories to any National Bituminous Coal Wage Agreement [NBCWA], they would be asked to participate only in providing health care coverage for true orphan retirees, those whose last employers are no longer in business. As with abandoned mine lands, these abandoned miners would become an industry-wide responsibility. I believe this approach is both fair and reasonable. In fact, if I were to have any objections to the provisions contained in H.R. 4210, it would be that, as a result of modifications made to S. 1989, responsibility for the industry's orphan retirees is not more equally shared by all within the coal industry.

Furthermore, despite any objections I might have, I believe it is most important that we begin moving toward a resolution of the problems which threaten the United Mine Workers of America benefit trusts and, thus, the coal industry's retiree health care system. Again, as I have stated before and as we are all aware, this bill faces an almost certain veto. We will undoubtedly have to revisit this issue, and I hope that we will do so quickly.

I am deeply concerned about what might follow from a cutoff in retiree health benefits. Clearly, such a cutoff would impose great hardships, as my colleague so ably stated, on beneficiaries, many of whom suffer from poor health and must stretch very limited financial resources to make ends meet. Moreover, terminating retiree benefits could also ignite tremendous labor unrest in and around our Nation's coalfields.

We ought to pause and think about what that will do to the economy, an economy that is already in deep recession. We might ponder as to the impact of such labor unrest, and it would almost be sure to take place.

Sending a signal to those who are looking to us for a solution to the problems confronting the coal industry's retiree health system might help temper any such reaction. To strike the provisions of this bill that would restore the solvency of the industry's retiree health system would send the wrong signal and would be a serious mistake. So I urge my colleagues to support the bill as reported, so that we might move forward on this issue, not backward.

The only reason I will support this bill is because of the provisions that are in the bill as a result of the very hard work that has been done by my able colleague, Senator ROCKEFELLER. That is the only reason I will support this bill.

I think those provisions are worthwhile and they are so important that I am constrained to vote for the bill which I otherwise would not be so constrained to do.

I compliment my colleague. He has proved time and time again that he does his committee work; he is dedicated to the committee. He has demonstrated his ability to work out compromises and, after all, legislation is the art of compromise. He has the welfare of these UMWA retirees at heart, and he has the welfare of the Nation at heart. I thank him and I thank the committee. I thank Senator BENTSEN and all others on the committee who have worked with him to make it possible for these provisions to be in the bill. I yield the floor.

Mr. WOFFORD addressed the Chair.

The PRESIDING OFFICER. The Senator from Pennsylvania.

Mr. WOFFORD. Mr. President, it is a privilege to add my voice with that of the President pro tempore and Senator ROCKEFELLER of West Virginia who has given his heart and soul to this effort which is an effort to see that promises are fulfilled.

I ask my colleagues to support the bill as reported with this vital section in the bill because it provides a solution to a very complex and painful human problem facing thousands of retired coal miners and their families across our country.

America's retired coal miners have worked in dangerous, dirty and often unhealthy conditions. The coal the miners mine remains the single largest source of energy in the United States.

Like other Americans, coal miners went to work each day under the assumption that their health benefits would be there when they eventually retired. This legislation helps ensure that promise is kept.

For today, that promise is being broken for thousands of retired coal miners and their families. Not because they did not work hard enough. Not because they did not plan ahead. But because of economic forces over which they have no control.

Through no fault of their own, miners have become orphans in their retirement years. Their former employers have gone out of business or simply no longer make contributions to the existing health benefit trust funds. Now our miners have no place else to turn except here, to their Government. They played the game by one set of rules all their lives, and now somebody has changed the rules on them.

In large parts of Pennsylvania, miners have worked for over a century to bring coal out of the ground and provide the fuel that powered America's progress; in communities built by immigrants who came to this country looking for a better life for themselves and their children. Generation after generation, they were more than willing to work hard to fulfill the American dream: Of a secure retirement if you work hard; of helping your children go to college if they study hard; of owning your own home if you save; and of having a doctor if you need one.

They did not expect anything handed to them on a silver platter. But they also did not expect to have the rug pulled out from under their feet when they retired. For the miners and their families, losing what they thought were guaranteed health benefits, the safety net is broken. Congress can fix it and this legislation will do it.

In 1990, a commission appointed by then Labor Secretary Dole, and chaired by former Secretary William Usery, addressed the problem and reached a conclusion that ought to be a matter of common sense and basic fairness: that retired miners are entitled to the health care benefits they were promised and such commitments must be honored today.

The basic recommendations of the Dole Commission are contained in this legislation. It is time for us to enact them into law. It is time to commit our will and our wallet to taking care of these people—our own people—and their problems.

The health benefits provided to coal miners under this bill are nothing more than what they are due. They worked hard for their retirement years. They have earned some peace of mind and a decent, healthy quality of life. This is not a handout. This is no giveaway. This legislation represents nothing more than a promise kept, a commitment honored.

I urge my colleagues to keep this provision in the bill to vote for it with pride and to keep the promise made to America's coal miners.

I yield the floor, Mr. President.

Mr. SPECTER addressed the Chair.

The PRESIDING OFFICER. The Senator from Pennsylvania.

Mr. SPECTER. Mr. President, I support the provisions of the pending legislation addressing the crisis affecting a large group of retired coal miners. These miners have relied upon commitments for health benefits and due to factors totally beyond their control, those benefits are at risk. I submit that coal miners are in a unique position because of the ultrahazardous work which they perform.

In my State of Pennsylvania, there are thousands of retired coal miners who have relied upon these benefits and who how live in fear that these benefits will be denied them. Earlier this year, I met with several hundred of these retired coal miners in Washington County, PA, and heard for several hours the details of their plan, of their suffering and of their concern about what would befall them if the health benefits that were promised them were lost.

In the course of my work in this body, I have had occasion to visit the mines. It is an awesome experience to go many stories—hundreds of feet—into the earth. Only then do you see the tenuous structures which hold up the small opening where these miners work. To wonder what the odds are of a cave-in, recalling eyewitness accounts and news reports of such cave-ins. What a frightening experience it is to be in the mine for a very, very short period of time, let alone work in one for decades.

Miners are also subjected to the risks of acquiring black lung. Simply stated our current remedies are insufficient to solve that problem.

A number of Senators have spoken tonight about the admitted need to help these miners but have searched for some other way to aid them.

I would be interested to hear what their alternatives are.

I have been contacted by many of my constituents—coal operators—who have raised questions about the cost which they will be subjected to and have raised concerns about their lack of responsibility for these specific obligations. I must say that this concern is understandable. But on many occasions in our society we structure our laws which help those who are in special need even though those who are making the payments do not have any direct responsibility. In our society, the laws do impose obligations on people to take care of those who are in great or are in extreme need.

The circumstances of these miners just cry out for some assistance. It may be that some way could be structured and the law could be fine-tuned in some manner to relieve some of those who are making the complaints. But until someone comes forward with some way to accomplish that, it seems to me that as a matter of public policy there ought to be some formula found for continuing these health benefits.

I compliment the Senator from West Virginia [Mr. ROCKEFELLER] for the prodigious work which he has done on this matter. I have talked to many of my colleagues about their views as to

this kind of legislation, and it has been a difficult matter for many Senators who acknowledge the need but who have some doubts as to the specific remedy. Until a better remedy is proposed, however, it seems to me that the pending provisions ought to be supported.

I thank my colleague from Wyoming for his customary courtesy in yielding to me. I had not known this matter was coming up, but I saw it on television and came back to the floor to participate in these comments briefly.

I thank the Chair, and I yield the floor.

Mr. SIMPSON. Mr. President, we are on an issue which greatly touches the State of Wyoming. My colleague from Wyoming has spoken. Senator BOREN, from Oklahoma, has spoken. It has been a very good debate—Senator ROCKEFELLER, Senator FORD, and the two Senators from Pennsylvania. But I just want to bring this into a clearer perspective if we can get away from some of the individual anguish and pain which is going to be relieved one way or the other, but not this way, so that people are covered and no one is going to suffer. Not only Medicare is there, but this will be there because it will be paid for by the people who did the collective bargaining in the first place.

The coal tax provision in this bill is a singular attempt to bail out a privately negotiated union health plan in a fashion that would violate the most fundamental principles of collective bargaining and simultaneously turn inside out the economic dynamics of a highly competitive industry.

The supporters justify this proposal with a reference to a group of 120,000 or so retired miners, widows, and dependents, who will supposedly wind up out in the cold unless this Congress assumes the burden of looking after their retirement health care benefits and entitlements.

I use the word "entitlements" with a very clear purpose, for these miners are in every sense entitled to the health benefits that were promised them in collective bargaining by their employers. None of us here today disputes that.

What we take issue with is the disingenuous assertion that the only way to assure that those entitlements are honored is through some sort of congressionally sponsored private relief bailout. The fact is that a group of large wealthy corporations want to renege on a deal they no longer like—I am speaking as a Republican—and they are holding those 120,000 miners and widows hostage to their success.

But you do not do that in America. Every 4 years or so the United Mine Workers of America and the Bituminous Coal Operators Association renegotiate wages and benefit packages, including retirement benefit packages, health care, the whole works, for their miners through a collective bargaining process, and through that process the United Mine Workers and the BCOA have established a health benefit trust fund, a trust fund for their members.

Under terms of the agreement, the signatory companies agree to pay a certain dollar amount per labor hour into a trust fund, which then pays for the retirement health benefits of all of the collective retirees. And hear this. Also under the terms of the agreement, the health benefits of retired miners whose employer has gone out of business, broke, if you will, are still covered under the trust fund and financed by the remaining companies. That was the agreement reached between the coal companies and the union miners at the collective bargaining table. Please hear that.

Not all of the coal industry is represented by the United Mine Workers of America-BCOA. Existing Wyoming mines and their miners, for example, are not covered under that agreement. Wyoming coal miners and retirees receive their health benefits directly from the companies for which they work or worked and not from the general trust fund. Even the three Wyoming mines which are United Mine Workers-organized negotiate their own wage and benefit contracts separately from the Eastern-dominated UMWA and the BCOA agreement.

And then hear this. In 1988, when the BCOA and the United Mine Workers last renewed their collective bargaining agreement, the coal companies won a change in the contract which effectively reduced their contributions to the health care trust fund by 58 percent. That was in the collective bargaining agreement. When the United Mine Workers initially objected—and why would they not—they objected to the reduction in payment. And the companies said, in effect, "Hey, don't worry about it; we will make sure the fund is solvent." That clause is right there in the contract.

It should not surprise any soul here that with a 58 percent reduction the trust funds immediately began to show a deficit, and rather than make good on their promise to keep the fund solvent, the BCOA companies have now turned to Congress and asked us to bail them out of their obligation through a new coal tax on the rest of the industry.

What this means for my home State is that Wyoming coal companies would be assessed a coal tax on their labor to bail out a trust fund that they had no hand in creating and in which none of their own miners are enrolled. Wyoming coal operators would continue to pay for the health benefits of their own miners and retirees and then would, in addition, be thus forced to assume the health benefit obligations of their vigorous competitors in the East. The increased approximate costs will eventually find their way, of course, into the pocketbooks of electric utility ratepayers and mine employees. Meanwhile, under the legislation, the Eastern United Mine Worker-BCOA signatory companies could actually further reduce—further reduce—their current payments to the trust fund below even their currently inadequate levels. Now, what sense does that make?

Mr. President, I wonder whether the unions and the companies that support this legislation have really stopped to think what it is they are demanding.

Likewise, I wonder whether the Finance Committee that approved this legislation has really considered the Pandora's box it would open. The precedents established by this legislation certainly do organized labor no favors.

Under this proposal, Congress would be authorized to intrude at will into the fully ratified collectively bargained labor contract. Congress may subvert with impunity the binding legal commitments and obligations made to union workers by their employers, and Congress can enforce a new and patently unfair principle of coerced contributions from nonparties to an industry labor agreement.

Is this what the United Mine Workers really want? If employers believe that they can at will dump their employee obligations on somebody else who may or may not consent to assume them and get away with it, where is the security of the unions, any union at the bargaining table? On what faith would they accept the promise made?

This wholesale subversion of the principle of collective bargaining would smash—literally smash—the most venerated cornerstone of U.S. labor policy, which is collective bargaining.

And there are other unacceptable precedents in this bill. Under this proposal we have found some of the most creative applications for our constitutionally conferred taxing authority.

First, this legislation proposes to tax the people through higher utility rates to pay a private debt. Then it proposes to tax half the country at one rate, and half the country at another. Even more astonishing, the Finance Committee has discovered the immensely politically useful trick of exempting one State from any tax at all.

Where will that one stop?

Finally, this legislation proposes to first establish these ground rules and cede the Federal taxing authority to some new, independent corporation.

Come, come. We have all heard the horror story. Nobody is going to lose out in this. I have seen the postcards flowing out, and I tell my people throw them away. Nobody is going to leave you holding the sack. You are going to go back to collective bargaining and companies are going to pay. And who-

ever is terrifying you this way is joshing you and just trying to frighten you. That is a shame, and a poor way to do business.

For the record, in conclusion, two very recent court decisions have held that the United Mine Workers-BCOA signatory companies must increase their contributions to the United Mine Workers' health benefit trust funds to several levels sufficient to restore actuarial balance, which means solvency. Court decisions.

So we have the courts that have ruled that the BCOA signatory companies must indeed abide by this collective bargaining agreement, and this ruling would appear to negate the need for any industry tax.

A second rule is held that companies which have opted not to sign the successor United Mine Worker-BCOA agreements are still responsible for the health care costs of their miners who retired when the contract was in force. And if the BCOA and the United Mine Workers do not want to live with the results of their own 1988 agreement where one side swallowed a 58 percent reduction in contributions, then it is up to them to change that process, appropriately, through the collective bargaining process.

The new labor agreement must be ratified within the year. That would be a very good time for the United Mine Workers and the BCOA to review their mutual demands and obligations with respect to the retiree health benefit trust fund, and to be honest about it this time and not foist it off on us after collective bargaining has failed.

Thank you.

Mr. ROCKEFELLER addressed the Chair.

The PRESIDING OFFICER. The Senator from West Virginia.

Mr. ROCKEFELLER. Mr. President, I had not intended on continuing because I am sure that the Senate wants to close down.

The Senator from Wyoming has 432 retirees in his State, and I am trying to figure out what it is that he has in mind to do to help them. He says that the BCOA should take care of all of the 120,000. And indeed the BCOA has been doing so for, lo, these many years, some 46 years.

What he does not apparently understand is that the BCOA used to be more than 2,000 companies, and that because of the conditions of the coal fields, because of international competition, and because of many companies going nonunion and no longer bargaining, that now only about 300 companies represent the BCOA.

But then let us suppose his point was still correct, that the BCOA should go ahead and do it. Well, the BCOA has done this because it has been agreed to in the collective bargaining agreement.

What the Senator apparently does not understand is that the BCOA and the 300 companies that it represents is not only paying for all of its own retirees, which represent 25 percent of the 120,000, but it is paying for all of the rest of them, too; all the rest of them including companies that no longer belong to the BCOA, companies that once belonged to the BCOA but then decided to dump their retirees, including 75,000 retirees, average age 77 years old that do not belong to anybody anymore because all of their companies have gone out of business. There is nobody around to pay for them.

Well, the BCOA has been paying for them because of the contract, but guess what? The contract ends next February 1, 1993, and that is going to be the end of that arrangement. They are not going to make that agreement anymore, because they do not have to sign it, and they will not.

So this will not be a matter of the BCOA paying for all of the people who are retired in the State of Wyoming; doing it, taking care of all the people for free, and all of the people in the rest of the country for free because they are not going to do it. The contract will run out.

That is the point. That is the entire point. So then you come to the question of what do you do next? The BCOA will take care of its own people. That will be 25 percent of all of these retirees. But what about all the rest of them? They are going to be nowhere, out on the street, no help.

That is the point. That is why this is a crisis. That is why I reach out to my friend, the Senator from Wyoming, and say rather than using the extraordinary skills which he has to devastate, to tear arrangements apart, to take proposals to shatter them, and turn them into ridicule, but take some of those intellectual talents and spiritual talents and apply them to think to solve the problem.

As of April 13, these people are not going to have any health benefits. What would the Senator from Wyoming do? What would he do with these people? He knows perfectly what coal miners go through. He knows what their lives are like. He knows what these people mined 35, 40 years ago when they had pick and shovels. And that is what it was—people who spent their lives on their knees, under 3 feet of coal.

What does he propose they do? As of April 13, they will have nobody because there will be no more money in the health funds; there will be nothing left. Yes the BCOA will take care of theirs, but all of his they will be out on the street. What does he propose?

Mr. SIMPSON. Mr. President, I just have further thought.

The PRESIDING OFFICER. The Senator from Wyoming.

Mr. SIMPSON. Mr. President, I thank you. I greatly enjoy my friend from West Virginia. When he speaks he speaks with honesty and integrity.

No one is arguing that these people are not fully entitled to this. I am not. And Senator FORD says clearly, and others. I have not a qualm about that. They are fully entitled to what they have because of what they gave up in collective bargaining. They took lower wages to get this Cadillac package of health care benefits. It is an extraordinary package. That was collective bargaining.

The Senator from West Virginia will remember because of his tremendous work in this place with health care and his leading, and capably leading a commission, a group, to try to find these answers, that one of the answers was to go to appropriate copayments and deductibles and real things in health care contracts. And they are not in this.

The Senator asks how I would help them. I will help them. There is no need for them to worry about April 13, because there is an injunction. No court is going to allow the participants in collective bargaining to just dump their obligation.

And the things that the Senator talked about with regard to people are in here for free, people are going to go out of business, and when they go out of business, it is going to shrink the pool of employers; every bit of that was covered in the collective bargaining agreement. It was provided that as companies went out of business, the others would pick up the slack. They apparently believed each other. That was what happened.

Everything that the Senator from West Virginia has described as to what happened was in the collective bargaining agreement. It did not come from outer space or anywhere else. Their peers knew what was happening. The union knew what was happening. The bituminous operators knew what was happening.

So now we are faced with this situation. There will not be a gap on April 13. No one is going to allow that to happen.

There is an injunction already to prevent it by saying that they will get the money from the trust fund, and that they will use pension asset surpluses. And they will, because the court has said that.

No court in America is going to allow those that are still there on both sides, labor and management, to escape. It is not right, it is not fair. It is not collective bargaining. No one is that broke that they cannot go correct it.

So collective bargaining time is coming up again soon; time for them to sit down honestly, not let each other off of the hook, and certainly not put the burden on companies and individuals who never had a thing to do with the original agreement, not a thing. They are not going to sit still for that.

Mr. ROCKEFELLER. Mr. President, the injunction that my friend from Wy-

oming refers to does not exist. It is a temporary restraining order. It only lasts until March 16.

Nothing has been presented to the court. No decisions have been made. There is no mention of pension assets. There is nothing of the kind. It is an absolute invention of fabrication.

I hope he is right about February 13. I hope the court puts an injunction. If it does, it will not last very long, because the fund is broke.

My friend says we must let the BCOA do what it has always done. That is nice, but come February 1, 1993 the contract runs out, and they are not going to sign it again. That is what we keep coming back to.

They have been paying $1 for their own retirees and $3 for everybody else's. Ordinarily, in business one does not do that for a very long time. When the contract runs out, indeed they are going to stop doing that. All of these people are going to have no health benefits. That is simply the fact.

There is no injunction. April 13 is going to come, the health benefits are bankrupt, and they owe $100 million, plus another $80 million beyond that. And unless the Congress, not uses the taxpayers money, but comes up with a solution which puts these things back together again, these people will have no health benefits.

It is not very complicated. What it is is terribly discouraging.

What I say to my friend from Wyoming is that people are angry in America. The Senator from Pennsylvania was here earlier. He did not win on the issue in Pennsylvania called health care. He won because it appeared to the people of Pennsylvania that he was genuinely concerned about what was happening in their lives, and lives in which they are less satisfied with surrounded by all sorts of economic problems. It was the tip of the iceberg in the human condition which is deteriorating.

Government does not know where we are going, business is discouraged, and people are angry. I say to my friend, let us get together on this, as the Senator had indicated, as this bill will be vetoed, and this measure will be vetoed along with it. But we have a majority of the Senators that are determined that these coal miners are going to have their health benefits maintained. And we know it cannot be entirely through the BCOA, because the contract runs out next February 1.

My friend can hope it will be there, but it will not. They can hope for injunction of the court, but there is no injunction.

These are serious matters. I know that if this tax bill passes, this measure will pass with it, and it will go to the President, and the President will say he is going to veto it—having to do with yachts, furs, and upper-income tax increases, and all kind of things.

I ask of my friend from Wyoming, and indeed my friend from Kentucky, Mr. President, that we can sit down and reason together, get away from the hyperbole which is so much part of the coal industry anyway. There is hatred on both sides and extremism on both sides, and violence, both physical and in spirit. I hope we can sit down and work out a bill which is fair and recognizes the need for health care and which solves it.

The amendment which I have put in the tax bill does in fact do that. If my friend from Wyoming does not like it, let us reason together and try and make the situation work so that the retirees who have lived the most dangerous life anybody can live in this country will have their health benefits. That is not unreasonable, and I do not think he thinks it is unreasonable.

Mr. SIMPSON. Mr. President, I will conclude in 2 minutes. The acting majority leader could invoke the two-speech rule, but being a kind, compassionate and caring man, he will allow me 2 minutes.

I will work with the Senator from West Virginia. We will not see these people suffer. They will not lose their benefits.

There are many things that can happen. We will review the court proceedings. It is my understanding that the trustees obtained a court order that will force the companies to up their contribution rates to levels sufficient to make up the trust fund deficit before the year is out. We could authorize here pension assets, surplus transfer, continuation of benefits, things that could be beneficial.

I pledge to work with him and see if we can resolve it in a way that none of us are ever going to watch these people lose their coverage. This is the best health plan in America today, because it was obtained by good old collective bargaining.

Mr. President, I ask unanimous consent that the following "Dear Colleague" pertaining to the health benefits of retired coal miners be printed in the RECORD at this time.

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

U.S. SENATE,
Washington, DC, March 10, 1992.

DEAR COLLEAGUE: The tax legislation that will be taken up this week by the Senate contains a provision on health care for retired coal miners that we hope you will support. The purpose of the legislation is to stave off financial crisis in the funding of health care for these retirees and their widows and dependents. The provision is based on Senator Rockefeller's bill, S. 1989, cosponsored by Senators Byrd, Specter, Wofford, Riegle, Dixon, Simon, Akaka, Gore, Heflin, Inouye, Metzenbaum, and Shelby.

Health benefits have for decades been provided for retired coal miners through trust funds established under successive bargaining agreements derived from a 1946 agreement reached after President Truman seized the mines during a nationwide strike. The funds are facing a financial crisis because fewer and fewer coal companies are making contributions. Many employers stopped making contributions when they went out of business and others remain in business, but simply stopped making contributions, dumping their retirees on the funds. Under the legislation, each company with beneficiaries in the funds would be responsible for its own retirees and would also participate with the rest of the bituminous coal industry in paying for the retirees of companies that are out of business.

The legislation is based on the majority recommendations of a special Commission appointed by then Secretary of Labor Elizabeth Dole and chaired by former Labor Secretary William J. Usery, Jr. Secretary Dole said the commission was "charged with recommending long-term solutions for a 'financial crisis' facing retired coal miners' health care funds." In its report, the Dole Commission concluded that it "firmly believes that the retired miners are entitled to the health care benefits that were promised and guaranteed them and that such commitments must be honored."

This legislation to ensure that the commitments are kept has drawn vocal opposition. Fortunately, even before debate begins on the Senate floor, the opposition has conceded two thirds of the case in favor of the legislation. No one denies what the Dole Commission found—"that the retired miners are entitled to the health care benefits that were promised and guaranteed them." Second, virtually everyone agrees with the provisions of the legislation that say that if a company walked away from commitments and dumped hundreds of retirees on the funds, it should be required to meet its responsibilities.

What then remains at issue? Opponents of the legislation have criticized the part of the legislation that provides health care for orphan retirees—those whose companies are out of business and who therefore have no company to look to for health care payments. Under the legislation, current and former participating companies still in business are required to pay for their own retirees. Since the former employers of the orphans no longer exist, under the legislation funding for their health care comes from an industry-wide fee.

The principal critics are companies who do not wish to be subject to the industry-wide fee and who argue that this fee requires them to "pick up the tab" for companies who have responsibility for the orphans. The central flaw in this argument is simply that when the current collective bargaining agreement expires early next year, the program will be at an end and no one will have the legal responsibility to sustain it. The simple fact is that this is not a case of picking up someone else's tab, but of getting everyone to pick up a tab that soon will be no one's.

For years the current contributors have renewed the safety net for the orphan retirees, but the piling up of financial burdens on a smaller and smaller group of companies for the health care of people who are not their retirees cannot be sustained. We refer to this not to take the part of one or another economic interest. The point is simply that the current system is unworkable and won't last. If we are to preserve the promised health care for these retirees, we must move from an unworkable system to one that is workable.

The critics of the legislation have produced a blizzard of statistics, often mislead-

ing, to try to show that somehow the current deficits in the funds are the fault of the parties to the collective bargaining agreement. But this is a red herring because the legislation provides for a transfer of surplus pension assets to retire the current deficit. The miners themselves have said that they would contribute their own money out of their pension funds to moot the argument over the past. The issue is solely whether anyone will pay in the future to take care of the elderly and vulnerable people who earned, and who depend on the benefits.

Often, especially in the coal industry, we have established industry responsibility by law when such responsibility could not be adequately handled in collective bargaining. With whom do the coal miners bargain when companies have gone out of business or have left the bargaining unit? If we can require the entire industry to pay to reclaim abandoned minelands, the entire industry can pay to take care of abandoned people. As Secretary Dole said, during negotiations of a recent coal industry labor dispute, "it became clear to all parties involved that the issue of health care benefits for retirees affects the entire industry." She added that "a comprehensive, industry-wide solution is desperately needed."

Often lost in the technical and academic argumentation of the critics is an appreciation for the people involved, and the explosive nature of the subject of health care benefits in the nation's coalfields. Because of the financial condition of the trust funds, health benefits could be cut off within weeks, resulting in widespread labor strife. Retired coal miners are often in much worse health than other elderly people and, for that reason, retired coal miners have placed great importance on the promise of health care. In a not untypical case, monthly health costs covered only by the trust funds exceed the retiree's entire income from other sources. Without the benefits of the program, retirees could be devastated.

When the forerunner of the current program was established in 1946, the collective bargaining agreement covered most of the industry, while today it covers only a small and shrinking fraction. When the program was established, it was a model for the industrial world and an achievement in industry and government statesmanship. Rather than turning back the clock on that accomplishment, we should be proud as Americans of the achievement and ensure that it survives.

Opponents of the legislation are said to wish to strike it from the tax package or to cripple the legislation by locking in the current unworkable situation, limiting the funding to the current shrunken funding base. We appeal to your sense of fairness and compassion towards the 120,000 retired miners, widows and dependents.

We urge your support for the legislation contained in the tax package, and your opposition to any effort to strike or weaken this solution which is urgently needed to avert a human tragedy.

Sincerely,

Robert C. Byrd, Paul Simon, Howard M. Metzenbaum, Daniel K. Akaka, Donald W. Riegle, Jr., John D. Rockefeller IV, Harris Wofford, Al Gore, Howell Heflin, Arlen Specter.

Mr. FORD. Mr. President, I am delighted to hear the distinguished minority whip say he is willing to work with Senator ROCKEFELLER and myself to find a situation that would be amenable to both sides, and that we can find a solution to a problem that I think is desperate. And I intend to work as hard as I can. It may be that if we go off someplace and let the participants be represented, I think we can work out something that would be agreeable. I look forward to that.

AMENDMENT NO. 1707, AS MODIFIED

Mr. FORD. Mr. President, I ask unanimous consent that amendment 1707 be modified to reflect the last missing page which I now send to the desk.

The PRESIDING OFFICER. Without objection, it is so ordered.

(The foregoing amendment has been modified to reflect the above order.)

Mr. GRAHAM. Mr. President, I have a question regarding the issue of hospice care. I planned to offer an amendment to include hospice as a substitute benefit under the standard and basic benefit package required for all small employers in all blocks of business. However, I will not do so at this time. This provision is consistent with the hospice benefit included in a bill similar to S. 1227 considered by the Labor Committee. It is my understanding that the Finance Committee's standard benefit package was modeled after the bill's covered benefits. If so, a hospice benefit would be appropriate.

It is also consistent with the manner in which hospice is provided under Medicare law—only once a patient has waived all rights to curative care at a hospital and only receives palliative care. The cost-effective Medicare benefit is reimbursed on a fixed, per diem basis. It has improved the quality of life dramatically for terminally ill patients and their families.

It is my impression that Senator BENTSEN is supportive of this addition, and I look forward to working with him on this issue in the future.

Mr. BENTSEN. The Senator is correct that the standard benefit package is modeled after the benefit package offered by Senator MITCHELL and others in S. 1227. I have long been a supporter of hospice benefits under the Medicare and Medicaid Programs, and, in fact, Senator ROTH and I were responsible for the change in law that introduced hospice benefits under the Medicaid Program. It is my understanding that Senator MITCHELL is supportive of the change that the Senator from Florida is proposing. Therefore, if possible I will work to include this addition to the standard benefit package in the conference agreement

Mr. MITCHELL. I share the views expressed by Senators GRAHAM and BENTSEN about the importance of hospice benefits as part of a comprehensive benefit package. Hospice care can be an alternative to hospitalization which both improves the quality of life for the patient and limits or reduces costs to the health care system.

Mr. GRAHAM. I would like to comment on a provision of the health care package contained in the tax bill. As a cosponsor of S. 1872, I comment Senator BENTSEN on the health reform bill, which represents a consensus, bipartisan approach until Congress and the President agree on the direction of reform efforts.

I strongly support the bill's expansion of Medicare preventive services. Last year, I introduced a bill to provide an optional Medicare prevention benefit—a periodic health examination, screenings, immunizations, and health counseling. I hope to increase Medicare's coverage of preventive services and plan to push my legislative wherever appropriate. Although the Finance Committee's expansion is more narrow, I support all efforts to increase preventive services.

I originally planned to offer my preventive bill as an amendment to the tax bill's Medicare section. The Finance Committee's Medicare benefit, however, was limited during markup due to financing issues. For this reason, I will not offer my comprehensive Medicare measure at this time.

I also considered offering an amendment to increase the Medicare prevention demonstration authorization levels, to include health behavior counseling as an offered benefit and to require HCFA to consult with the U.S. Preventive Services Task Force when adding new services. However, I will not do so at this time.

When the Senate next considers S. 1872, I plan to introduce this amendment. It is my understanding that Senator BENTSEN is supportive of this amendment and will be supportive in the future.

Mr. BENTSEN. I share the Senator from Florida's concern about the limited scope of preventive care benefits currently available to Medicare beneficiaries, and I look forward to working with him to expand coverage of these services in the future.

As the Senator knows, Medicare generally covers only services that are necessary for the diagnosis and treatment of illness—which excludes coverage of services, such as immunizations, that avert illness, as well as "screening" tests for patients with no symptoms of a disease. This exclusion dates back to the beginning of the Medicare program and reflects an approach that was prevalent in private health insurance policies at that time.

Although Congress has made substantial progress in this area during the last few years—extending coverage to hepatitis B and pneumococcal vaccines, pap smears, and mammograms—much remains to be done.

S. 1872—the bill from which the health provisions of the pending legislation were drawn—originally included coverage for a broader array of preventive services, including colorectal screening and annual mammograms for women age 65 and over.

Under pay-as-you-go budget rules, however, the costs of any legislation

expanding Medicare benefits must be offset in order to avoid across-the-board cuts under the Gramm-Rudman law. Because all of the available financing options raised concerns, the original benefit package had to be scaled back.

Beneficiary groups, such as the American Association of Retired Persons, have expressed opposition to financing the new benefits entirely through increased part B premiums, primarily because of the precedent this would set for financing other program improvements in the future. Likewise, provider groups expressed concern about financing the expansions with offsetting cuts in Medicare provider payments, such as those proposed in the President's fiscal year 1993 budget.

Faced with such fiscal constraints, the Committee limited its package of new preventive benefits to annual flu shots, tetanus-diphtheria boosters, and well-child care for the approximately 300 children who are eligible for Medicare because they have end-stage renal disease.

But the committee bill would also require the Secretary of Health and Human Services to conduct demonstration projects to evaluate other preventive services not yet covered by Medicare. In the current fiscal environment, it makes sense to begin testing the efficacy of such services in this manner.

If the results demonstrate that a particular service will save the program money by averting more costly medical interventions, the budgetary costs associated with legislation extending coverage to that service might be lower—which would enhance the chances for enactment. Equally important, the demonstration approach will also help ensure that the program covers preventive services that truly enhance the quality of care for Medicare beneficiaries.

I understand that the Senators from Florida would like to expand the scope of the demonstrations to include additional services, and I appreciate his willingness to refrain from offering an amendment at the present time. I will attempt to see that his concerns are addressed during the Senate-House conference on this bill, and, as I said at the beginning of my remarks, I look forward to working with him on the important issue of prevention in the future.

CHILDREN'S PROVISIONS IN TAX PACKAGE

Mr. ROCKEFELLER. Mr. President, this tax package, approved by the Senate Finance Committee, includes several important provisions designed to strengthen our country's investment in our most precious human capital—our children.

I applaud Senator BENTSEN's effort to focus middle-income tax relief on families with children by calling for a $300 child tax credit. Clearly, families struggling to raise children today face enormous pressures including, a greater tax burden. The average family with children pay 28 percent of its gross income in taxes, up from about 14 percent in 1970. This increase has significantly outpaced the tax increases borne by other groups of taxpayers.

In the name of fairness, investment and economic growth, America's families deserve a children's tax credit.

Critics of the children's tax credit will say that $300 means little to a family. But I strongly disagree. A $300 credit would provide real help for working families. Such a credit represents what an average family spends each year on health care for a child. Or it would cover one-third of what a family spends to feed an infant. It could also pay for more than half of the average cost of clothing for a preschooler in a low- or middle-income family.

For West Virginia families, and families across our country, this is genuine and needed support.

A child tax credit also sends a clear signal that our country values its children and supports families.

The National Commission on Children, in its unanimous report outlining a bold blueprint of ways to strengthen support for children and families, strongly recommended the concept of a tax credit for children. Our report called for an even greater investment with a $1,000-child tax credit, that would be refundable so that all working families would be included in the plan, and that would replace the exemption for dependents.

A children's tax credit, in my view, is far better than just increasing the personal exemption for children which has eroded over time. Reliance on the personal exemption alone disproportionately favors wealthier families. A child tax credit is a better option for working families.

I was disappointed that the Senate Finance Committee did not direct the resources in the final package to make the children's tax credit refundable so that all working families would benefit.

Consequently, 8 million families will be excluded or shortchanged because the children's tax credit is not refundable. It's estimated that six million families would be completely excluded by a nonrefundable credit, and two-thirds of them include a parent who is working full time. Two million working families only get a partial amount of the credit they deserve because they simply don't owe enough taxes to reap the full benefit.

These are deserving parents struggling to raise their children on low-wage jobs. They pay the same amount for diapers, food, and school clothes as middle-income families. I believe they should be included in the tax credit by making it refundable.

In human terms, a nonrefundable tax credit would exclude a parent who is a child care worker, living on an average income of only $12,854. Such a worker who is raising two children does not have a tax liability, and will not receive a dime from a nonrefundable tax credit. It's sad because such a family clearly deserves our support. Hard working parents in low-wage jobs are playing by the rules. They are trying to do what's right for their children. They deserve a child tax credit just as much as middle-income families.

During the House-Senate conference, I hope that we can review this matter, and enhance the fairness of the children's tax credit by making it refundable.

But there is some good news in the Senate Finance package for low-income families with the improvements and expansion of the EITC, the Earned Income Tax Credit. The EITC, first established in 1975, has been an important tool to offer meaningful support to working families who are struggling to play by the rules. I have been proud to be part of the efforts to expand the EITC for families over recent years. In 1989, 11.9 million families received almost $6.7 billion through this work incentive. Estimates for 1990, indicate that nearly 13 million families participated in this valuable program.

The Finance Committee package improves the EITC in two ways. First it expands the credit to provide a larger credit for families with two or more children. This is a needed adjustment.

The measure also removes the problem of confusing interactions between the wee tot supplemental credit and the health care credit. With both of the supplemental credits, families now have to choose among several options and complicated calculations in filling out their tax forms. It is clear that the EITC form is far too confusing, and the options are a barrier and a hinderance rather than additional help. It is crucial to simplify the EITC form so families who qualify will not be discouraged from filing for the credit.

The Finance Committee tax package takes care of this problem by removing the interactions. The wee tot supplemental credit was established with good intentions, but in practice it has made the form too confusing for families so it will be repealed by this bill. The health care credit will be kept as part of the EITC, but there would no longer be problems caused by the interaction between various supplemental credits when we enact this change.

Expansion and improvement of the EITC was also strongly endorsed by the National Commission on Children as part of our overall package to provide families with greater income security.

These improvements are pieces of the Family Income Security Act, which I recently introduced. This comprehensive legislation reflects the specific recommendations of the National Commission on Children. It is a bold initia-

tive to dramatically restructure how we offer support to families raising children. It states that all children deserve our support through a generous child tax credit, an improved EITC, a new Child Support and Insurance Program, and community employment waivers to help smooth the transition from welfare to work.

Enactment of this Family Income Security Act is my long-term goal. I believe it has great potential to lift children and their families out of poverty, restructure family support to prevent dependency on welfare, remove the stigmas of public assistance, and create strong incentives for all parents to join the work force.

The tax package approved by the Senate Finance Committee is not perfect. But with the child tax credit and the improvements in the EITC, it is a big step in the right direction toward the overall goal of basic income security for children and families.

BETTER ACCESS TO AFFORDABLE HEALTH CARE ACT

Mr. BRYAN. Mr. President, I strongly support the inclusion of the Better Access to Affordable Health Care Act (S. 1872) provisions, which I cosponsored, in this tax bill.

Over and over again, small business people in my home State of Nevada share with me their unfortunate experiences in trying to provide health care insurance for themselves, and for their employees.

Small businesses struggling to fight off the recession, and increased foreign competition are finding it harder and harder to provide health insurance for their employees. These are employers who want to be able to provide this benefit for their workers. But more and more, these same employers are finding that they either cannot afford to provide insurance at all, or can only provide the barest of coverage.

If we are ever to solve the health care problems that this Nation faces today, we must start by making it more affordable for small businesses to provide their employees with health insurance. The Better Access to Affordable Health Care legislation is a step in the right direction.

Self-employed individuals would be allowed to take a 100-percent tax deduction for health care insurance costs up from the current 25-percent deduction. Large corporations can already deduct 100 percent of their costs. It is wrong to think that a mom and pop store can better absorb the costs of health care insurance than a large corporation. We need to create a level playing field, and give the self-employed an even break.

For employees, the legislation also provides much needed help against joblock for employees. More and more employees are locked to their current job out of fear. Fear that if they take a new job, they will not only lose their current health care insurance, but will be unable to get new insurance coverage.

This legislation addresses joblock by prohibiting group health insurance, including self-insured employer plans, from excluding coverage for preexisting medical conditions for more than one 6-month period. Eligible employees, or their dependents, could not be excluded from coverage under a small group health insurance plan. Nor could insurance sold to small employers be canceled due to claims experience or health conditions. Health insurance policies would also have to meet minimum Federal standards for small employers.

Fear of losing one's health care insurance cannot continue to place a barrier impeding employee advancement. Employees need freedom from this fear to take advantage of better employment opportunities, not only to improve themselves; but to enable this country to ultimately improve its own competitiveness.

In Nevada, where we have some of the highest health care costs in the Nation, the importance of containing costs cannot be overstated. To help contain health care costs, this legislation establishes a Health Care Cost Commission to access public and private strategies for reducing growth in health spending, and recommend cost containment efforts.

Working families are also helped through limits on the maximum out-of-pocket expenses they are responsible to pay. The annual deductible could not exceed $400 for an individual, and $700 for a family in 1993; future deductible limits would be indexed to the consumer price index. Coinsurance payments would be limited to no more than 20 percent. An annual cap on the total deductibles and coinsurance would be set at $3,000 for individuals and families in 1993; future caps would also be indexed to the consumer price index.

Today, there are over 37 million Americans who are uninsured; many of whom have jobs—who are working Americans. It is imperative we make it affordable for employers to provide insurance to these people. Employers want to do the right thing, but in the current economic climate, they need our help to do it.

We all know that these important provision are not the solution to the health care crisis in America—but they are a positive beginning. We have a long way to go toward solving this Nation's health care problems. Many difficult decisions will still have to be made to ensure all Americans have access to affordable quality health care.

The reforms contained in this legislation, however, are changes we can make right away. They provide some much needed relief to small business employers and employees now. I hope my colleagues will join in supporting this legislation as the first of many steps we must take to solve our health care crisis.

GUILTY UNTIL PROVEN INNOCENT

Mr. REID. Mr. President, the Las Vegas newspapers have pointed out a potential problem in this tax bill we are considering today.

It seems that a provision slipped into the House bill in, of all sections, the taxpayers bill of rights 2 [T2]—legislation of which I am an original cosponsor. According to the articles, the provisions would overturn an appeals court decision ruling which states that IRS estimates of taxpayer income cannot be presumed correct when derived without any foundation whatsoever.

The appeals court decided that no longer was the IRS able to disallow what a taxpayer claims to be correct. It was a good decision. It would mean that the taxpayer would no longer be considered guilty until proven innocent.

I have discussed this issue with Senator PRYOR and he has assured me that this provision was not included in the bill before us today. He has worked hard to protect the rights of taxpayers and I am confident that he would not condone such an onerous provision. It would go against the very intent of the taxpayers bill of rights.

It is my hope that when this bill goes to the President, the taxpayers bill of rights does not include this onerous provision. It is my hope that when this bill goes to the President, it includes the provisions to protect the taxpayer from IRS abuse and does not weaken them.

In conclusion, I have to commend the Las Vegas newspapers for being so diligent in their duties to protect taxpayers. Not only Nevada taxpayers, but taxpayers across the Nation. I applaud their efforts, and ask unanimous consent that these articles be printed in the RECORD.

There being no objection, the articles were ordered to be printed in the RECORD, as follows:

[From the Las Vegas Sun, Mar. 6, 1992]

HOUSE BILL SPELLS TROUBLE TO MANY ORDINARY CITIZENS

The Internal Revenue Service wants to weigh the game in its favor again, making taxpayers the losers.

The IRS has been lobbying hard for congressional legislation to overturn a court ruling that requires the agency to prove its case. The 5th Circuit Court of Appeals ruled the IRS must verify information it receives on a taxpayer before assuming he owes more taxes. Until now, the IRS has been comparing tax returns with documents on wages, interest and other income submitted by sources other than the taxpayer.

But the IRS does not check on data submitted. It assumes all documents about a taxpayer are correct and that the burden of proving them false lies with the taxpayer. The court of appeals said no. The IRS must substantiate any data it has in claiming a taxpayer owes money.

What the court said is that the IRS may not assume any data on a taxpayer is correct if it cannot be proved. A House bill would negate that requirement, and essentially put a taxpayer at the mercy of an IRS auditor.

That gives the service more power than a criminal prosecutor who must prove his case at every step of the way. No criminal court judge would allow an assumption by a district attorney to stand without verification. The rules of courtroom evidence would not permit it.

The House bill would let the IRS play the game by its own rules, and that is wrong. The bill has particular importance to service employees in Las Vegas who make their wages at least in part through tips. The tax service has based its estimates on tip income on a percentage of the gross income of a business. Many employees have complained their tips are nowhere near the IRS estimate.

Under the House bill, the IRS can continue this practice even though it places a hardship on many workers. A better way would be to devise a reasonable process for estimating tip income, one that both sides could live with. The IRS obviously does not want that.

The authors of the bill paid lip service to the court ruling, asking the IRS to take reasonable steps to verify its information. Then, however, they indicated that any failure by the IRS to verify its data would not invalidate its notices of tax deficiency. In other words, they told the IRS not to worry about details, like facts.

This bill flies in the face of the four-year-old Taxpayers Bill of Rights—co-sponsored by Sen. Harry Reid, D-Nev.—which was a forthright step to curb abuses by the organization. It defined exactly what the IRS must do and what rights the taxpayer has in audits. But now, under this House bill, all bets are off if the IRS doesn't have to substantiate its case.

The IRS has claimed it can't function without these special powers. We doubt that. It would be a rare prosecutor who would claim he can't convict someone if he has to use evidence.

There's a good chance President Bush may veto this bill because of other tax features such as higher taxes for the wealthy—a sore point for him in this election year.

He should veto it, not for his reasons, but to kill this potential assault on the ordinary taxpayer.

[From the Las Vegas Review-Journal, Mar. 9, 1992]

GUILTY UNTIL PROVEN INNOCENT

President Bush has ordered the IRS to withhold a little less from wage earners' paychecks this year. Presumably, this is supposed to have the same short-term effect as a tiny tax cut, making us all believe we have a little more to spend.

Problem is, we don't. The tax schedules haven't changed at all. What this little bit of leger-demain means is that those who normally expect refunds from their year-long payroll loans to the IRS will get a little less back in 1993.

Others, of course—including many who never paid before—will find they owe the IRS money 13 months from now. How much more? You may have to trust the IRS to tell you, in which case here's the bad news:

A Supreme Court decision last June challenged the long-standing (and hideous) legal assumption that when the IRS assesses a taxpayer for under-reporting income, the IRS is assumed to be correct, and the taxpayer in the wrong, unless the taxpayer can prove otherwise.

The case came out of the 5th Circuit, where Texas house painter Ramon Portillo contested an IRS estimate of his income from a job, although he admitted he had no records to prove their estimate wrong.

The Appeals Court ruled the IRS was wrong, that such IRS estimates cannot be presumed correct when derived "without any foundation whatsoever."

Sounds reasonable.

But IRS Commissioner Shirley D. Peterson, incredibly enough, testified last fall before subcommittees headed by Democrats J.J. Pickle of Texas and David Pryor of Arkansas that, "The entire tax system will eventually crumble" if the decision is allowed to stand.

So the Democrats dutifully inserted a late amendment in their current tax-cut bill last week, gutting the high court ruling by allowing that, "Failure (by the IRS) to comply (with reasonable steps to corroborate the accuracy of income estimates) . . . shall not invalidate any notice of deficiency or assessment of a deficiency."

In other words, taxpayers will once again be considered guilty unless they can prove themselves innocent.

So file your returns, everyone. But best keep a little kit with a spare toothbrush and a change of clothes next to the bed, anyway, just in case they come for you in the night.

Mr. KENNEDY. Mr. President, I am prepared to offer an amendment to the tax bill regarding the use of Customs Service asset-forfeiture funds. But the leadership has urged that floor amendments not be offered to the bill, and I am willing to relinquish my right to offer the amendment at this time if I have a reasonable expectation that there will be another opportunity to offer the amendment later in the session.

Let me explain the amendment. My proposal would use up to $30 million in unexpended money from the Customs Service Asset Forfeiture Fund to support drug treatment programs. If enacted into law, it would make a modest, additional sum of money available to activities that reduce the demand for drugs and thereby prevent crime.

This amendment does not take a single dollar out of the hands of law enforcement. Under current law, money that the Customs Service does not use for its own purposes reverts to the general treasury. I believe that a small amount of this money should be used to help fight the demand-side of the drug war.

It is appropriate that some assets seized from criminal defendants should be used for drug treatment because treatment reduces crime. Addicts who complete a treatment program are five times less likely to be arrested than those who are not afforded treatment. In a recent landmark study, the Institute of Medicine concluded that "[t]reatment reduces the drug consumption and other criminal behavior of a substantial number of people."

But the need for drug treatment services has never been greater. Treatment is available to only one in eight addicts who need it. Tens of thousands of addicts languish on waiting lists for treatment programs, and many of them commit crimes to support their addiction while waiting for an opportunity to get help.

In effect, this amendment adds money for the war on drugs, and provides that a modest portion of the billion dollars seized each year under the Federal forfeiture laws will be used to prevent crimes through drug treatment.

I have been advised by the Congressional Budget Office that this amendment does not violate the Budget Enforcement Act and will not count against the budget caps.

On July 9, 1991, I offered this amendment to S. 1241, the Violent Crime Control Act, and it passed the Senate by unanimous consent. It was not included in the crime bill conference report, however, because the House Ways and Means Committee opposed the inclusion of any revenue provisions in that bill. The pending tax bill is certainly a revenue bill, but it is my understanding that it is not likely to be the last revenue measure the Senate will consider in this Congress. May I ask the distinguished chairman of the Finance Committee if that is correct?

Mr. BENTSEN. The Senator is correct. Of course I cannot predict the business of the Senate with certainty, but I expect that there may be other revenue bills before the end of the 102d Congress.

Mr. KENNEDY. And may I ask the chairman his view of the amendment?

Mr. BENTSEN. I supported this amendment when it passed the Senate by unanimous consent last year, and I remain sympathetic to it.

Mr. HATCH. Mr. President, the tax bill before us today has two stated objectives—to stimulate economic growth and to promote tax fairness for American families. Both of these are goals that I believe all of us can agree upon. Unfortunately, neither objective is met in this legislation.

When I talk with my constituents in Utah, I am impressed with the fact that they view economic growth and tax fairness as one and the same. In other words, if we want tax fairness, we need to ensure that we pass measures that promote economic growth and provide opportunities for all of our citizens.

In viewing the economy today, I am reminded of the situation confronting the Nation during the inflation and stagnation of the late 1970's and early 1980's. That was a time of falling real incomes, rising unemployment, and diminished economic opportunities. While the situation today is one of much lower inflation, we are again faced with falling real incomes and rising unemployment compounded by an inadequate rate of investment in an increasingly competitive global environment.

Unfortunately, Mr. President, the old style politics of income redistribution and class warfare are not going to show us the way out of this mess. What we need to do today is what we did back then—work together to craft a bipartisan bill aimed squarely at promoting economic growth to benefit all Americans. I hope we can put politics aside and take advantage of this opportunity to change the Tax Code in a manner that will promote economic growth for the long term and make the economic expansion of the 1990's even longer than the record peacetime expansion of the 1980's.

In the late 1970's, the economy was brought to its knees by sharply higher marginal tax rates on work effort, saving, and investment. These higher rates were brought about by inflation. In spite of frequent increases in the personal exemptions and standard deductions between 1970 and 1980, inflation was permitted to drive taxpayers into higher tax brackets, reducing the incentive to save, work overtime, or invest in a small business. Inflation eroded the value of the capital recovery allowances, driving the cost of capital higher. Investment failed to keep up with the labor force, productivity slumped, and with it so did real wages and employment.

Two great policy shifts served to overcome these difficulties. The Federal Reserve curbed inflation by restraining money supply growth, and the Economic Recovery Tax Act of 1981 was passed. That act lowered individual marginal income tax rates across the board, which in turn reduced the tax on labor, saving, and investment. The act also provided more rapid capital cost recovery and an investment tax credit to further lower the cost of capital.

In 1981, both Congress and the administration recognized that incentives were the key to growth. The 1981 bill was a bipartisan effort. Both parties were moving away from credits and rebates and toward individual rate reductions. The business incentives in the bill owed much to the 10-5-3 depreciation proposal introduced by our distinguished colleague Senator BENTSEN. I was privileged to work with him on that pathbreaking effort as the Joint Economic Committee, under his leadership, held hearings and issued bipartisan reports on the need to stimulate the supply side of the economy.

The twin reductions in inflation and tax rates ushered in the longest peacetime economic expansion in our history, reversed the plunge in productivity and real wages, and created 20 million new jobs. Wages and family incomes, which fell between 1979 and 1982, turned around at all income levels and rose across the board during the recovery.

The tax reductions unleashed a tremendous burst of economic activity, some of it resulting from the diversion of economic activity out of tax shelters into more productive channels. The result was a sharp increase in the amount of taxable income generated by upper bracket taxpayers, who took on a substantially increased share of the income tax burden.

The Internal Revenue Service reports that the share of total income taxes paid by the top 1 percent of taxpayers jumped from 17.6 percent in 1981 to 27.5 percent in 1988. Even more significant, the share of the top 5 percent jumped from 35.1 to 45.5 percent in 1988. This means that the top 5 percent of all income earners paid nearly half of the total income taxes paid in this country in 1988. Moreover, the share of the lowest 50 percent actually dropped from 1981 to 1988—from 7.5 percent to 5.7 percent.

We can learn some great lessons from the results of the 1981 tax rate cuts, Mr. President, if we will but pay attention. The tax cuts demonstrate that marginal tax rates and incentives make the difference in promoting growth. There is no question that reducing tax rates at the margin on labor and capital does result in more growth and new jobs.

Tax cuts that are not related to work effort or that fail to reduce capital costs will not promote growth. The many attempts to prime the pump with government spending, tax rebates, and tax giveaways have not been successful in stimulating the economy. Unfortunately, we have before us yet another such measure today.

What we should have learned, Mr. President, is that productivity and economic growth are the keys to rising incomes and living standards.

Unfortunately, many of the lessons of the highly successful 1981 tax changes have been ignored or forgotten. As soon as the policy was in place, it came under attack. Tax rates on investment in equipment were raised in 1982, and on structures in 1984.

However, the biggest tax increases on capital formation came in the Tax Reform Act of 1986. This act further reduced income tax rates on individuals. Unfortunately, this positive move was more than offset by measures that raised the cost of capital, and that crippled the investment necessary to increase productivity and real wages. These measures included the lengthening of the recovery period for investment in business property and the repeal of the investment tax credit, the elimination of the exclusion of a portion of capital gains from taxable income, and the creation of passive loss rules for real estate investment.

On top of the negative impact of the 1986 tax act, the payroll tax rate was raised in stages. The latest percentage point increase in the tax rate on labor has cost the economy some three or four hundred thousand jobs.

Mr. President, we are faced with a decision here. There are two ways we can go in addressing the sluggish economy. We can undo some of the errors made in recent years and promote both economic growth and tax fairness, or we can get bogged down in a pointless debate about which economic class pays its so-called fair share.

Let's be very clear, Mr. President. The income tax cuts of the 1980's were fair. In 1981, taxes were cut across the board, and indexing favored the lower brackets. The Tax Reform Act of 1986 took 4 million Americans off the tax rolls.

The current Economic Report of the President reveals that in 1990, households in the top 20 percent of the pretax, pretransfer income distribution paid an average of just over $22,000 in taxes to Federal and State Governments. At the same time, average income for families in the lowest 20 percent increased by way of government transfers by over $8,800. As can be seen from this chart, there is a major redistribution of wealth from the top 20 percent of households to the bottom 20 percent of households. It is clear, Mr. President, that the combined effects of Federal and State taxes and transfers are highly progressive.

The President's Report also demonstrates that the progressivity of the income tax structure has clearly been maintained over time. In both 1980 and 1991, the average tax rate of families earning twice the median income was roughly 3 times that of families earning half the median income—18.3 percent versus 6 percent in 1980, 15.1 percent versus 5.1 percent in 1991.

Furthermore, as I mentioned earlier, the share of individual income taxes paid by the highest income groups has increased since 1981, while the share paid by the lowest income groups has declined. In fact, over 46 percent of the total income taxes paid into the Treasury in 1988 was paid by the highest earning 5 percent of families, up from 35 percent in 1981. At the same time, the bottom half of families paid only 5.7 percent of the total income taxes paid in 1988, down from 7.5 percent in 1981. This result is also reflected in figures released by the Congressional Budget Office that include the years 1980 to 1990.

Mr. President, some inequity does exist in our Tax Code today. The payroll tax is regressive and places an onerous burden on the American worker. In fact, many low- to middle-income workers pay more in payroll tax than in income tax. If we want to pass a tax bill to promote tax fairness and middle-income tax relief, let us cut the payroll tax rate.

The biggest inequity of all is that we have choked off growth. We need to restore growth. Unfortunately, the bill before us will not accomplish this. It does almost nothing to cut the cost of

capital. The middle-income tax relief provisions will not lower the cost of labor nor promote employment. The investment incentives are a step in the right direction but are inadequate to offset the permanent damage done to investment incentives in 1986. While these provisions will fail to promote economic growth, the situation is made worse by the fact that they are paid for by raising marginal tax rates. Consequently, the bill will depress employment and the GNP.

The marginal tax rate increases in this bill are not confined to the upper income and are far more severe than a quick reading of the bill might indicate. In addition to the new 36-percent bracket, there is a 10-percent millionaire surtax which raises the top statutory rate to 39.6 percent. These rates are only the beginning. The phaseout of the tax credit for children adds another 3 percent to the marginal tax rate for a couple with two children and 6 percent for a couple with four children in the $50,000 to $70,000 adjusted-gross-income range. This is significant in Utah where large families are common. It seems ironic, Mr. President, that we would talk about increasing tax fairness for families while penalizing those with larger families by effectively increasing their tax rate.

The phaseout of the personal exemptions and itemized deductions for higher income families would effectively raise the 36-percent tax rate to 39 percent for a family of four and to 40 percent for a family of six. Again, we see large families penalized. At such high rates, history indicates that the revenue gain, if any, would be very small. Many people would be encouraged to shift their efforts into tax-sheltered activities. The effects of reduced GNP will be felt by all sectors of our economy and by all American families through job losses, fewer opportunities, and lower real incomes.

I ask my colleagues, Mr. President, "Is this tax fairness?"

The economy will fare no better under these taxes than it has under the luxury tax. This tax was also designed to soak the rich and make the tax system more fair. The effects, however, have been disastrous, and I doubt if there is one Member of this body who would not vote to repeal at least a portion of this ill-conceived tax. Time and time again, efforts to redistribute income through the Income Tax Code have backfired. Taxes on the rich have injured the poor and middle class.

If we were serious about growth and really wanted to get employment rising, we would take a lesson from the success of the 1981 tax reductions and reverse some of the damage that we have done in recent years. An effective package to do this would reduce the marginal tax burden on labor and reduce the cost of capital on a permanent basis and in a meaningful way.

Such a package would include:

A payroll tax reduction or an equivalent offset to the income tax

An enhancement of capital cost recovery allowances or reinstatement of the investment tax credit

A deep cut in the capital gains tax rate with short holding periods

A modification of the passive-loss limitation rules

A significant reform of the alternative minimum tax.

Such a package would generate growth, and growth would greatly alleviate the static revenue losses that would be projected to occur from these provisions. The one thing we can learn from the last two budgets is that failure to achieve economic growth has a devastating impact on the budget deficit. Even more important, we have learned that the failure to grow has a devastating impact on American families.

Mr. President, this bill will not become law. It does not deserve to become law because it is antigrowth and would end up hurting those whom it professes to help. When this bill is behind us, I hope we can pull together and come up with a progrowth tax bill that will create jobs, increase living standards, and propel our economy into the competitive position in which it should be.

DIRECT STUDENT LOAN PROPOSAL

Mr. HATCH. Mr. President, before we finish discussion of this bill, I would like to express some concerns about the direct student loan proposal contained in it. No one on the minority side is against a fair and thoughtful review of the pros and cons of a direct loan proposal. However, this proposal has only received one hearing called at the last minute without adequate time for concentrated thought and review.

I think all of us have listened to the many claims made by the proponents of direct loans. It is difficult not to be swayed by the arguments in favor of reducing defaults in the student loan program and of saving taxpayer dollars. However, we need to make sure that those claims are not inflated expectations that ignore many of the additional costs and potential problems involved in a direct loan program.

We passed the Higher Education Reauthorization Act last month in the Senate with only one dissenting vote and in only 1 day, largely because the proponents chose not to offer their amendment for direct lending on student loans. This proposal did not have adequate support last month because too many questions remain.

As I see it, there is plenty of time to review this proposal more adequately. The House has not yet passed its bill for higher education. Why then does the Senate need to rush this bill through without adequate consideration?

It seems to me that this freight train is moving down the track a bit too quickly. There simply is no deadline that is forcing us to rush this direct student loan provision through a process which is designed to allow the kind of deliberation necessary for a change of this magnitude. If this proposal is such a great idea, it ought to be able to withstand the scrutiny of closer examination by all parties involved in the current student loan program. I have always believed that if an idea is not a good idea tomorrow, then it is probably not a good idea today.

I can assure you that I am as eager as anyone else in this body to reduce the cost of the Student Loan Program. But, in that process we must not destroy the Student Loan Program and limit the ability of our students to obtain the higher education that is so vital.

This is not to suggest that we should not investigate a responsible direct loan proposal. While the proposal has been revised to meet some of the concerns raised at the hearing, I am not sure that it is yet ready for implementation.

In my view, Mr. President, the inclusion of this direct loan provision is just one more reason not to pass this tax bill into law.

ENERGY TAX POLICY

Mr. WIRTH. Mr. President, just a few short weeks ago, the Senate approved a historic energy bill that begins the vital move away from our dependence on an oil dependent economy. Senate passage of this energy bill is remarkable in many respects, not least among them is its comprehensive nature. Energy tax policy, however, was not addressed by the energy bill.

Consideration of the tax bill now before us presents an ideal opportunity to address energy tax policy questions—and it would have been my choice to do this. However, I recognize the tremendous pressures and constraints placed on the Finance Committee and its distinguished chairman in considering and reporting this bill, and how the fiscal straits we are in have prevented the Finance Committee from doing more on this front.

They have taken some very responsible steps on energy policy items in this bill. But I do not want to let this opportunity pass by without a brief discussion of some areas where I strongly believe we should be doing more.

UTILITY REBATES FOR ENERGY CONSERVATION IMPROVEMENTS

The first of these involves rebates utilities give their customers to encourage them to invest in energy efficiency improvements. Until its expiration in 1989, the National Energy Conservation Policy Act provided for the exclusion from a taxpayer's gross income of electric utility rebates offered to residential customers for the purchase of energy conservation measures.

But since that provision expired, the IRS has ruled that utility rebates are

to be included in the calculation of a taxpayer's gross income. The utility industry argued strongly against the IRS ruling because of its discouraging effect on efforts to increase energy conservation. The environmental community also strongly opposed the ruling because of the profound environmental benefits of increased energy efficiency facilitated by rebate programs.

As interest and regulatory incentives for conservation have increased, utilities have begun initiating aggressive demand-side management programs. These programs often feature rebate programs through which the utility gives the consumer a cash incentive to purchase a more efficient water heater, air-conditioner, or more efficient lighting. Although cost effective, energy efficiency investments often require a substantial up front investment which discourages their purchase. To encourage investment in conservation, utilities have successfully used cash rebates to help defray the initial cost of these improvements.

In the last few years, a variety of proposals have been made by myself and Senators SYMMS, SPECTER, DASCHLE, and GRASSLEY to overturn the IRS ruling. The administration's national energy strategy also included a proposal to exclude certain utility rebates from gross income. The exclusion of utility rebates has gained such broad-based support because these programs work. They increase energy conservation, and therefore help the environment and our efforts to reduce dependence on imported oil.

We should continue the commitment the Senate made by passing a comprehensive energy bill by reinstating an expanded utility rebate tax exclusion to include rebates offered by gas, electric, and water utilities to residential, commercial, and industrial customers.

RENEWABLE ENERGY PRODUCTION TAX CREDIT

Senator DASCHLE'S bill, S. 2100, included the utility rebate measure I have just spoken about. It also included a production tax credit for renewable energy sources.

That tax credit would go a long way toward bringing new power generation from renewable energy sources such as solar, wind, and biomass. These are areas where we have an enormous potential, but they need help. We should be helping these technologies to establish themselves. It is important to breaking our reliance on imported oil. It is important to reducing the greenhouse effect. And it is important for us to develop these technologies here at home, because they will be hugely important for the future development of much of the rest of the world.

It would be pennywise and pound foolish for us to forgo giving these renewable energy technologies the help they need to develop here, and thus forgo the opportunity of exporting them to the developing world. The developing world is the export market of the future. We should be doing all we can to ensure that we develop the products and services that they will be needing.

REFORM OF THE ALTERNATIVE MINIMUM TAX

The last item I want to mention, Mr. President, may seem to some to be a strange match with the last two. It is modification of the way we tax independent oil and gas producers. But the three are closely linked—all of these are items that are essential to our future energy supply.

I strongly support the modification of the alternative minimum tax treatment of drilling costs for independent oil and gas producers included in H.R. 4210. These are the people who are searching for oil and gas here in the United States and they are in a crisis. American oil and gas production is in a free fall and last week's rig count, at 660, was one of the lowest in history. Over 300,000 jobs have been lost in this industry in the past 10 years, and things are not getting better.

This bill does make some changes in the tax treatment of oil and gas development, but I would urge our colleagues to consider doing far more.

The disincentives to drilling and the reduction in reinvestment dollars caused by the alternative minimum tax's discrimination against this industry must be eliminated. To get Americans back to work in this industry, drilling costs for independents must be deductible under the AMT, as they are for others who are not penalized by this tax.

In addition, I think it makes sense for us to make the depletion allowance deductible in calculating AMT as well. This wouldn't aid the big oil companies—but it would help the independent producers, the vast majority of whom are entrepreneurial, family owned businesses. By disallowing deductions for depletion, we encourage the premature abandonment of wells and the permanent loss of stripper well production.

A large part of the very progressive energy bill we passed a few weeks ago was intended to replace imported oil in our economy with domestically produced natural gas. If we are serious about making natural gas the fuel of the future, the fuel which can help us clean up the environment and reduce oil imports, we need to ensure that we maintain our supply source. And that is the independent driller.

To do that, all we have to do is treat the independent driller like any other businessman, and allow them to deduct their expenses before calculating their taxes. I hope the Members of this body will take a good look at this issue as we continue to work on tax policy for this country's future.

Mr. President, I want to recognize the tremendous job the chairman has done to craft a tax bill that is fair, balanced, and comprehensive. But it is becoming apparent that today's debate will not be the end of this matter, and I hope that in dealing with taxes after tonight my colleagues will carefully consider the merits of the energy items I have spoken about tonight.

LOW-INCOME HOUSING TAX CREDIT

Mr. ROCKEFELLER. Mr. President, I would like to call particular attention to several important housing provisions in the tax package designed to spur development of housing for low-income families. Our bill extends the Low-Income Housing Tax Credit [LIHTC] and the Mortgage Bond Program for 18 months.

Since 1987, the LIHTC has been an effective tool to provide reasonable priced rental units for low-income families, and to create jobs. Between 1987 and 1990, 316,000 unit nationally were constructed or rehabilitated under this program. This credit currently produces 120,000 units each year—94 percent of all low-income rental new construction, and nearly one-third of all multifamily housing new construction.

Beyond providing decent housing for struggling families, this tax credit also creates jobs—about 66,000 annually.

Another important tax credit to promote affordable housing is the qualified Mortgage Bond and Mortgage Credit Certificate Programs [MRB/MCC]. This provides affordable financing for first-time home buyers.

Clearly, these credits are worthwhile investments. But each year, the tax credits are in jeopardy of expiring. Currently, both expire in June 1992. Our package extends the programs for 18 months, which is good, but we really need to take action to make this credit permanent. A permanent credit would bring greater stability and security to these essential programs.

In West Virginia, hundreds of units have been created with the LIHTC and the Farmers Home section 515 program. These have greatly helped families in rural regions afford decent housing. Thousands of families in my State have achieved the American dream of homeownership under the MRB/MCC programs. These credits offer help and hope to families who are struggling to do the right thing on limited incomes.

As chairman of the National Commission on Children, I believe that our best bet to help children is to strengthen families. Providing decent, affordable housing should be part of our strategy for families and for economic growth. It's a winning proposition that creates jobs in the short term and helps families over the long term.

MORNING BUSINESS

Mr. FORD. Mr. President, I ask unanimous consent for a period of morning business with Senators permitted to speak therein.

The PRESIDING OFFICER. Without objection, it is so ordered.

SENATOR CONRAD'S BIRTHDAY

Mr. FORD. Since it is 1 minute of 12, Mr. President, I want to wish you a happy birthday, because if we waited 1 more minute, it would be the next day, and it would not be your birthday. The occupant of the chair has been here—this is his sixth year here. You were a young man of about 38 when you arrived. You look like 68 now. So it indicates that you have been working tremendously hard in order to represent the great people of North Dakota and this country.

I compliment the Chair on reaching this birthday, and regret he is aging so fast. But we wanted the RECORD to reflect that just prior to midnight we were able to wish you a happy birthday and look forward to celebrating many more with you, at least six more birthdays with you. That is reelection.

SENDING AN AMBASSADOR TO BURMA

Mr. CRANSTON. Mr. President, today, after careful deliberation, the Foreign Relations Committee approved the nomination of Parker Borg to be Ambassador to Burma.

The committee report will state, however, that it is the view of the Foreign Relations Committee that the full Senate should consider this nomination only if the United States has taken the following actions: Issued a strong statement condemning Burma's ruling State Law and Order Restoration Council and stating that the decision to send an ambassador to Burma does not in any way constitute acceptance of the regime, removed the current military attaches from the United States Embassy in Rangoon, suspended its contacts with Burma's military attaches in Washington, agreed to support a U.N. arms embargo against Burma, and opposed further U.N. Development Program funding for Burma.

My colleagues and I have called for these steps so that the United States position on Burma would be clear: Burma's regime is deplorable. We do not want to send an ambassador to Burma at a time when such action would grant unwarranted legitimacy on this brutal regime. The strong measures we have recommended ensure that this appointment cannot be used in a way to enhance the junta's legitimacy. These steps will also encourage the United States to take a stronger role in urging international pressure for reform in Burma.

I have made my concerns about the situation in Burma well known. Conducting business as usual with a regime that continues to commit gross human rights violations would be irresponsible. At a hearing I held as chairman of the East Asian and Pacific Affairs Subcommittee, I made it clear that if the administration intended to send an ambassador to Burma then it should work to prevent Burma's rulers from exploiting the appointment.

As I noted to Mr. Borg during his confirmation hearing, his post will not be an easy one. Conditions inside Burma continue to deteriorate. There is no sign as to when the junta will step down. The State Department believes that it may well take years before civilian leadership is restored.

The regime continues to hold opposition leader and Nobel Laureate Aung San Suu Kyi under house arrest.

The regime continues to purchase arms from China and other Asian nations.

The junta is currently leading an attack on the Karen rebels in Manerplaw. According to news reports, it plans to wipe out the insurgency in time for Armed Forces Day on March 27. The regime is forcing Karen men, women, and children to serve as porters for the army and as human minesweepers.

Further, as many as 100,000 Rohingya Muslims from Burma's Arakan State have fled into Bangladesh to escape the regime's persecution. This group is also recounting chilling stories of killings, rapes, torture, and mass arrests of those who refuse to act as porters for the Burmese Army. The present attack on the Rohingyas is a sad reminder of the 1978 Burmese military campaign that forced 250,000 Burmese Muslims across the border into Bangladesh.

Given Burma's widespread repression, any United States Ambassador would be expected to make human rights promotion a priority. If confirmed, I hope that Mr. Borg will establish a dialog with the Burmese regime, Burma's allies, and the Burmese people to express United States concerns about Burma's human rights situation.

PIONEERING SPACE EXPLORATION

Mr. GARN. Mr. President, many members of this body will recall that, a few years back, I had the opportunity to spend a considerable amount of time at the Johnson Space Center, in Houston, TX. I was there primarily for training and preparation for a flight aboard the space shuttle *Discovery*, which I have occasionally discussed with my colleagues here on the floor and in our private conversations.

When I completed that flight and returned to Washington, I reported to this body in some detail about that entire experience, and what I learned as a space flight participant trainee and payload specialist aboard *Discovery*.

Among the most valuable by-products of that experience was the opportunity to see, firsthand, the day-to-day workings of the Johnson Space Center, as well as to gain an understanding of the incredible degree of planning and preparation necessary to successfully put an orbiter and its payload and crew into space, conduct a mission, and return to earth.

I learned much about the Nation's space program, from something more like an insider's view, than any amount of hearing testimony or reading reports could have taught me, and I believe that knowledge has been invaluable to me in the years since in maintaining an understanding of this Nation's space program, and what makes it tick. Perhaps the single most impressive thing I observed throughout that experience was the dedication, commitment, and talents of the people who comprise our Nation's space program.

Those who suggested after the tragedy of the *Challenger* accident that NASA personnel had exceeded their level of competence did not know the people that I came to know at JSC. Certainly, it was a more safety-conscious NASA, under somewhat different leadership, that returned to flight following that tragedy, but it was largely still the same folks in the trenches, making it happen, that put us back in space and have kept us flying safely since then. If they have changed, it is in the sense that they are even more dedicated and even more committed and even more highly skilled than they were 7 years ago.

Recently, I received a document which clearly illustrates that my assessment of the people at JSC is at least as accurate today as it was in 1985. That document is entitled "1992—Pioneering Space Exploration—The JSC Strategy".

Mr. President, it is no secret in this chamber how strongly I feel about this Nation's space program, and the inestimable value I believe it has in improving the lives of every human being on the face of the earth. I have said many times here that I believe it is essential for this body, the entire Congress, and the Nation as a whole to support and expand our space program and accept the challenges and seek the opportunities offered by humanity's next great frontier.

The JSC strategic plan represents one of the best expressions I have seen of what the true mission of our Nation's space program can be.

It was not by mere chance, Mr. President, that I received a copy of this document. As it happened, my former administrative assistant, Jeff Bingham, who served in that capacity for some 16 years, is now working under a support contract at JSC, as a senior policy analyst for Science Applications International Corp. In fact, he works for one of my crewmates from *Discovery*, Capt. Don Williams. Jeff's job is to support the strategic planning activity at JSC, and as such has been able to give me further insight into the development of this unique and important document.

This was not a document that someone went off into a room and wrote, based on his or her view of the future. This document is not simply a restatement of policy directives in the form of mission statements, goals, and objectives. Rather, this is the result of 7 months of exhaustive, intense and detailed self-examination by all the various principle elements of JSC, challenged with the task of defining their future role and mission. It reflects the collective thoughts of a wide range of individuals and organizations, and brings them together in a cohesive form with a very clear message.

I might also add that it is unique in yet another aspect. It is described as a "living document". It is not intended to be a one-time statement of intent, to be browsed through, shelved and forgotten. Its very physical makeup proves that point, Mr. President.

This is a loose-leaf document. It is laid out in a way that allows a reader to make notes, and is designed to be kept in a three-ring binder, where it can be updated with replacement pages, as the need arises.

This is a strategic plan that truly is worthy of its name, for a document cannot be considered strategic if it remains static in the midst of an ever-changing world, and an ever-changing policy environment, with the ebbs and flows of priorities and resources. With this document, rather than simply suggesting that it would be revised in a year or so, it is clear that replacement pages could be made up for it tomorrow, or next week, or next month, as more becomes known about what, for example, we here in Congress will do about NASA authorization and funding, or more is known about policy changes within NASA itself, or as a result of new Presidential directives.

Another thing significant about this document, Mr. President, is that it is only part of the strategic planning process now in existence at JSC. The same people who spent the past 7 months developing this document are now in the process of developing the specific detailed plans to implement their objectives they have established for themselves; the nuts and bolts of converting high-sounding words into concrete action.

Over the next few weeks and months, every single statement or objective in this document will be in the hands of a responsible officer at JSC who will have the specific responsibility for carrying it out and being accountable for it. There will be a detailed, step-by-step guide, which he or she will have developed with the help of his or her own staff, to take that assigned responsibility from beginning to end.

At the same time, JSC senior staff will be monitoring both the world around them and the internal workings of NASA and its centers for any possible change in direction that might be imposed upon them, or which they may wish to suggest themselves in order to better accomplish their goals. And they will have tools which will enable them to anticipate the requirements that might be imposed on them, or new resources that might be available to them, should any of those prospective changes become reality.

Mr. President, the men and women of NASA at Johnson Space Center know where they are going. They will very soon know precisely how they are going to get there, and if some policy shift or resource shortfall beyond their control forces a change, they will be ready to chart and begin moving along a new course without missing a beat.

The leadership at JSC, and more specifically Aaron Cohen, the JSC director, now has a tool at his finger-tips that he can instantly use to respond to any changes in his mandate or resources. He does not have to wait for some sort of indepth study to assess options and recommend choices, based on a review of JSC activities. He has an ongoing planning support and implementation process that he can tap into instantly and know, in about as much time as it takes to draft a paper, what his options are and what their relative impact will be on his center, because those issues and questions are being considered and evaluated on an ongoing basis.

I want to commend Aaron Cohen, and his excellent senior staff and all the employees and contract support staff at JSC for this most impressive undertaking. Their approach to strategic planning goes far beyond anything I have seen in the civilian side of government, and is a model that others should emulate. We now have this unique and valuable document that comes as a by-product of that new ongoing strategic planning process, and its clear contribution to the continual improvement of JSC capabilities. They have proven once again that they have what it takes to excel and succeed in the fulfillment of their duties, on behalf of all Americans and, as I have said before, to the lasting benefit of all the people of the world.

Mr. President, I want to conclude by saying that not only do I believe JSC has developed a process which gives new meaning to the term "strategic planning", but I also believe that, in coming to terms with their own vision of the future, they have demonstrated a clear and unmistakable understanding of the mission and future of our entire space program.

The title chosen for the document, "Pioneering Space Exploration," presents the core of the message. The JSC mission statement, on page 2, spells it out more completely:

> The Mission of the Johnson Space Center is the expansion of human presence in space through exploration and utilization for the benefit of all.

What better purpose could there be than that? What greater vision or purpose than one that expands, ennobles, and enhances the human species? With that message in mind, Mr. President, it becomes clearer to me, and I hope to my colleagues and to all Americans, why it is that we are building a space station; why it is that we continue to fly shuttle missions; and why it is we are beginning the early stages of returning to the Moon and eventually sending a manned expedition to Mars.

I have heard it said here that the space exploration initiative or SEI, is dead on arrival at Congress; that we will undertake no new ambitious program such as returning to the Moon and going on to Mars.

I understand the limitations on our resources just as well as anyone else, Mr. President, and I do not believe we will be able to expand the resources available to NASA nearly as much or as quickly as I would like, or as I believe we should. I am a realist. But there is a message in this JSC plan that takes us beyond that. There is a statement that simply leap-frogs over the objectors and the nay-sayers, and which I believe is one of the most salient points made in this document.

On page 5 it states:

> Exploration cannot be viewed simply as another specific program. Exploration is not a program. For us, it is an orchestrated process or sequence of steps designed to probe and use space for the benefit of all citizens of the United States and the Earth. The Space Shuttle, Space Station Freedom, settlement of the Moon and missions to Mars are all part of the ongoing exploration process, an integrated multi-program process that is the U.S. space program.

Mr. President, those words, for me, simply leap off the page! They tell me something that is so obvious that many of us have simply overlooked it in our focus on details and specifics. And for them to come from those who have the most immediate responsibility for those details and specifics, is remarkable. Clearly, they have learned to keep their eye on the ball, and have not been overwhelmed by the minutia and detail that they must deal with, and which they do so well.

Those who say "exploration is dead" or "don't bother with SEI", are missing the point, entirely.

What those words tell me is the clear truth of the matter: that we are already exploring, Mr. President! We have been exploring since we prepared ourselves to launch *Vanguard*. Everything we have been doing in NASA for the past 30 years is part of the exploration process.

We do not have a space shuttle just so we can have a space shuttle; it is not an end in itself; it is a tool, to be used to the best of its capabilities and then replaced with even better tools which improve our ability to explore.

Space Station Freedom is not a reason for our space program—it is an-

other essential capability we need to continue along the historic and inevitable path of human exploration.

Somehow, Mr. President, we seem to have forgotten that basic concept of exploration. Somehow we have lost sight of the vision, and now, thankfully, the nuts and bolts specialists and technicians in the depths of NASA, at JSC, have handed it back to us on a silver platter: Exploration is us. It is what we are doing and what we have been doing and must continue to do. What a concept, Mr. President. What a notion to grasp and believe in and support, as I hope my colleagues will do as we press forward this year with our deliberations on NASA's authorization and appropriations.

Mr. President, there is much much more in this plan which I could discuss, and undoubtedly will have the opportunity to do so over the next several months. In the meantime, I believe my colleagues could benefit greatly from a review of this strategic plan. Therefore, I ask unanimous consent to insert, at this point in the RECORD, the entire JSC Strategic Plan, "Pioneering Space Exploration", and urge my colleagues to thoroughly examine this remarkable document.

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

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

Houston, TX, January 10, 1992.

To: ALL JSC TEAM MEMBERS,
From: *AA/Director*,
Subject: *JSC Strategic Plan*.

When I met with JSC's directors, program managers, key staff, and their deputies for our first Total Quality Management retreat in March 1991, the need for an updated strategic planning process was identified as the top business issue for the Center. To meet this need, the Senior Staff initiated a series of deliberations and reviews that resulted in the strategic plan presented here.

The enclosed document presents the framework that JSC's senior management will use to guide effective decision making to achieve our long-range goals while soliciting inputs from all levels of the Center. JSC's senior management is fully committed to leading this ongoing strategic planning process and is responsible for the implementation and revision of the plan.

Using the 1987 strategic plan as a starting point, this new plan was developed to allow us to meet head-on the responsibilities and challenges we have today while assuring that we are well prepared to meet the opportunities and challenges of tomorrow. In developing our strategy for the Center, we carefully considered all the various advisory group recommendations. The time had come, however, for us to define our own vision, to define a consistent and clear plan of action—a plan that will be read and acted on. It was time for us to review our objectives, our roles, our responsibilities, and our capabilities. It was time for us to define and articulate how we at JSC intend to support NASA's future.

The JSC strategy is closely aligned with the overall strategic direction currently being defined by the Agency. One of our major goals was to keep our plan and our process tightly focused but flexible enough so that as our national interests in the exploration of space evolve, so can JSC. A strategic planning process that supports the Agency's role in building our country's future in space also builds the career potential of the members of our team, civil servants and contractors alike. That is who this plan is for: It is for you, a member of the JSC Team.

This plan is intended to serve as a road map for the future—a road map that is subject to change as new waypoints and routes are selected over the course of time. You will notice as you read this plan that it is less formal than most official JSC publications. It is in a fairly plain three-hole punched format that is designed to be a working document. It is designed for you to put in a notebook and read with pen in hand.

As the JSC strategy evolves to take into account major resource or policy changes, updated pages will be issued. These revisions will be a result of changes in the Agency or JSC strategy. They will also be the result of your recommendations. In this way, the ongoing planning process becomes open to all of us at JSC, to our ideas, and to our participation. The goals and objectives stated in this plan offer each of us the opportunity to align our personal initiatives and commitments with those of the Center.

AARON COHEN.

JOHNSON SPACE CENTER

INTRODUCTION

The strategy presented in this plan is based on an exploration-focused future for JSC. Exploration, after all, is a fundamental element of our Nation's heritage. It is the heritage of this country's space program, and it is most certainly the heritage of JSC. Exploration is what NASA has been about for the last 30 years. It is our past. And it is our future. NASA has a presidential mandate telling us that we will continue to uphold that heritage. We will return to the Moon—and this time to stay. And we will continue on with a manned journey to Mars.

If we as a Nation are to continue to remain leaders on a global scale, we must stretch our scientific and technical capabilities to their limits. We must enhance this country's intellectual wealth and improve our economic health. We must stimulate new commercial ventures and provide a forum for increased international cooperation. We believe that the exploration of space is one of the best ways to achieve these things.

With our experience and requisite expertise as the Center that has led this Nation's manned space flight activities, JSC is the right center to lead this country's human space exploration endeavors. By incorporating an exploration focus into our strategic planning process, we can look beyond the near-term challenges associated with the Shuttle and Space Station. We can be adequately prepared for our role in NASA's future.

We know that, right now, we have to be extremely successful in fulfilling our role in the Shuttle and Space Station programs. Our emphasis on exploration enables us, however, to define a strategy that integrates all our responsibilities. It results in a clearer picture of the long-term role JSC can and should play for the Agency. Our emphasis on an integrated exploration strategy also reinforces our commitment to improving our current program processes as a means of finding the resources required to pursue that future.

PIONEERING SPACE EXPLORATION: THE JSC VISION

As a direct result of our Nation's commitment to a civilian space program, we possess a far greater understanding of our planet and universe than we had only 30 years ago. Every American has had some element of their day-to-day life enhanced by the U.S. space program. This country's manned space flight program was initially fostered by a national interest in maintaining scientific and technological preeminence in the world. It was founded on a pioneering spirit manifested in that basic human desire to explore the unknown and to search for means to improve the condition of our lives. The essence of that pioneering spirit is still very much with us as this country prepares to extend the boundaries of the space frontier and open new opportunities for America.

Pioneering Space Exploration: These three words succinctly summarize our vision of JSC's role in the future of the U.S. space program. At JSC, we are all pioneers charged with the enviable task of implementing the dreams that not too long ago existed only in the world of science fiction. JSC is homebase to the explorers of the new frontier—a frontier that continues to surprise and astound us, but also presents us with unimaginable opportunities to learn more about the universe in which we live and, hence, our home planet and ourselves. JSC will provide direction in the expansion of human activity in the exploration and utilization of space. We will continue to support and to improve the ways that we transport people to and in space. And we will provide the leadership for establishing frontier outposts where we will learn to use the resources unique to those environments.

We know all too well that the risks associated with this pioneering venture are great, and possibly costly. But, historically, the benefits have always been ultimately far greater and enriching. We at JSC stand willing to take the risks in what we see as our destiny—our destiny to reach out and explore the unknown, to bring back the returns on our investment in space to benefit the American people.

OUR GUIDING PRINCIPLES

The Mission of the Johnson Space Center is the expansion of human presence in space through exploration and utilization for the benefit of all.

The JSC mission is without a doubt incredibly challenging and broad reaching. And it is so intentionally. Historically, JSC has served as the proponent and leader for this country's manned space flight activities. We have the know-how to do manned space flight and to do it well. Our astronauts have flown every mission. We have excelled in engineering and science, mission operations, and project and program management. We are prepared to continue that leadership role as this country expands the presence of humans in space. That is JSC's mission.

At JSC, as we pioneer space exploration, we will strive to keep the following fundamental principles always to the fore.

Pursuit of Excellence

We will pursue excellence in all our efforts, striving to develop innovative, more effective approaches to managing and operating our programs.

We will emphasize safety in space and on the ground, while working to reduce the cost of space operations.

We will share our specialized expertise and facilities to assist other NASA centers, and rely on the specialized expertise and facili-

ties of our NASA centers to aid us in our endeavors.

Respect for the Individual

We will enhance the experience level of our civil service staff.

We will foster individual empowerment and accountability.

We will provide avenues for open communication throughout our organization.

Public Trust

We will conduct a space program that benefits the U.S. public and promotes the transfer of technology and science to U.S. industry.

We will enhance our working relationships with other government agencies, academia, and industry.

We will inspire and support efforts to educate and prepare the U.S. work force for the future.

We will respect the environment of Earth, space, and other planets.

We will conduct the business of JSC in accordance with integrity and the highest professional standards.

OUR BASIC STRATEGY

As a vital part of the Agency, as the leader in human exploration activities, JSC has the potential for an incredibly exciting and rewarding future. In building that future, we as a Center are faced with one of our biggest challenges. We no longer have one specific flight program. We have multiple programs and several jobs to do. And we must do them all well.

Supporting several programs at various stages of development and operation is something that is still relatively new to us. If we are to do these multiple tasks well and support our larger exploration-focused mission successfully, we must seek opportunities to improve the way we currently manage our work and handle our responsibilities. We must think in terms of multi-program processes. We must plan and implement our work using processes that are not simply one-program specific, but that can be applied across a range of activities, all of which support our exploration focus. We must link our efforts together and evolve, not just transition. That is a simple statement for such a complex task, but it is fundamental to the future success of our manned exploration endeavors. And it is a new way for us to think and act at JSC.

We must begin to evaluate current and future strategies and options in terms of their usefulness across all program elements. We must find ways to perform new work with our available resources because increases in NASA's funding level are likely to be limited over the next several years. We are also likely to receive no major increase in our civil service work force. We must train and prepare the people we have to do the job.

Obviously, making adjustments like these in the way we operate as a Center is not going to be an easy task. It is going to take hard work and commitment on the part of everyone who works here.

WHAT WE'RE GOING TO DO AND HOW WE'RE GOING TO DO IT

To promote a long-range exploration perspective in our planning process, the Senior Staff considered an illustrative Moon and Mars exploration scenario to examine the roles JSC will play in the future. This strawman scenario, based on the Synthesis Group report, "America at the Threshold," allowed the Senior Staff to assess required elements, capabilities, technologies, and possible options as well as resource, schedule, and other challenges inherent in JSC's taking the leadership role in human space exploration.

One of the most significant understandings that emerged from these strawman scenario discussions was the criticality of linking all our programs and projects in support of space exploration. Exploration cannot be viewed simply as another specific program. Exploration is not a program. For us, it is an orchestrated process or sequence of steps designed to probe and use space for the benefit of all citizens of the United States and the Earth. The Space Shuttle, Space Station Freedom, settlement of the Moon and missions to Mars are all part of the ongoing exploration process, an integrated multi-program process that is the U.S. space program.

In the sections that follow we detail the specific steps we intend to take in the areas we've identified as crucial to our success during the 1990's and into the next century. Each area is a vital link in the overall exploration process. The areas are treated somewhat separately in the text to highlight specific initiatives that are the enabling capabilities for achieving our mission as NASA's leader in human space exploration.

Doing Business Differently

JSC has a marked record of success. To ensure that we maintain that record, we must pursue our future with a renewed gusto and commitment to finding new and even better ways of conducting our business. By adopting an interconnected, evolutionary approach to our work, we can better define long-term organizational roles and responsibilities and balance the program management, engineering, operations, and science roles of the Center. This new approach will also enable us to streamline our management, fine-tune our expertise, and improve those processes critical to our program activities.

Find Synergies in Current Programs

Finding synergies in our current programs will allow us to combine common support functions and to recover resources where there is overlap. To accomplish this, JSC will:

Identify Shuttle operations where efforts can be combined and made more efficient within JSC and implement changes as appropriate;

Identify areas of consolidation, clearly define roles and responsibilities, and set priorities in our Orbiter sustaining engineering efforts;

Identify opportunities to shift and consolidate functions between NASA centers and their contractors to reduce resource requirements across the Agency;

Promote consolidation of Shuttle and Space Station operations at the appropriate time;

Consolidate hardware and software development, flight certification, management of government-furnished and crew equipment, and information and data systems across all our activities; and

Establish cross-functional process analysis teams to streamline and improve the quality of our critical program activities.

Implement New Approaches to Major Programs

Programs that involve people actually living and working in space will demand entirely new approaches to how we think about programs, how we develop them, and how we operate them. Our current and future work offers JSC an opportunity to develop and refine new approaches to the multi-program, long-term operations challenges inherent in the reexploration process. To implement these new approaches, JSC will;

Manage and organize major programs on the basis of long-term ownership and the evolution of sustaining operations;

Strive to clearly define program interfaces between centers and contractors and emphasize simple standardized interfaces between technical elements;

Use common systems elements, including ground support systems, across major programs;

Build on existing hardware and capability rather than treating new programs as standalones;

Apply risk management strategies that make the most effective use of our resources to achieve acceptable levels of risk; and

Ensure wherever possible that our development processes and systems for any future program are designed and built to be used in effective sustaining operations.

Keep Our Civil Service Work Force on the Leading Edge

By shifting and consolidating our tasks, we can increase the number of civil servants who are available to work on our exploration-related activities. JSC is committed to making our in-house requirements definition and project management capabilities stronger. To accomplish this, JSC will:

Consolidate functions, shift personnel and resources, and continuously improve our performance on current activities to create a civil service work force wedge dedicated to new exploration roles;

Give the people who comprise this wedge opportunities to develop enhanced technical expertise and project management skills by defining, developing, and building in-house projects that fit within the scope of JSC's strategy for the future; and

Emphasize the critical role civil servants must play early in the life cycle of a project to ensure final delivery of a better, less-expensive product.

Cultivate Our Partnership with the Contractor Community

The JSC community of contractors is the largest segment of the JSC team. Our contractor partners are integral and invaluable to the success of our mission. To tap the expertise, innovation, and unique capabilities of these partners and to best use the collective creativity of our total team, we must effectively involve our contractors in the exploration process. To achieve this, JSC will:

Clarify the roles and responsibilities of civil servants and contractors to make the best use of our team during the entire life cycle of a project or program;

Define contractor tasks and management responsibilities to permit and facilitate the transfer of appropriate functions, including some aspects of major program sustaining operations; to a government-owned, contractor-operated mode, if this is to the advantage of the government;

Eliminate, wherever possible, barriers to consolidating services and economies-of-scale in procurement processes;

Use incentives to promote quality, productivity, and cost efficiency in our contracts;

Simplify statements of work to allow contractors to meet NASA requirements in the most cost-effective manner possible, which may mean using industry rather than NASA standards, systems, and processes. Use existing contractor reporting systems when possible; and

Examine pre-contract specifications and documentation requirements to make sure they are truly necessary to the successful implementation of the contract.

Build In Safety, Reliability, and Quality Assurance

Given the importance of safety, reliability, and quality assurance (SR&QA) to our over-

all mission, we must promote a culture at JSC that instills in every individual the responsibility for ensuring that quality is continuously built into everything we do. We cannot rely on testing and inspection alone as effective mechanisms to assure quality assurance. Quality and reliability must be goals during the entire life cycle of a project or program. To accomplish this, JSC will:

Involve SR&QA specialists early in the system engineering process to influence design decisions that will ultimately result in high reliability systems;

Develop a cadre of SR&QA-oriented expertise to work from the beginning with new initiatives and new technologies to ensure that quality is built into every process and product;

Stay up to date on industry standards and advocate their use in lieu of NASA-unique standards in those instances where equal or higher quality and reliability can be attained at a lower cost. Make it easier and less time consuming to use industry, military, and international standards; and

Apply quality management tools, such as concurrent engineering and integrated risk assessment, to achieve a total systems approach in our development organizations.

Improve Our Service Base

In the not-so-distant future, service capabilities will become increasingly important as multiple exploration programs result in an increase in the number of contracts, new partnerships with other centers and agencies, and joint ventures with the academic and private sector. Because of this, we must improve the processes we use to administer and support our program management and technical and scientific functions. Improving these processes will require an innovative and resourceful team effort on the part of all our service organizations. To improve our service base, JSC will:

Foster Centerwide continuous improvement initiatives already underway such as those in the procurement and budget processes;

Consolidate information systems and data bases and improve our accessibility to them;

Investigate using fee-for-service practices in our service organizations and develop efficient methods to use these where practical; and

Encourage and facilitate the use of available commercial off-the-shelf technologies, systems, and processes. Develop a much-improved data base of what is available.

Providing Access to Space

In fulfilling the Nation's space exploration objectives, JSC is responsible for ensuring that the U.S. has the capability to carry people and their equipment into space and to return them safely. As we fulfill our current responsibilities in conducting Shuttle missions safely and successfully, we must begin to think of those responsibilities as building blocks to the future. We recognize that the Shuttle is a vital link in the exploration process. With a focus on continued space exploration, we must also begin to consider long-term manned transportation strategies. We have to develop new ways to gain access to space that can extend our reach beyond low Earth orbit.

Fly the Space Shuttle Safely, More Effectively, and at Lower Cost

For our current access capability, our strategy is to continuously improve the Shuttle and flight preparation and operations processes. To accomplish this, JSC will:

Provide a Shuttle capability through the first 10 years of the next century, assuring that this capability can be extended, if needed, to the year 2020. This includes maintaining the capability to produce another Orbiter if required;

Evaluate and implement upgrades to the Shuttle system based on the following criteria: increased safety and reliability; cost effectiveness, including return on investment; extended vehicle operational lifetimes; and decreased technical obsolescence. We will also consider implementing upgrades based on their commonality with other programs;

Continue to implement the Office of Space Flight's continuous improvement initiatives for the Space Shuttle Program; and

Reduce our portion of Shuttle program costs by the 15 percent mandated by 1996 without compromising safety.

Ensure Continued Access to Space

For JSC to lead in the development of manned vehicles that will provide continued access to space, particularly as we explore beyond low Earth orbit, we must begin today to study long-term manned transportation systems. JSC is committed to providing the management capability, the technology base, and an environment that guarantees a well-balanced approach to our dependence on current systems as we develop future capabilities. As we examine various options for getting people to and from space, JSC will:

Evaluate programmatic needs, the availability and advantages of new technology, and the cost of replacement systems against the capabilities and the operational costs of the Space Shuttle;

Reduce the time it takes to develop human-rated systems;

Structure plans for long-term manned transportation systems that meet the access needs required for extended exploration of space and provide a way to respond quickly in the event of unforeseen factors such as technical obsolescence or attrition in the Orbiter fleet; and

Define the manned vehicle requirements for the developers of any future launch vehicle;

Living and Working in Space

Using the Space Shuttle, we can provide people access to low Earth orbit where they can live and work for a limited amount of time. As we pursue our exploration-focused future, JSC will articulate, advocate, and demonstrate the capabilities and benefits of humans living and working in space, on the Moon, or on their way to Mars.

Space Station Freedom will provide us unique and immeasurably valuable opportunities for advancements in engineering, science, and research. In addition, Spacelab, an extended duration capability for the Orbiter, and other space-based platforms all have unique aspects that will contribute to our eventual long-term habitation and use of the space environment. The experience we develop from these activities will be the foundation for further steps in the exploration process, just as Mercury and Gemini were the foundation for the Apollo program.

Conduct a Continuum of Life Science Research

Before we can extend the presence of humans in space, we must have a comprehensive understanding of how to sustain people in a healthy, safe, and productive condition for long periods of time in the harsh environment of space. Our research in human life sciences at JSC is critical to developing that understanding—without it, there simply can be no extended exploration of space by humans.

Our efforts in human life sciences research at JSC are, and must continue to be, extensive. We must understand the physiological and psychological impacts of being in the space environment and develop appropriate countermeasures. We must resolve every foreseeable health and safety issue. We must design effective life support systems, build technology that enhances human productivity, and develop operational procedures that make the most of human performance. We must provide food, clothing, and hygiene capabilities. We must have clear-cut radiation protection measures in place. We must be prepared to provide people with what they need to be healthy and productive as they learn to live and work outside Earth's boundaries. In addition, we have the opportunity to use biotechnology for basic research into the growth of cells in microgravity, a field of great potential benefit to both earth-based and space medical applications. To increase our understanding of human life science requirements and capabilities, JSC will:

Define the projected requirements for humans in space environments;

Develop a plan with specific objectives to verify equipment, methods, and effective countermeasures for keeping people healthy and productive. Have discrete phases of the plan address specific mission duration or environment exposure needs;

Conduct life science research on the Shuttle and Space Station to meet the specific objectives of the life science plan and to develop and verify countermeasures as early as possible for the longest duration flights anticipated; and

Conduct biotechnology research to grow cells in microgravity for potential health-related applications in space and on the ground.

Build and Operate Manned Facilities in Space

In addition to learning how people can live and work in space, we must also learn to operate systems and spacecraft for extended periods of time. Assembling the Space Station, bringing the facility into initial use, controlling it during unmanned periods, and achieving permanently manned operational status will provide us with a solid foundation we can build on to further our exploration activities. We can also find ways to use our space-based capabilities to accomplish scientific and technical research not possible here on Earth. To develop our expertise in building, operating, sustaining, and using our space-based capabilities, JSC will

Use the Shuttle to perform near-term exploration activities and to support verification of Space Station systems. Use the Space Station as a test bed to validate the longevity of systems and processes needed for future exploration activities;

Develop systems, flight techniques, and operations procedures to accomplish rendezvous, proximity operations, and robotics-assisted assembly of large structures in space using the Shuttle and Shuttle-based extravehicular activity;

Develop techniques to make optimal use of autonomous systems for operational activities in space. Design those autonomous systems carefully considering the needs of the people who will operate and maintain them and serve as backup to the automated functions;

Continue to design and develop an assured crew return capability as an essential safety requirement for Space Station Freedom;

Demonstrate the success of sustained international partnerships; and

Find ways for government, academic, or private sector users to take advantage of our assets in space and improve the methods we

use to accommodate their specific requirements.

Extending Our Reach

As part of our exploration-focused future, we will extend our reach in space by returning to the Moon to explore, to live and work there, and to learn to use the resources available in space as we travel to Mars. Leading this country in the human exploration of space is what we at JSC intend to do. As we begin to travel, to live and work beyond low Earth orbit, JSC will lead the development and operation of all human-related transportation vehicles and surface systems. And that is a leadership role we must step up to today.

Develop the Strategy for Returning to the Moon and Traveling to Mars

President Bush presented America with the challenge of returning to the Moon to stay and conducting manned missions to Mars. In 1992, NASA will begin to define the specific course of action we need to take to accomplish what the President tasked us to do. JSC must play an important role in the development of these specific strategies. To fulfill this responsibility, JSC will:

Assist NASA Headquarters in developing a strategy to evolve the exploration architecture based on our national goals, identified constraints, and desired achievements. Retain the flexibility to respond to the realities of resource availability and to incorporate advantageous technologies and approaches as they are proven,

Identify and develop the technology requirements to accomplish our milestones and assure that development efforts begin when needed; and

Influence and support Agency decisions on establishing partnerships and assigning hardware responsibilities by developing a comprehensive technical understanding of available NASA, Department of Energy, and Department of Defense and other government capabilities; commercial services; university research; and foreign capabilities.

Develop Manned Vehicles and Human-Related Surface Systems

Consistent with JSC's demonstrated expertise, we will lead in developing the manned vehicles and human-related surface elements of the exploration architecture. The systems development associated with this will include responsibility for program management, systems engineering, flight testing, and operations. To accomplish this, JSC will:

Define the early project requirements and concepts for manned transportation vehicles and for human-related surface systems. Provide these requirements for inclusion in the overall exploration architecture,

Build mockups and test beds to develop and verify critical systems and technologies; and

Analyze early exploration projects, such as lunar landers and Mars sample return missions, and pursue the manned and unmanned efforts that best fit JSC's expertise and responsibilities in the exploration process. Perform selected precursor activities from requirements definition through fabrication, launch, and operations.

Assuring Technologies Are Ready When Needed

Meet the Technology Needs of Space Exploration

All future space missions will require systems that can operate for long periods of time with high reliability. Spacecraft systems will evolve from those being controlled and monitored from the ground to systems incorporating onboard autonomous control and space-based or surface systems needing minimal logistics support.

JSC will play two key roles in meeting the technology needs of space exploration: we will ensure that technologies are available when needed, and we will develop needed technologies which are unique to the Center's mission and in those areas where JSC has particular expertise, experience, or facilities. Figure 1 identifies critical technology areas which have already been identified for future JSC programs and those areas where JSC intends to lead in technology development and application.

To ensure the availability of technologies when they are needed, JSC will:

Identify requirements for technologies and capabilities to support exploration missions and advocate those technologies to organizations sponsoring technology development; and

Advocate and establish partnerships with other NASA centers, the Department of Defense, Department of Energy and the National Laboratories, other government research centers, academia, and the private sector to increase the effectiveness and efficiency of research and technology programs and to facilitate technology transfer at our Center initiatives.

JSC currently uses a Technology Coordinating Committee (TCC), comprised of senior representatives from all directorates and project offices across the Center, to coordinate and focus technology development at the Center. The TCC defines technology priorities for JSC based on current and future program requirements. To accomplish our role in developing technologies that are unique to our experience and abilities, JSC will:

Continue to use the special skills and services of the TCC to assure that technology work at JSC is closely coordinated with overall technology requirements definition activities; and

Review Center technology efforts at least annually and discontinue work in areas where the effort does not support the objectives of the JSC strategy.

FIGURE 1.—TECHNOLOGIES REQUIRED FOR FUTURE JSC PROGRAMS

Overview	Technologies and Capabilities
Human Support	
Technologies required for spacecraft systems and planet surface systems that will sustain human life and provide productive environment for mission operations.	Regenerative life support.[1] EVA suits and personal life support systems.[1] Low gravity countermeasures.[1] Human factors.[1] Crew health maintenance.[1] Radiation health research.[1] Thermal control.[1]
Mission Operations	
Technologies to integrate control of mission between ground, spacecraft and planet surface.	Space systems monitoring and control.[1] Automated training for crews and operators.[1] Software design/engineering/re-engineering.[1] Automation of flight design and mission preparation.[1] Operations engineering and support tools. Mission control display and graphics.[1] Tools for automated requirements design.

FIGURE 1.—TECHNOLOGIES REQUIRED FOR FUTURE JSC PROGRAMS—Continued

Overview	Technologies and Capabilities
Spacecraft Systems	
Technologies necessary to build and operate higher quality human spacecraft with improved safety, reliability and cost effectiveness for longer duration missions.	Aerobraking.[1] Automated operating systems.[1] Vehicle health maintenance.[1] Adaptive guidance, navigation and control.[1] High definition video Automated on-orbit operations.[1] Autonomous landing.[1] Debris and meteoroid modeling and protection.[1] Advanced power and propulsion. High data rate communications.
Planet Surface	
Autonomous, highly reliable, long duration planetary surface system technologies providing capabilities for mission implementation.	Surface distributed systems concepts.[1] Survey, mapping and remote sensing. Surface guidance, navigation and control. Robotic tracking and control. Radiation protection.[1] In situ resource utilization.[1] System automation and maintenance. On-orbit/surface assembly and construction.[1] Science instruments. Surface dust countermeasures.[1]
Management Tools	
Technologies required to improve the efficiency and effectiveness of program management and center operations.	Requirements documentation and control Configuration control. Scheduling. Design knowledge capture. Budget management: Improved cost estimation algorithms. Real-time cost tracking. Correlation of technical and cost progress. Cost to completion estimates. Software commonality.

[1] JSC lead center or major contributor for technology development.

Foster U.S. Technological Competitiveness

JSC will foster the Nation's technological competitiveness by facilitating early application of technology development to future space activities as well as to the private sector. To accomplish this, JSC will:

Expand our efforts through the Technology Utilization network to disseminate information about ongoing and planned scientific and engineering activities which may provide valuable "spin-off" technology to ensure early transfer to and use of this technology by American industry, and

Work closely with the Mid-Continent Regional Technology Transfer Center and state agencies to facilitate access by the private sector to technologies from NASA, our aerospace contractors, and other Federal laboratories.

Helping Our People Reach Their Potential

Space is a marvelous motivator. Many of us who work at JSC came from faraway cities and states to be a part of the U.S. space program. Many of us have always dreamed of being a part of the space program. We feel proud when we tell people we work for NASA at the Johnson Space Center. We have a profound sense of purpose and community here that in and of itself gives us reason to do our jobs well.

JSC's proven success is directly related to its people and the dedication and pride they feel in their work. Our people are our most valuable resource. We know that our future success is dependent on continuing to provide our people with exciting work, a proper work environment, and the tools that allow them to be productive, innovative, and to reach their full potential.

Build the Talent, Knowledge, and Capability of Our People

Given the challenges of our future, we must put greater emphasis on developing the abilities of all members of the JSC team through job experience and varied training opportunities. To help our people obtain these skills, JSC will:

Perform selected projects in house to build the expertise required to handle the large-scale exploration projects;

Develop project management skills by requiring people to take greater responsibility for clear, concise definition of project requirements, followed by management of cost, schedule, and performance to meet those requirements;

Define job responsibilities and accountability for results to allow decision making at the lowest practical levels; and

Increase opportunities for rotational assignments both within JSC and to Headquarters, other centers and with other partners in space exploration, broadening job knowledge and enhancing understanding of cross-organizational processes.

Enhance the JSC Work Environment

As JSC actively pursues its exploration-focused future, we must ensure that we continue to provide a work environment that allows people to do their jobs the best they can. To accomplish this, JSC will:

Promote an environment of open communication that recognizes the contributions of all employees and that stimulates the transfer of our hard-learned corporate knowledge to the next generation of pioneers;

Attract, develop, and retain a high-caliber work force diverse in culture, race, and gender;

Use the rewards and recognition systems to acknowledge superior contributions from the JSC team and to encourage continuous performance and quality improvements that support our mission;

Reward innovators who succeed in making major changes in their work areas, and consider innovation as one of the factors in selecting people for leadership roles; and

Continue to provide opportunities for professional growth through multiple career paths.

Using Our Facilities Effectively

Promote Common Support and Evolution of Facilities

JSC has several unique facilities available for spacecraft and technology development, space life sciences, crew training, and mission operations. As we define and implement new projects and programs in the future, we will require new and upgraded facilities. New initiatives development organizations will work with the institutional facilities organizations to ensure that requirements for new or upgraded facilities are identified in a timely manner and that the best means of meeting these requirements are evaluated. To ensure that we are using our current and future facility resources most effectively, JSC will:

Inventory our existing facilities, their capabilities, and their projected use;

Define and implement a plan for multi-program, cross-organizational use of these specialized facilities wherever possible; and

Make optimal use of our existing facilities by allowing contractors access to them, to the extent possible, to avoid spending program dollars on creating their own, often duplicate, facilities.

Use White Sands Test Facility as a National Resource

The White Sands Test Facility (WSTF) represents a major asset to JSC engineering, program development, testing, and verification activities. Indeed, with its specialized propulsion, spacecraft systems, components and materials testing environment, it is a unique national asset. To ensure that we are using this resource to its full potential, JSC will:

Continue to use WSTF to serve a variety of users and be a model for reimbursable work agreements with other Federal agencies; and

Have all development organizations annually identify testing and verification procedures that can best be performed at WSTF.

Fostering Educational Outreach and Public Awareness

The public should be able to know not only what NASA is doing, but why we are doing it. JSC shares in the NASA-wide responsibility to ensure that the American public is fully informed about the activities of the Nation's space program and its efforts to meet the challenges of space exploration.

Enhance Educational Outreach and Public Awareness Programs

JSC must continue to expand its outreach activities both in education and public information to provide increased recognition of the value of the space program as a resource and incentive to return technical excellence to our Nation's educational system. JSC's unique facilities, talented work force, and challenging mission enable us to make an important contribution to the development of a talent pool that will enhance U.S. leadership in aeronautics, space science, and technology development. To increase educational outreach, JSC will:

Assess the current impact of NASA and JSC educational activities and better fulfill unmet needs

Expand the creative application of space-related knowledge and techniques to the classroom and campus environments

Expand the use of NASA Select Television educational programming, innovative audio-visual products, publications, and syllabus materials

Use our emphasis on exploration to inject excitement into educational programs; and

Reach beyond traditional aerospace industry and technical fields of study to establish partnerships in support of educational programs.

To foster public awareness of what we're doing and why, JSC will:

Structure public information programs to inform the public of NASA's emphasis on exploration;

Make more effective use of NASA Select and other special interest television systems and media resources;

Increase opportunities to involve the public directly in the adventure and excitement of space exploration through expanded access to the people and events behind our missions and programs;

Develop in the early stages of program or project definition the supporting rationale to foster public understanding of new exploration activities;

Incorporate imaging systems in basic vehicle and ground system designs so the public can participate in the exploration of space;

Continue and expand our efforts to demonstrate the many ways in which the new technologies and scientific requirements of our space program benefit Earth's inhabitants; and

Continue to cooperate with museums and visitor centers, such as Space Center Houston.

HOW THIS PLAN WILL BE IMPLEMENTED

Focusing on Exploration: A New Center Perspective

JSC has stepped up to the future. With a new focus on exploration, we will now look at our current activities with a slightly different view: Does our current work relate to our vision? What are the opportunities for use of our Shuttle and Space Station resources to further our exploration goals? How can we do our current jobs better and free resources to take on new work?

The JSC 1992 strategic plan that you have read begins the process of answering these questions. It takes a long-range view of where the Center wants to be during the 1990's and into the next century. On the last page of this strategic plan, you will find the signatures of all JSC senior-level managers and staff. They are committed to this plan and to implementing a process that will ensure its success. That process will include coordination of Centerwide goals and timetables and periodic review of the progress.

Many of the strategies defined in our JSC strategic plan are already being acted on. Many others, however, obviously go beyond our internal JSC organization and will have to be authorized by the appropriate people before we can implement them. We are committed to pursuing these approvals, where needed, to significantly change the way we are currently doing business. We simply have to. Our mission, our future as the lead center for human exploration, depends on it.

Establish a Formal, Ongoing Process

JSC will update our strategic plan annually. During the course of the year, however, several changes are likely to occur that will need proactive and timely action. As a result, JSC is establishing a formal strategic planning and action management process to assure that Center resources are applied to those activities that best support our mission.

A new JSC Executive Council will serve as the forum and decisionmaking body for implementing this planning and action management process. The Council will be chaired by the Center Director; its members will include the JSC Senior Staff. The Council will make resource allocation decisions and resolve any issues that arise as we implement this strategic plan. Additionally, the Council will authorize major changes resulting from continuous improvement in how we do business. Details of the process will be issued at a later date as a JSC Management Directive.

Decide What Activities to Take On

We have defined the vision, mission, and activities we will undertake to get JSC on the road to a vigorous future. Over the next several years, a number of opportunities will be identified and many of the tasks associated with these opportunities will be competing for our valuable resources. When we undertake new assignments, particularly with an emphasis on developing our civil service expertise, we have to look to a structured management process for the Center that can evaluate Center commitments and the deployment of Center resources. We must also evaluate the impact of potential new projects across the Center and evaluate the long-term effects of allocation decisions on the balance of JSC's program management, engineering, science, and operations responsibilities.

Illustrated in figure 2 is the strategic filter that the JSC Executive Council will use to set priorities and allocate resources between current and new activities. [Figure 2 was not reproducible for the RECORD.] The criteria in

this filter are designed to allow us to pursue those activities that are in direct line with our stated mission. We will have to pass or stop work on those projects and activities that do not fit within the frame of our defined future.

Develop Individual Organization Implementation Plans

To assure deployment of our strategy at all levels, each JSC organization will develop its own implementation plan. Individual organizations will identify specific objectives, roles and activities, schedules, resource requirements, interfaces, and support needs that are consistent with the JSC plan. Each organization will provide its own characteristic and measurable milestones.

Implement and Update Plans and Processes

The Executive Council will review all organization plans to ensure that the total of these plans will enable JSC to achieve its goals. While putting their plans into action and measuring progress, individual organizations will also be asked to update their plans at least annually to reflect their progress and to add necessary changes.

Pioneering Space Exploration: Achieving Our Mission

As we implement this plan and new philosophy at JSC, many important changes will be made in the way we do business. To achieve our mission, we must be innovators, seeking new and better ways to manage our limited resources and to do our jobs. JSC welcomes innovation. As we work to make resources available to take on new activities, those of you who have demonstrated leadership in significantly improving the way we do business will be the people we look to to lead our future projects.

Because of the tremendous challenges ahead of us, our roadmap presented in this plan is bound to change over the course of time. Updated pages will be issued annually or as the situation warrants. We have encouraged you to use your pen while you have been reading this. This is, indeed, your plan. Please write down your ideas and send them via your management for review by the Executive Council.

JSC has already made significant progress in the past year. We have agreed on a vision and strategy for the future. We have established specific waypoints and routes on our roadmap to the future. We have established a formal Centerwide decisionmaking and analysis process that will enable us to better manage our resources and handle our external environment. By publication of this plan, we bring all JSC employees into the process.

For JSC to vigorously pioneer the future of human space exploration, everyone who works as a member of this Center's team must be willing to contribute their ideas, their expertise, and their enthusiasm to making the promise of our exploration-focused future a reality.

JSC STRATEGIC FILTER—FIGURE 2-TEXT DESCRIPTION (FOR USE IN LIEU OF BOX DIAGRAM ON PAGE 28)

Note: The Strategic Filter described below is a series of questions posed in the consideration of any new activity or the modification of a current activity which JSC may wish to pursue.

The Mission of the Johnson Space Center is the expansion of human presence in space through exploration and utilization for the benefit of all

Overall Strategy:

JSC is the lead center for human spaceflight, exploration and utilization;

JSC will concentrate on piloted vehicles, human systems, life sciences and related technology development; and

JSC will participate in selected unmanned precursor activities that will develop our expertise and experience required for human space exploration.

Filter Criteria

Issue raised: "Should JSC pursue this activity?"

It the activity appears to be desirable, the question is asked: "Is this activity consistent with JSC's mission and overall strategy?"

If it does not appear to be, it is subjected to a "Special Consideration" evaluation, where the question is asked: "If this is not specifically related to our mission and strategy, is it in the best interest of JSC to waive these filter criteria because of special considerations?"

If "yes", the activity is then subjected to the Resource Criteria evaluation, described below.

If the activity was deemed initially to be consistent with JSC's mission and overall strategy, it is subjected to the next criterion, where the question is asked: "Is this needed for the development and maintenance of our institutional excellence?"

If the answer is no, the activity is subjected to the "Special Considerations" evaluation, described above. If the answer is yes, it moves to the next level of consideration, where the question is asked: "Is this an area we want to be recognized for in the future?"

If the answer is no, the activity is referred to "Special Considerations". If "Yes", it is subjected to the next criterion, where the question is asked: "Can this be accomplished better elsewhere?"

If the answer is "Yes", the activity is referred or transferred to another, more appropriate organization. If the answer is "No", the activity is then subjected to a set of Resource Criteria.

Resource Criteria

The first question raised in this level of evaluation is: "Are the necessary resources currently available to support this activity?"

If "Yes", the activity is pursued. If "No", the question is asked: "Do we want to invest the necessary resources?"

If not, the activity is not pursued. If "Yes", the question is asked: "Are we willing to give up something else or do things differently in order to do it?"

If not, it is not pursued. If the answer is "Yes", then steps are taken to make whatever changes are necessary for JSC to pursue the activity.

TRIBUTE—MAJOR GEN. EUGENE J. YONNO

Mr. SPECTER. Mr. President, on Saturday, March 28, 1992, Maj. Gen. Eugene J. Yonno, Commanding General of the 79th U.S. Army Reserve Command, headquartered at Willow Grove, PA, will be honored at a retirement dinner, marking more than 35 years of service in the U.S. Army.

A graduate of Pennsylvania Military College, General Yonno began his military career with active service in the U.S. Army Engineers in Korea in 1957 and 1958. Subsequently he held numerous command and staff positions in the Army Reserve Program, including Company Commander, Battalion Commander, Brigade Commander and Commander of the 78th Maneuver Training Command. He also served as Deputy Commander of the 79th ARCOM before assuming command in March, 1988.

General Yonno has received numerous U.S. decorations, including the Meritorious Service Medal with three oak leaf clusters.

In his civilian capacity, he serves as Deputy Director, Public Works Division, Naval Aviation Supply Office, Philadelphia.

During Operation Desert Shield and Desert Storm, General Yonno supervised the mobilization of 15 units of the 79th ARCOM, four of which were deployed to Southeast Asia, with the remaining 11 performing duty in Europe and the United States.

Under his guidance, the 79th established regional and local family support centers. These assisted the families of mobilized soldiers, provided for their needs and offered places for families to meet and gain mutual support. With the conclusion of Desert Storm, General Yonno insured that his units were quickly demobilized and his soldiers returned to their families.

General Yonno has served the U.S. Army, his Nation and his fellow citizens in an exemplary manner. It is fitting, therefore, that the U.S. Senate take note of his excellent military career, commend him for his devotion to duty and wish him well as he concludes a lifetime of service.

FIGHTING BLUE HENS

Mr. ROTH. Mr. President, I would like to take a moment today to recognize a monumental achievement earned by one of the University of Delaware's sporting teams—the Fighting Blue Hens Men's Basketball Program. Last evening, this fine group of young men overcame the challenge of the Drexel University Dragons to capture the North Atlantic Conference crown in a hard-fought contest hosted on the Delaware Campus in Newark.

The enthusiastic capacity crowd witnessed Delaware's record 20th straight victory and first conference championship in over 40 years. The team displayed a near-perfect performance in each contest of the tournament, climaxing in last night's 92–68 victory. Alexander Coles, an outstanding leader of this club throughout the season, was named most valuable player for the tournament.

The next stop in the Blue Hen's magical mystery tour is the land of the unknown—the NCAA Tournament. As North Atlantic Conference Champions, Delaware has automatically ascended in the college basketball ranks to earn their first-ever appearance among the 64 top teams in the country. Coach Steinwedel and the entire team are to be commended on the dedication and

commitment that has earned them a berth among the elite in college athletics.

The 1991-92 fighting Blue Hens cinderella season has brought endless hours of enjoyment for the many thousands of supporters throughout our small State. I am proud of these young men who have displayed the true sportsmanship and pride that make college sports at the University of Delaware so very special. I wish them luck in the NCAA Tournament.

For my colleagues from North Carolina, I have a message: Blue Devils beware, the Hens are on a roll!

MESSAGES FROM THE PRESIDENT

Messages from the President of the United States were communicated to the Senate by Mr. McCathran, one of his secretaries.

EXECUTIVE MESSAGES REFERRED

As in executive session the Presiding Officer laid before the Senate messages from the President of the United States submitting sundry nominations which were referred to the appropriate committees.

(The nominations received today are printed at the end of the Senate proceedings.)

MESSAGES FROM THE HOUSE

At 12:50 p.m., a message from the House of Representatives, delivered by Mrs. Geotz, one of its reading clerks, announced that the House has passed the following joint resolutions; in which it requests the concurrence of the Senate:

H.J. Res. 272. Joint resolution to proclaim March 20, 1992, as "National Agriculture Day"; and

H.J. Res. 410. Joint resolution designating April 14, 1992, as "Education and Sharing Day, U.S.A."

MEASURES REFERRED

The following joint resolutions were read the first and second times, and referred as indicated:

H.J. Res. 272. Joint resolution to proclaim March 20, 1992, as "National Agriculture Day"; to the Committee on the Judiciary; and

H.J. Res. 410. Joint resolution designating April 14, 1992, as "Education and Sharing Day, U.S.A."; to the Committee on the Judiciary.

ENROLLED BILLS PRESENTED

The Secretary of the Senate reported that on March 11, 1992, he had presented to the President of the United States the following enrolled bills:

S. 1467. An act to designate the Federal building and the U.S. courthouse located at 15 Lee Street in Montgomery, AL, as the "Frank M. Johnson, Jr. Federal Building and United States Courthouse."

S. 1889. An act to designate the Federal building and the U.S. courthouse located at 111 South Wolcott Street in Casper, WY, as the "Ewing T. Kerr Federal Building and United States Courthouse."

REPORTS OF COMMITTEES

The following reports of committees were submitted:

By Mr. PRYOR, from the Special Committee on Aging:

Special Report entitled "Developments in Aging, 1991" (Rept. No. 102-261).

By Mr. GLENN, from the Committee on Governmental Affairs:

Special Report entitled "Interim Report on Combatting Fraud and Abuse in Employer Sponsored Health Benefit Plans" made by the Permanent Subcommittee on Investigations (Rept. No. 102-262).

EXECUTIVE REPORTS OF COMMITTEES

The following executive reports of committee were submitted:

By Mr. BIDEN, from the Committee on the Judiciary:

Robert L. Echols, of Tennessee, to be United States District Judge for the Middle District of Tennessee, vice a new position created by Public Law 101-650, approved December 1, 1990.

John R. Padova, of Pennsylvania, to be United States District Judge for the Eastern District of Pennsylvania, vice a new position created by Public Law 101-650, approved December 1, 1990.

Jimm Larry Hendren, of Arkansas, to be United States District Judge for the Western District of Arkansas, vice a new position created by Public Law 101-650, approved December 1, 1990.

Ira DeMent, of Alabama, to be United States District Judge for the Middle District of Alabama, vice Truman M. Hobbs, retired.

By Mr. PELL, from the Committee on Foreign Relations:

Ints M. Silins, of Virginia, a Career Member of the Senior Foreign Service, Class of Counselor, to be Ambassador Extraordinary and Plenipotentiary of the United States of America to Latvia.

(Contributions are to be reported for the period beginning on the first day of the fourth calendar year preceding the calendar year of the nomination and ending on the date of the nomination.)

Nominee: Ints M. Silins.

Post: U.S. Embassy Riga (Latvia).

Contributions, amount, date, and donee:

1. Self, none.
2. Spouse, Elizabeth, none.
3. Children and spouses, names, Nicholas, Kate, Lucas, Matthew, none.
4. Parents, names, Mrs. Velta Ozolins, Leonids Silins (deceased), $20, 1988, Bush for President Campaign.
5. Grandparents, names, deceased.
6. Brothers and spouses, names, none.
7. Sisters and spouses, names, none.

Darryl Norman Johnson, of Washington, a Career Member of the Senior Foreign Service, Class of Minister-Counselor, to be Ambassador Extraordinary and Plenipotentiary of the United States of America to Lithuania.

(Contributions are to be reported for the period beginning on the first day of the fourth calendar year preceding the calendar year of the nomination and ending on the date of the nomination.)

Nominee: Darryl N. Johnson.

Post Vilnius, Lithuania.

Contributions, amount, date, and donee:

1. Self, none.
2. Spouse, n/a.
3. Children and spouses, names, Darawan Margo Johnson, Gregory Raman Johnson, Lauren Eugene Johnson, none.
4. Parents, names, Norman Boyd Johnson, $300, Laurell Eugenia Johnson, (deceased), every year, Rep.-Nat'l Comm., Cong. Comm., State Comm.
5. Grandparents, names, n/a.
6. Brothers and spouses, names, Brian Rolfe and Susan Johnson, Linn Valen Johnson, none.
7. Sisters and spouses, names, n/a.

Robert C. Frasure, of West Virginia, a Career Member of the Senior Foreign Service, Class of Counselor, to be Ambassador Extraordinary and Plenipotentiary of the United States of America to Estonia.

(Contributions are to be reported for the period beginning on the first day of the fourth calendar year preceding the calendar year of the nomination and ending on the date of the nomination.)

Nominee: Robert C. Frasure.

Post: Embassy Tallinn, Estonia.

Contributions, amount, date, and donee:

1. Self, none.
2. Spouse, Katharina, none.
3. Children, names, Sarah and Virginia, none.
4. Parents, names, deceased.
5. Grandparents, names, deceased.
6. Brothers and spouses, names, Maynard Frasure, none.
7. Sisters and spouses, names, none.

(The above nominations were confirmed subject to the nominee's commitment to respond to requests to appear and testify before any duly constituted committee of the Senate.)

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. SPECTER (for himself, Mr. ROCKEFELLER, Mr. THURMOND, Mr. WOFFORD, Mr. HELMS, Mr. HOLLINGS, Mr. RIEGLE, Mr. LIEBERMAN, Mr. DODD, Mr. HEFLIN, and Mr. DIXON):

S. 2345. A bill to extend the provisions of the Steel Import Stabilization Act for specialty steel and other purposes; to the Committee on Finance.

By Mrs. KASSEBAUM:

S. 2346. A bill to provide for comprehensive health care access expansion and cost control through standardization of private health care insurance and other means; to the Committee on Finance.

By Mr. McCAIN (for himself and Mr. NICKLES):

S. 2347. A bill to improve the health of the Nation's children, and for other purposes; to the Committee on Finance.

By Mr. MACK:

S. 2348. A bill to reduce the growing cost imposed on State and local governments by unfunded Federal mandates; to the Committee on Governmental Affairs.

S. 2349. A bill to amend the Congressional Budget Act of 1974 to minimize the impact

on State and local governments of unexpected provisions of legislation proposing the imposition of large unfunded costs on such governments; to the Committee on Rules and Administration.

By Mr. GRAHAM (for himself and Mr. MACK):

S. 2350. A bill to direct the Secretary of the Navy to develop a second homeport on the East Coast of the United States for nuclear-powered aircraft carriers; to the Committee on Armed Services.

By Mr. ADAMS (for himself and Mr. BINGAMAN):

S. 2351. A bill to provide for research to test the efficacy and cost-effectiveness of nutrition screening and intervention activities in populations of older individuals and to determine the extent of malnutrition in such populations; to the Committee on Labor and Human Resources.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. SPECTER (for himself, Mr. ROCKEFELLER, Mr. THURMOND, Mr. WOFFORD, Mr. HELMS, Mr. HOLLINGS, Mr. RIEGLE, Mr. LIEBERMAN, Mr. DODD, Mr. HEFLIN, and Mr. DIXON):

S. 2345. A bill to extend the provisions of the Steel Import Stabilization Act for specialty steel and other purposes; to the Committee on Finance.

SPECIALTY STEEL VOLUNTARY RESTRAINT AGREEMENT EXTENSION ACT

Mr. SPECTER. Mr. President, today, in conjunction with 10 other Senators, I am introducing legislation to extend the voluntary restraint agreements for specialty steel products until March 31, 1995, since the current VRA Program expires at the end of this month, on March 31, 1992.

So, on behalf of myself, Senator ROCKEFELLER, Senator THURMOND, Senator WOFFORD, Senator HELMS, Senator HOLLINGS, Senator RIEGLE, Senator LIEBERMAN, Senator DODD, Senator HEFLIN, and Senator DIXON, this important legislation is being introduced. It is my expectation, Mr. President, that others will be speaking on this subject either in morning business or later today as the business of the Senate permits because of the tremendous importance of this issue and the widespread support for the VRA extension as suggested by 10 initial cosponsors of this legislation.

Mr. President, the extension of VRA's is necessary as a method for stopping trade practices such as subsidies and dumping which violate the principles of free trade. The American steel industry has long been victimized by steel imports which are subsidized by foreign governments or which are dumped in the United States, both of these practices being in direct violation of free trade principles. We need free trade in this country and in this world, Mr. President, in order to have the maximum benefits that commerce provides, without shackles or without bonds. But the United States for too long has been the advocate of free trade while others do not practice free trade.

An essential element of free trade is reciprocity, which, unfortunately, is not present. Japan illustratively keeps their markets closed to United States products while the United States markets continue to be open. The dumping and subsidy of steel has been a major international scandal going beyond the past decade. The voluntary restraint agreements were initiated by President Reagan in 1985 and extended by President Bush in 1989, and they ought to be renewed, Mr. President.

There has been a lack of unity among the carbon steel producers because that situation is a little different from specialty steel. There is some anticipation among the carbon steel producers that the multilateral steel agreement negotiations may solve many of their problems in a reasonable way. Also, due to depressed demand, the VRA ceilings for carbon steel are 4 to 5 percent above current import levels. So the issue is not quite as critical for carbon steel as it is for specialty steel.

So, at this time, my cosponsors and I are directing our attention to the specialty steel industry alone, but it may well be that at some point in the very near future we will make an amendment asking that VRA's for carbon steel be extended as well. Two carbon steel producers from my home state, Bethlehem Steel and Lukens Steel, support the extension of VRA's for carbon as well as for specialty steel.

Mr. President, for those who do not know, the specialty steel industry in the United States comprises virtually all U.S. producers of stainless and alloy steels, heat-resisting steels, electrical steels, super alloys, and other high technology metals. The specialty steel industry employs approximately 35,000 people, with annual shipments of over $6 billion. Approximately 50 percent of the industry is located in my home State, the Commonwealth of Pennsylvania.

In undertaking open house town meetings when we adjourned immediately before last Thanksgiving, Mr. President, I noted tremendous concern among my constituents on unfair foreign imports which were taking so many jobs away from American workers. In response to that, I chaired Judiciary Committee hearings, arranged through the courtesy of Senator BIDEN, the chairman of the committee, in four Pennsylvania cities: Allentown, Harrisburg, Pittsburgh, and Philadelphia. And on February 20, this last month, Senator ROCKEFELLER, Senator WOFFORD, and I attended a Senate steel caucus hearing where we heard very important testimony, including that from Mr. Robert E. Heaton, chairman of the executive committee for the specialty steel industry of the United States.

The issue of extending VRAs for specialty steel goes beyond the matter of trade, Mr. President, because specialty steel is indispensable for national defense. In fact, in the gulf war, specialty steel products were indispensable for a variety of defense applications and the industry responded to the Department of Defense request to increase production for that very important purpose. If we allow other countries to take over on the production of specialty steels, Mr. President, we may well find ourselves without the essential ingredient for national defense to protect the United States of America.

We have seen recently a very substantial funding by other governments. For example, the British Government has channeled some 4.5 billion pounds into the British Steel Corp. during the past decade and an additional $5.6 billion has come from the European Community. Italy's largest steelmaker recently received a 350 billion lire—which is about $280 million—capital injection from its state-owned parent corporation. Its predecessor benefited from $10 million in subsidies during the past decade.

These are only illustrative, Mr. President, of the many problems associated with subsidized steel coming into the United States. The chairman of Lukens Steel of Pennsylvania, Mr. William Van Sant, testified on January 10 at judiciary trade hearings in Philadelphia, that the French Government recently provided $463 million from the State-owned bank for a 30-percent stake in a government-controlled steel producer in France.

All of this means, in essence, that the specialty steel industry is being victimized by foreign trade practices which violate the basic principles of free trade, because the steel is subsidized and steel is dumped in the United States.

For these reasons, the 10 Senators who are presenting this legislation today feel very strongly that as a matter of basic fairness, as a matter of seeing to it that there is justice for American workers, and as a matter of seeing to it that the United States has steel necessary for national defense, that the voluntary restraint agreements be extended.

One word in conclusion. In November 1988 when the VRA's were about to expire, my distinguished colleague, the late Senator John Heinz, and I were with then Vice President Bush at a political rally in Chester, PA, just 3 days before the election. At that time Senator Heinz, who was a great leader in so many ways in the U.S. Senate, presented then-Vice-President Bush with the importance of the extension of the voluntary restraint agreements, and on that Saturday received a commitment on VRA's from then-Vice-President Bush, which was later put into practice after Mr. Bush became President of the

United States. We will soon commemorate the passing of Senator Heinz in that terrible plane accident of last April 4, but I think in considering the extension of the VRA's it is appropriate to note his outstanding work in this respect.

To reiterate, Mr. President, today I am introducing legislation to extend until March 31, 1995, the voluntary restraint agreements [VRA's] for specialty steel imports. The current VRA Program expires on March 31, 1992. A VRA extension provides the most effective near-term means of preserving the significant advancements the specialty steel industry has made since the VRA Program was initiated by President Reagan in 1985 and extended by President Bush in 1989. Because of the continued dumping and subsidy practices employed by our overseas competitors, without a VRA extension, the specialty steel industry risks losing the competitiveness they have regained in recent years.

The specialty steel industry is not the only part of the domestic steel industry experiencing the burden of foreign unfair trade practices. The carbon steel producers are also exposed to dumping and subsidy practices which undercut their ability to compete in the global market. While a number of carbon steel producers such as Bethlehem Steel and Lukens Steel in my State support extension of the VRA's, at this juncture the carbon steel industry is not able to speak with a unified voice on this issue. In large part this stems from their desire to await the outcome of the Multilateral Steel Agreement negotiations before they take a position on VRA's. Moreover, due to depressed demand, the VRA ceilings for carbon steel are 4 to 5 percent above current import levels. Nevertheless, the foreign trade abuses continue. And as history has taught us when VRA's were lifted in the late seventies, when current restraints expire we are likely to witness a substantial rise in steel imports. If it becomes apparent in the upcoming weeks that the MSA has fallen short of its objectives, I am prepared to introduce legislation to extend VRA's for the carbon steel industry as well. In the meantime, I will focus my efforts on the specialty steel industry.

The specialty steel industry in the United States comprises virtually all U.S. producers of stainless and alloy steels, heat-resisting steels, electrical steels, superalloys, and other high technology metals. The industry employs approximately 35,000 people, with annual shipments of over $6 billion. Approximately 50 percent of the industry is located in the State of Pennsylvania. In January of this year I chaired Judiciary Committee hearings in Philadelphia, Pittsburgh, Harrisburg, and Allentown on the issue of unfair foreign trade practices. A number of representatives from the specialty steel industry testified during these hearings and all were able to cite specific instances of subsidies and dumping practices which were threatening our domestic specialty steel markets. I also joined my colleagues Senator ROCKEFELLER and Senator WOFFORD in a Senate steel caucus hearing in February 20, 1991, at which Mr. Robert E. Heaton, chairman of the executive committee for the Specialty Steel Industry of the United States argued for extending the VRA's.

Specialty steels are a critical part of our Nation's industrial base. They constitute the high value, high technology segment of the steel industry. With their high alloy content, technical properties and special processing techniques, specialty steels are highly sought after for critical applications in the automotive, power generation, chemical processing, marine and aerospace sectors of the economy. In addition, because of their environmental durability, specialty steel products are essential to the production of all major weapon systems, as well as aircraft and other defense-related equipment. During Operation Desert Storm, the specialty steel industry responded to urgent requests by the Department of Defense to supply materials on extremely short notice while halting commercial production schedules to meet the demands of the war effort.

Mr. President, the gains achieved by the specialty steel industry as a result of the VRA's could be lost as their schedule expires on March 31, 1992. Unfortunately, foreign government subsidization of specialty steel production continues unabated along with dumping of numerous specialty steel products. During the early 1980's, the specialty steel industry in the United States successfully brought antidumping and countervailing duty cases against a variety of stainless and alloy steel products from the United Kingdom, Spain, France, Germany, Brazil, and Sweden. With the establishment of the VRA Program, antidumping and countervailing duty cases on these specialty steel were terminated. While the level of import growth may have been restrained under the VRA's, unfair dumping and subsidization practices persisted. Now that VRA's are due to expire, foreign capacity additionally have increased by more than 3 million metric tons, much of it subsidized.

Mr. President, so that my colleagues can appreciate the extent to which unfair trade practices disadvantage our domestic specialty steel industry I will cite a few examples. During the 1980's, the British Government channeled 4.5 billion pounds into British Steel Corp. with an additional $5.6 billion coming from the European Community. British Steel is one of the world's largest producers of specialty steel. Italy's largest steel maker, Ilva Spa recently received a 350 billion lire—$277.7 million—capital injection from its state-owned parent. Its predecessor, Finsider, benefited from over $10 billion in subsidies during the 1980's. The principal specialty steel producer in Italy, Terni, is a subsidiary of Ilva and will be a direct beneficiary of the aid.

Finally, Mr. William Van Sant, chairman and CEO of Lukens, Inc., testified on January 10, 1992, at our trade hearings in Philadelphia that the French Government recently provided $463 million from the State-owned credit Lyonnais Bank for a 30-percent stake in Usinor Sacilor, a government-controlled steel producer in France. Usinor controls most of France's specialty steel production capacity and is the parent firm of Creusot Loire and Dillenger, a competitor in the global steel plate market with Lukens.

The dumping and subsidization practices carried out by foreign competitors combined with the extensive expansion of global capacity will undoubtedly disadvantage our domestic specialty steel producers. Efforts to address these problems in international trade negotiations have so far been unsuccessful. The Dunkel draft for the current GATT round and the multilateral steel agreement [MSA] negotiations either fail to address the dumping problems experienced by the specialty steel industry, or in the case of the GATT proposal, significantly weaken U.S. antidumping and subsidy laws.

While many policymakers remain sanguine that the MSA negotiations will provide a steel agreement which will eliminate most unfair trade practices, the reality is that the specialty steel industry will be left in a very vulnerable position. For example, subsidy practices for basic industrial research and applied research which are critical to the high technology end of the steel industry will be partially exempted from the subsidy prohibitions in the agreement. Moreover, the current version of the MSA strips the specialty steel producers of their ability to file countervailing duty cases against subsidies permitted by the agreement. A number of other controversial issues remain, among them preferential Government procurement practices, filing of antidumping cases, and a decision as to whether to include downstream products such as wire strand wire rope and couplings.

Mr. President, the proposed cessation of the VRA Program has always been viewed as being contingent upon a number of improvements in the global steel market which, unfortunately, have not taken place. While most foreign governments acknowledge that overcapacity is most likely the greatest impediment to a healthy global market, many have continued to subsidize further expansion in the specialty steel industry. This overcapacity has brought even more pressure on our domestic markets since the current re-

cession has further weakened global demand for specialty steel. Given the current situation, it would make little sense to eliminate the VRA Program and once again expose an already fragile industry to the abuses of our foreign competitors. The specialty steel industry and the American steelworkers who operate this industry deserve our support. Accordingly, I urge my colleagues to join us in cosponsoring this legislation to extend VRA's for specialty steel until March 31, 1995.

I ask unanimous consent a full copy of the legislative proposal for the extension of VRA's be included, and that leave be obtained for any of the cosponsors to insert statements later today in the RECORD as if presented at this time.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

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

S. 2345

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 "Specialty Steel Voluntary Restraint Agreement Extension Act."

SEC. 2. FINDINGS.

The Congress makes the following findings:

(1) Specialty steel products are critical to the national defense in that they are utilized in virtually every major weapons system as well as in aircraft and other defense-related equipment.

(2) Specialty steels are essential to the capital goods and consumer durable sectors of the U.S. economy. In many critical applications there are no available substitutes for specialty steel.

(3) The domestic specialty steel industry continues to suffer from a wide array of foreign unfair trade practices such as dumping and subsidies.

(4) The current voluntary restraint agreements (VRAs) on specialty steel products are due to expire on March 31, 1992.

(5) The domestic specialty steel industry invested over $1 billion in new capital and R&D during the VRA period, thereby preserving its position of technology leadership in the global market for specialty steel products.

(6) Notwithstanding the voluntary restraint agreements, imports of specialty steel have increased since 1988, despite a decline in apparent consumption in the same period. The combination of higher imports and lower apparent consumption have pushed import penetration levels for specialty steel to unprecedented levels.

(7) Despite increases in VRA ceilings for specialty steel products, VRA signatories have fully utilized or exceeded their VRA allotments.

(8) Worldwide capacity additions by foreign specialty steel producers are expected to exceed 3.0 million tons by March 31, 1992—an amount that exceeds total U.S. annual consumption of specialty steel. Much of this new capacity is believed to be targeted at the U.S. market upon termination of the VRA program.

(9) The MSA negotiations, even if concluded, will not address the structural overcapacity problems and pervasive dumping that continue to plague the specialty steel industry.

SEC. 3. SENSE OF THE CONGRESS REGARDING EXTENSION OF THE SPECIALTY STEEL VOLUNTARY RESTRAINT AGREEMENT PROGRAM.

It is the sense of the Congress that—

(1) The President should exercise his authority to extend the voluntary restraint agreements for specialty steel for three years ending March 31, 1995.

(2) The President, in exercising his authority to extend the voluntary restraint agreements, should ensure that the import ceilings negotiated should not exceed those levels in place as of March 31, 1992.

SEC. 4. EXTENSION OF STEEL IMPORT STABILIZATION ACT.

Section 806(a) of the Steel Import Stabilization Act (19 U.S.C. 2253 note) is amended to read as follows:

(a) IN GENERAL.—Section 805 shall terminate on March 31, 1995, unless the President, before such date, submits to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate (in writing and together with the reasons therefor) an affirmative annual determination described in subsection (b)."

• Mr. WOFFORD. Mr. President, I support this important legislation. The steel industry stands at a critical juncture. The impending expiration of the VRA's, the uncertain future of current trade negotiations, and the burden of a prolonged recession are producing a lot of understandable anxiety in the industry.

We in Congress share these concerns. The steel industry has always been the heart of industrial America. We cannot stay competitive without it. And our national security is dependent on a strong manufacturing base—and a strong specialty steel industry.

I am familiar with the impressive track record of specialty steel from my days as Secretary of Labor and Industry for Pennsylvania. The investments and upgrading of their facilities is only part of the success story—the industry is also a model for innovative labor-management cooperation.

The extension of the VRA's is critical for specialty steel, a highly competitive, high-technology industry with broad applications in sectors from health care to space to defense. Import limits of specialty steel have been reached or exceeded under the present agreements, and the expiration of the program could have dire consequences for the industry, its employees, and their families.

I look forward to working with my colleague from Pennsylvania, Senator SPECTER, and our fellow Senators to secure the 3-year extension of the VRA's for specialty steel.•

Mr. ROCKEFELLER. Mr. President, I am pleased to add my support to legislation that will extend the President's authority to maintain a voluntary restraint agreement program for steel imports. As Senators know, the current program of VRA's expires on March 31.

That program, which President Reagan began in 1984, was extended by President Bush in 1989 to fulfill a commitment he made to the late Senator John Heinz during the 1988 election. His letter to Senator Heinz promised renewal of the VRA program until such time as an international agreement had been reached that would bring an end to unfair trade practices in steel. As chairman of the Senate steel caucus I fought hard along with Senator Heinz and others to persuade the President to reject the recommendations of many of his advisers and instead honor his commitment and extend the VRA's.

To the President's credit, he has made a diligent effort to obtain such an agreement, and there is still a chance he may succeed in doing so before March 31. As of today, however, such an agreement is not in place, and there are indications from some foreign participants in the negotiations that they are unlikely to sign an agreement this month.

In addition, the multilateral steel agreement draft text that has been circulating contains some serious flaws and omissions. Its biggest flaw, in my judgment, is its explicit authorization for certain subsidies—plant closing, research, environmental, and worker adjustment—and its likely inclusion of a clause that precludes the American industry from using U.S. countervailing duty law against them. That means that if the United States signs the agreement, it will be denying to the domestic steel industry legal rights it has exercised under U.S. law for nearly 100 years and which have been sanctioned by the GATT since its inception. Permitting any subsidies is a serious mistake, in my judgment, but precluding access to U.S. law to obtain relief from them would be unconscionable.

Among the MSA's omissions are any language tightening up rules against dumping and an effective prohibition on subsidized financing for new steel capacity, which has been one of the major obstacles to our effort to promote market-based trade in steel over the past 15 years.

There are also other problems with the draft text, including in the areas of dispute settlement, product coverage, and government procurement, all of which taken together, tempt me to conclude that even if agreement is reached on this text, it will not be acceptable to the U.S. industry, and it should not be acceptable.

Thus it appears that when March 31 arrives, we will likely have either no MSA or an unacceptable MSA. In the absence of a VRA program, that will leave the industry with little choice but to file a large number of antidumping and countervailing duty cases in an effort to control unfairly traded imports.

They should have little trouble winning those cases, as dumping and sub-

sidies are, by all accounts, endemic in the industry. The VRA program has kept imports down quantitatively, as has the recession, but serious price suppression has been occurring and most of the industry lost money in 1991.

Extension of the VRA Program, at least until an MSA is approved, would not only fulfill the President's commitment, it would provide a guaranteed cap on the extent to which foreign steel producers can use unfair trade practices to access our market. The alternative—numerous unfair trade complaints—would be expensive and time-consuming. No relief would be granted for 5 or 6 months, at least, and any duties would not become final until approximately 1 year after each case began. That is simply too long to wait to enforce trade rules in steel.

The VRA Program has also been important to my steel constituents at Wheeling-Pittsburgh and Weirton. Only yesterday, Senator BYRD and I, along with Congressmen MOLLOHAN and APPLEGATE, received a petition from Wheeling-Pittsburgh labor and management signed by over 4,000 people asking for extension of the VRA Program.

Mr. President, the legislation being introduced today makes particular reference to the specialty steel industry as being particularly in need of an extension. That is an important point. In contrast to some other product categories, VRA limits have regularly been met or exceeded in specialty steel—between 96 and 113 percent in 1991.

That should come as no surprise to anyone who has examined the industry closely. What often occurs during a period of quantitative restraints is a shift in the import mix toward higher value items. Specialty steels, which are the high value, special property steels, are the primary victims of such a shift.

This matters in more than just economic terms. Specialty steel is critical to our national security. It is no exaggeration to say that we cannot build a tank, a missile, an airplane, or a submarine in this country without specialty steel. The industry estimates that 20 percent of its shipments go to defense applications, and that figure could be as high as 40 percent for certain high performance alloys.

The importance of specialty steel was made dramatically clear during the gulf war. The industry willingly diverted its production from civilian products to items badly—and immediately—needed by the military to fight the war. Specialty steels can be found, for example, in the Patriot and Stinger missile systems, the F-117A, F-18, and F-14 aircraft, Apache and Blackhawk helicopters, the M-1 tank, and the Bradley fighting vehicle. Mr. President, I ask that a partial list of Desert Storm weapons systems that utilized specialty steel be included in the RECORD following my remarks.

Mr. President, we cannot let this industry that is vital both to our national security and our manufacturing infrastructure be seriously and permanently damaged. At present it appears that a VRA extension, at least until an acceptable multilateral steel agreement is negotiated, is the only policy that will prevent this disaster. I hope the President will be able to put aside the antisteel bias that has characterized his attitude toward this industry over the past 3 years, recognize its importance to our economy, and take the only action that makes sense at this time—renew the VRA Program.

There bring no objection, the text was ordered to be printed in the RECORD, as follows:

DEFENSE APPLICATIONS FOR SPECIALTY STEEL

Product category	Chemistry and treatment	Applications
Stainless angels	Various	Navy submarine components.
	Various	Critical shipboard systems.
Stainless wire	300-series	Springs for bomb, tanks, fuses.
Stainless rod	300-series	Welding materials for use with stainless plate.
Stainless flat-rolled	Dual-hardness armor plate.	Armor for planes, tanks, personnel carriers, ships, etc., to protect pilot, crew and on-board personnel from combat attacks.
	300-series plate	Floor plating for ships, missile holds.
	300-series plate	Supply tanker hulls and storage vessels for foodstuffs and/or fuels.
	300-series plate	Fuel storage tanks for national fuel reserve.
	300-series	Strip for hose clamps (engines).
	300-series	Vessels for nitro- glycerine manufacture.
	Various	Shipboard saltwater conversion plants; nuclear propulstion systems; shipboard power plants.
	625 alloy	Tanks (generator).
	718 alloy heat-resistant	Engine parts, fighter and bomber aircraft.
	Precipitated hardening 17-7, 15-5.	Landing gear, aircraft.
	625 alloy, 718 alloy	Honeycomb sections, surface to air missiles.
	AM355	Strap pack for helicopters.
	425 alloy (martensitic)	Bayonets.
	AL600	Tank engine parts.
	Nitronic 40	Hydraulic Tubing for pressure vessels.
		Fire extinguishers for fighter aircraft.
	PH 15-7 Mo	Transport aircraft honeycomb panels (engine exhaust) and missles.
	15-5 PH	V-22 Osprey special transmission diaphragms.
	17-7 PH	Missile nose cones.
		Helicopter washers.
	27-4	Missile nose cones and warheads.
		Standard missile tubes.
	Hipernom sheet	Magnetic shielding, airborne radar.
	T-304, T-316, T304L, T-316L	Naval shipyards equipment.
	T321	Aircraft jet engine cowlings.
High temperature	Ni-Co-Cr-Mo (double vacuum-melted).	Aircraft fasteners (commercial, military and NASA).

DEFENSE APPLICATIONS FOR SPECIALTY STEEL—Continued

Product category	Chemistry and treatment	Applications
		Critical rotating aircraft engine components.
		Missile components.
		Aircraft engine combustors.
		Aircraft engine transmission ducts.
Maraging steel	Fe-Ni-Co-Mo	Rocket motor cases for missiles.
Aircraft bearing steel	Double vacuum-melted	Main aircraft engine bearings.
Aircraft structural steels.	Single vacuum-melted, high strength, high toughess steels.	Landing gear, structurals for flap blades, helicopter gearing.
Ultra-fine gauge wire	High-purity alloy steel (vacuum-melted).	Missile target tracking systems.
Special alloy steel	Vacuum-melted	Torsion bars for tanks.
Tool steel	High speed steel	Cutting and machining tools for production of components for tanks and other military equipment.
	Die steels	Dies for production of components for military equipment.
Stainless pipe and tube.	300-series	Nuclear propulsion; shipboard power plants; fuel lines for aircraft; intake manifolds for tank engines; substantial amount of military-specifications pipe and tube sold to distributors, with exact end-use unknown.
Electrical steel	CRNO	Generators, navy ships.
		Motors, M-1 tank.
		Various navy motor applications.
	RGO	Navy transformers.
		Armed Forces high-frequency radio equipment.
Stainless steel bar/billet.	Caralloy 255	Launch rails for aircraft carriers.
	Pyrowear 53	Gearing, V-22 Osprey aircraft.
	CTX (controlled thermal expansion).	Jet aircraft parts; welded overlays in space shuttle.
	WASP alloy	Jet engine parts.
	AF 1410	Arresting hooks, aircraft landing gear on aircraft carriers.
	Ex 100 (under development).	Landing gear, Navy fighters.
	Invar	Electronic gear, aircraft and missiles.
	Precipitated hard-grades 17-4.	Navy nuclear reactor components.
	Stainless grades 347/348.	Naval nuclear reactor components.
	Stainless T-304	Naval nuclear reactor components.
	Convar (high colbalt)	Gyroscopes, aircraft.
	Nickel/copper 400-series alloy.	Sonar arrays, nuclear submarines.
	Hiperco 50	Generators, aircraft.
	Nimark 3	Main shafts, jet engines.
	Bearings alloys	Main shaft bearings, jet engines.
	Nickel 200 alloy	Oxygen generators, nuclear submarines.
	CPM 10-V (powder metallurgy).	Fuel pumps, military aircraft.
	Custom alloy 455	Spreader beam, cargo bay of space shuttle.
	Payromet A286	Fasteners, space shuttle.
	EX 98 (in development)	Corrosion cracking prevention in space shuttle's main engine.
	Alloy 718	Torpedo straps, naval aircraft.
	MP 35N	Bomb hooks.
	Custom alloy 455	Cluster bomb hooks.
	Borated stainless steel	Spent nuclear fuel handling devices, Navy.
	JBK 75	Nuclear weapon components.

SPECIFIC APPLICATIONS RELATED TO DESERT STORM

Forging parts for engines	F-117A Stealth Fighter, F-18 Hornet, F-14 Tomcat, F-15, and F-16 fighters.
	Blackhawk helicopter.
	Engine of M-1 ABRAM's tank.
Flat bar	Multiple-launch Rocket system (MLRS).
Stainless/Special alloy bar/billets	Torsion bars for Bradley fighting vehicles.
	Helicopter transmissions.
	F-16 and F-18 transmissions.
	Engine shafts for A-10 Wart Hog and F-16 aircraft, F-18.
	Gun barrels for M16.
	F-18 engine rings.
	F-14 and F-16 high pressure turbine shafts.
	Compressor blades for F-15 and F-16 aircraft.
	F-14 and A-6E Intruder jet engine seals.
Sheet/strip	Land mine covers, razor ribbon and concertina wire fencing.
	Bomb and rifle magazine springs.
Plate	Baffles for tanks.
Tubing	Blackbird spy aircraft.
	Missile launcher for F-18 aircraft.
	Apache helicopter tail rotor support.
Other specialty steel	Permanent magnets for Stinger missile control systems.
	Recoil springs for tank and artillery cannons.

Mr. DODD. Mr. President, I rise to join in strong support of the legislation being introduced today to urge an extension of the voluntary restraint agreements on specialty steel imports. I am proud to be an original cosponsor of this bill and I want to commend my colleague from Pennsylvania, Senator SPECTER, for his work on this important piece of legislation.

Mr. President, as the recession continues its relentless assault on the working families of America, the only lifeline for many people is the security of a steady job. Today, the steel industry provides just such security to over 150,000 people, including 35,000 in the specialty steel industry. But the number is growing smaller with every passing day.

This shrinkage of our specialty steel capacity is particularly dangerous, Mr. President, when one considers the importance of the specialty steel industry to our national security. The specialty steel industry is critical to the production of all major weapons systems, as demonstrated during the Persian Gulf war when specialty steel makers went on emergency production to meet the increased demand.

We cannot afford to be dependent on foreign suppliers for this vital material. And that is why the legislation being introduced today is so important. It would give the President the statutory authority he needs to renegotiate and extend the voluntary restraint agreement with our major trading partners, keeping imports to a limit and keeping our domestic industry healthy.

Mr. President, the international market is a predatory jungle, where foreign competitors use unfair subsidies and market-distorting dumping practices to unfairly gain an edge. As a result of these unfair trade practices, our trade deficit in steel in 1990 was approximately 13 million tons.

In 1984, in response to predatory overseas practices, the President initiated a 5-year series of voluntary restraint agreements with a number of other nations to restrict imports into this country. In 1989, those VRA's were extended until March 31 of this year. If the President does not renegotiate them within the next few weeks, the VRA's will be gone.

The point of the VRA's, Mr. President, was to give our trading negotiators the time to negotiate fairness into the international system. Unfortunately, so far we have met not with fairness, but only obstinance—12 of the 24 nations that collectively account for over 50 percent of the foreign subsidies have continued their prior subsidies programs, and 11 of the remaining 12 have initiated new subsidies.

In addition, the Uruguay round, which was supposed to be the solution to our trading problems, has gotten mired down in half-baked compromises. The proposed draft text would significantly weaken, not strengthen, the antidumping laws and countervailing duties which are the last resort against foreign predatory practices. The current text of the multilateral steel agreement, now being negotiated along with the Uruguay round, is no better.

Finally, the newly liberated countries of Eastern Europe stand ready to test the waters of the international steel market, threatening to leave even less of a market share to the U.S. producers.

If the specialty steel VRA's are lifted before the proper time, the damage done to the domestic industry will be significant, Mr. President. And the damage done to domestic jobs, in a country with an unemployment rate of 7.3 percent, will be intolerable.

In the State of Connecticut, where 155,000 jobs have been lost since February of 1989, the specialty steel industry is one of the few industries that is now doing well. Today, specialty steel remains a steady source of employment for nearly 500 people at the Allegheny Ludlum plants in Wallingford and Waterbury.

That may not be a lot of people in terms of the global economy, Mr. President. But it is 500 people who have the security and stability of a steady income and a decent wage. And it is 500 people who would potentially be at risk if the VRA's were lifted at the end of this month.

On behalf of working men and women in my State and across the country, I urge the Senate to immediately adopt this important bill. And I urge the President to follow the recommendations in this legislation and extend the VRA's.

Mr. HEFLIN. Mr. President, I am pleased to rise today to support the extension of the voluntary restraint agreements for specialty steel. As my friend from Pennsylvania, Senator SPECTER, pointed out earlier this morning, these agreements, which were initiated in 1985 and extended in 1989, are set to expire at the end of this month.

Mr. President, the steel industry is certainly one of the most notoriously subsidized industries worldwide. Countries from Russia to Japan to Italy to Great Britain heavily subsidize their steel industries. Moreover, the practice of dumping by our foreign competitors continues to plague the health of our domestic steel industry. Make no mistake about it, our U.S. steel industry faces unfair competition in its strongest and most unabashed forms.

These voluntary restraint agreements are absolutely critical for the viability of our domestic steel industry, an industry which plays an essential role in most all major economic activities, including manufacturing, mining, construction, transportation, and agriculture.

Mr. President, in recent weeks, much of the attention of the Senate has been focused on the American economy and possible actions which we as legislators can take to improve the economic outlook for Americans struggling today. I would submit that the extension of the voluntary restraint agreements is one such action. The steel industry serves as a backbone for much of our economy and its health is, in a very direct way, tied to the health of our national economy. We simply cannot continue to watch our manufacturing base, of which steel is a vital part, erode without seeing the types of consequences we witness today.

As we are all painfully aware, the jobless rate between July 1990, when the recession began and January 1992 climbed from 5.5 to 7.1 percent. At the same time, the number of jobs has been falling due largely to weakness in the manufacturing and construction industries. If we are to ensure our Nation's short and long-term future, we must step forward and protect our bedrock industries from unfair foreign competition. We must ensure that our manufacturing sector does not disappear.

Mr. President, I urge all of my colleagues to take a hard look at the current state of manufacturing in our country today and at the unceasing efforts by foreign governments and steel companies to gain an unfair advantage over U.S. companies. If they do so, I believe that they will join me in offering their strongest possible support for the extension of voluntary restraint agreements for the steel industry, confident that this action will undoubtedly help our national economy.

By Mrs. KASSEBAUM:

S. 2346. A bill to provide for comprehensive health care access expansion and cost control through standardization of private health care insurance and other means; to the Committee on Finance.

BASICARE HEALTH ACCESS AND COST CONTROL ACT

Mrs. KASSEBAUM. Mr. President, I rise today to introduce legislation I believe offers a significant new alternative in the growing national debate on health care reform.

This legislation, the BasiCare Health Access and Cost Control Act, provides comprehensive expansion of health care access to the uninsured, as well as binding restraint of spiraling health care costs—and it does so in a way that is substantially different from existing proposals, both Republican and Democratic.

Mr. President, we will spend a staggering $871 billion on health care this year, which represents fully 14 percent of GNP, the highest such percentage of any country in the world. At the same time, health care costs continue to race upward at a pace two to three times the rate of general inflation. Already, such rising costs have priced health coverage out of the reach of more than 37 million Americans—and the number of such uninsured is certain to grow if medical costs are not soon brought under control. If present cost growth is allowed to continue, we will be spending 31 percent of our GNP on health care by the year 2020.

As this crisis deepens, proposals for serious reform are receiving renewed and much needed attention. There are those, for example, who say we should adopt a Canadian-style single-payer structure, under which all health care would be managed by the Government and financed by the taxpayers. Others, meanwhile, advocate a so-called play-or-pay system, under which employers would be forced either to offer coverage to their employees or to pay a special tax for a backup public program.

Additional proposals involving market incentives and individual tax credits for the purchase of health insurance are also under consideration, as are various plans for incremental reform in targeted areas, such as malpractice liability and the small group insurance market.

Mr. President, many of these plans have much to offer, and in some we may find solid ideas that can work for America. To my mind, however, nearly all carry serious—and possibly fatal—drawbacks.

The proposals for Government-run, single-payer systems, for example, would certainly guarantee coverage to everyone, but they could also seriously inhibit medical quality and innovation, as well as necessitate massive new tax increases. Similarly, the play-or-pay plans would assure coverage for most Americans, but they would do so only by shifting the spiraling health care cost problem onto the shoulders of American business. This is not only unfair, but it also threatens the security of American jobs and our competitiveness abroad.

At the other end of the spectrum, the administration's recent proposal to provide tax credits for the purchase of health insurance is also a very positive step, but I am worried that providing such credits without binding control of raging health care costs could, when all is said and done, make the problem worse, not better.

I am also very troubled by the fact that so many of the serious proposals put forward thus far are silent on the critical issue of financing, and that many of them avoid altogether the urgent need for coverage of long-term nursing home or home health care.

Mr. President, the bill I am introducing today seeks to fill in many of these gaps, and to offer a substantially different alternative to the plans already on the table. The BasiCare Health Access and Cost Control Act tackles head-on the twin challenges of tough cost control and comprehensive access expansion—and it does so without using either employer mandates or government-run single-payer coverage.

Let me take a few moments to outline some of the most important provisions in this plan.

First, the bill will create a single, nationally uniform BasiCare package of benefits that every insurer will have to offer and that every American will carry. The BasiCare package will be defined and standardized by the Government, but—importantly—its administration and financing will remain in the private sector.

The intent of this approach is to achieve much of the simplicity, stability, and cost control of a public single-payer system, but without giving up the private market incentives that have the quality and innovation of American medicine the best in the world.

Under this bill, the new BasiCare package will become standard across all health insurance carriers. That is, any insurance carrier wishing to sell health insurance will have to offer the BasiCare plan and adhere to its conditions, and he may not offer any other policies that duplicate BasiCare in any way. Insurers may, however, offer supplemental policies for persons wishing greater coverage beyond that provided by BasiCare.

Second, the content of the new BasiCare package will be developed by a full-time national commission of independent experts—and not by Congress. As under the current military base-closing system, Congress will have the power to vote up or down on the commission's recommendations, but not to amend them.

The eight-member, independent commission will also have significant and broad oversight authority over the health care system as a whole. In most cases, its recommendations to Congress will be considered only on a limited-debate, unamendable basis.

This approach represents a new direction in health care policymaking. It preserves ultimate congressional accountability for health care policy decisions, but it also leaves much of the very complex and sensitive work in the hands of experts. The purpose is to help assure that difficult tasks such as the development of a basic benefit package are not unduly distorted by congressional tinkering or by political pressure from specific interests.

Mr. President, something is clearly wrong with a system in which Members of Congress are legislating the dollar amounts of EKG payments or the cost of intraocular lenses. And yet, that is what we have been doing in Medicare and Medicaid for many years now. Unfortunately, we continue to fiddle and modify, but often with little indepth understanding of what we are doing or what is actually best for the system.

Congress should certainly continue to play a role in health care policy, but it should do so as an arbiter of decisions made by an independent and authoritative body. Our ailing health care system is crying out for disciplined, thoughtful change—and this bill offers us a constructive framework for achieving it.

Third, under my bill, BasiCare policies will be subject to strict rules protecting beneficiaries against denial of coverage or discriminatory rate hikes based on health status. Following a phasein period, all BasiCare premiums will have to be set according to equalized community rates, and insurance companies will be required to guarantee acceptance of all applicants.

No longer will insurers be allowed to raise a person's premiums just because he has been sick or to deny coverage because he has a preexisting medical condition.

Fourth, control of health care costs will be maintained by placing binding annual limits on the allowable percentage rate of increase in BasiCare premiums. This is a clean, straightforward approach designed to achieve binding cost control without the pitfalls of Government micromanagement of specific rates and provider fees.

This basic mechanism is adapted from an approach developed 2 years ago by the Kansas Employer Coalition on Health and published in the Journal of the American Medical Association last spring. I was also interested to hear the testimony of health care economist Stuart Altman before the Senate Labor and Human Resources Committee last week, in which he articulated a cost-control proposal not dissimilar to the one I am proposing today.

Under my bill, the annual percentage of allowed premium increase will be established by the BasiCare Commission, and it will be binding on all insurers. By setting a single maximum allowable percentage of increase, Government will be putting insurers themselves at

risk for rising costs, thereby creating a powerful incentive for efficiency.

Combined with national standardization of a community-rated BasiCare package, these new cost parameters will induce insurers, doctors, and hospitals to compete based on who can provide services most efficiently and attractively to patients. In practice, what this is going to mean is that insurers will react to the new premium limits by forming organized care relationships with providers in order to share the financial risk with those providers. Under such arrangements, both insurers and providers will have strong incentives to hold down costs and to deliver care as efficiently as possible.

Fifth, health care access for the uninsured will be addressed by offering low-income persons nontransferable vouchers for the purchase of BasiCare policies. Such vouchers will be redeemable directly to BasiCare carriers or employer plans and will reflect an applicable percentage of BasiCare costs a person or family is eligible to receive.

This legislation specifies minimum income levels for which voucher assistance must be provided, but it leaves the Commission discretion to propose increases in these levels, as it may deem appropriate to correspond with the new BasiCare benefits package. At a minimum, persons below 100 percent of the Federal poverty line will receive full voucher assistance, and persons between 100 and 200 percent of poverty will receive assistance on a sliding scale based on income. Importantly, even persons receiving full voucher assistance will be required to pay a small perservice copayment to discourage overutilization.

The new voucher program will replace and expand upon the current Medicaid program.

Sixth, the new BasiCare system will be expanded over time to encompass Medicare, and coverage for long-term nursing home and home health care will be included in the BasiCare plan.

Mr. President, I fully recognize the logistical difficulty and the potential financial cost of including long-term care in a bill like this one. Nevertheless, I feel it is imperative that we not shut long-term care out of the picture as we struggle for a solution on health care reform. The cost of nursing home care now averages about $30,000 a year, more than all but the most wealthy of us can afford.

Under my bill, persons of all ages will carry BasiCare's long-term care coverage as part of their BasiCare package, thereby greatly spreading the cost of such coverage and minimizing the burden on any single individual or family. A significant problem in the current system is that very few persons buy long-term care insurance—and those that do usually do so at or near retirement age. The result, of course, is that such coverage is often prohibitively expensive, thus leaving most Americans very vulnerable to devastating out-of-pocket expenses when long-term care becomes necessary.

Seventh, this bill includes very tough Federal reform of malpractice liability laws, as well as a significant expansion of community health centers and other community-based primary care facilities.

Eighth, to increase the number of health care professionals in medically underserved areas, the bill also includes a significant expansion of funding for the National Health Service Corps, as well as targeted tax incentives to doctors, nurses, and other health care professionals practicing in underserved rural communities.

Ninth, this bill equalizes the health care tax treatment of the self-employed. Farmers and other self-employed persons have long received only a 25-percent tax deduction for the cost of their health insurance. Incorporated businesses, meanwhile, receive a 100-percent deduction.

Under my bill, both self-employed persons and incorporated firms will receive the same tax treatment with regard to health care—100-percent deductibility for the cost of the BasiCare package.

Mr. President, this bill's tough cost-control measures and its standardization of the market around a single insurance package will significantly restrain costs in the health care system, both to individuals and to businesses. Even as this is occurring, however, new public funds will clearly be necessary to provide coverage to those who are currently uninsured. This is something that is true of any serious reform plan, not just this one. Estimates for the cost of such expanded coverage vary greatly, but usually run between $30 to $40 billion a year.

The legislation I am introducing today is straightforward about how these costs will be paid for. I firmly believe we need to be honest with the American people about the inevitable costs and tradeoffs of the proposals we advance.

Under my bill, needed funding will come from three sources:

First, appropriation of existing Medicaid expenditures;

Second, limiting the current 100-percent tax deduction and exclusion for employer health benefit contributions to the cost of the BasiCare package; and

Third, a limited draw of funds from the current Social Security payroll tax, not to exceed 1 percent of the tax.

Mr. President, the Social Security payroll tax is now set at a level higher than is necessary to assure adequate security for present and future retirees. Indeed, working Americans and their employers are now each paying 6.2 percent of their earnings to build up a massive surplus account that is currently being used primarily to offset Federal deficit spending. It is appropriate that a modest portion of these resources be devoted to the very useful purpose of overhauling our declining health care system. Just 1 percent of the current tax would equate to $56 billion a year in 1996, and even more as time goes by. I will be placing in the RECORD a Washington Post editorial by Ron Pollack, director of the consumer advocacy group, Families U.S.A., discussing this issue.

Importantly, none of the financing measures I have just outlined will require the enactment of new taxes, and all of them will be used for the establishment of a greatly streamlined, cost-effective system that will assure basic health and long-term care coverage for every American .

Mr. President, this bill is the product of more than a year of meetings and consultations with health care providers, insurers, consumers, and academics, both in Kansas and around the country. Their advice and criticism has been critical to making this effort possible.

I make no claims that this bill is the perfect solution, and I very much look forward to comments and suggestions, as well as to working with my colleagues in moving this debate forward. I, for one, am hopeful that we can pass a comprehensive health reform bill some time next year.

The bill I am introducing today does represent a substantially new approach in the health care reform debate, but there are still significant parts of it which build on the able work of others. The provision on malpractice reform, for example, is a modification of bills by Senators HATCH, DURENBERGER, DOMENICI, and MCCONNELL. The work of Senators PACKWOOD and PRYOR on rural health car and Senator CHAFEE on community health centers has also been adapted and included in my legislation, as have the proposals of Senators DURENBERGER and BENTSEN on the issue of small insurance market reform.

Mr. President, I would like to conclude by stressing that the BasiCare Health Care Access and Cost Control Act offers a fresh way to capture some of the most attractive features of a Canadian-style, single-payer system, while at the same time retaining much of the private market innovation that has made the quality of health care in the United States the envy of the world.

This bill is a significant departure from the major health care reform proposals currently under consideration in Congress and elsewhere. It is also straightforward in design, tough on rising costs, comprehensive on access, and honest about financing. It is a solution that can work.

Mr. President, I ask unanimous consent that the following items be in-

cluded in the RECORD following my remarks: First, a summary of the bill's provisions; second, an editorial by Ron Pollack of Families U.S.A. regarding health care and the Social Security trust fund; and, third, a copy of the legislation itself.

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

BASICARE HEALTH ACCESS AND COST CONTROL PLAN

Key components:

Establishes a single, nationally defined core benefits package (BasiCare), but leaves its administration and financing in private hands.

The BasiCare package will become standard across all health insurance carriers, and will be carried by all Americans. No insurance company can offer any plans that duplicate BasiCare benefits, although they may sell supplemental policies for persons wishing greater coverage.

The content of the BasiCare package will be determined by an independent expert Commission. As under the current military base-closing system, Congress will have the power to vote up or down on the Commission's recommendations, but not to amend them.

BasiCare will be community rated, and restrictions based on pre-existing conditions will be barred.

Control of health care costs will be maintained through broad limits on BasiCare's annual premium increases, as well as through administrative standardization of the single BasiCare package.

Incentives in health care competition will be refocused to maximize efficiency, rather than over-supply or risk-selection, as is often the case under the current system.

Health care access for the uninsured will be addressed by offering low-income persons non-transferrable vouchers for the purchase of BasiCare coverage. This system will replace and expand upon the current Medicaid program.

Medicare will also gradually assimilated into BasiCare, and long-term care coverage will be included in the BasiCare package.

Financing will be obtained through (a) a limited draw of funds from the current Social Security payroll tax, not to exceed 1 percent of the tax, (b) limiting the current 100 percent tax deduction and exclusion for employer health benefit contributions to the cost of a BasiCare package, and (c) appropriation of existing Medicaid expenditures.

The plan also includes malpractice reform, a significant expansion of low-income community health care services, and measures to increase the number of health professionals in underserved rural areas.

SUMMARY OF PROVISIONS

A. Creation of BasiCare

1. Congress will determine the broad foundations of the BasiCare package, but it will not be directly responsible for the details of the plan's composition. Among the foundations that Congress would require however, will be:

a. Basic hospitalization coverage;

b. Basic outpatient services;

c. Protection against catastrophic out-of-pocket costs;

d. Coverage against extraordinary long-term care costs; and

e. Coverage for preventive care services of significant proven and recognized value in averting serious and costly medical conditions.

2. Actual development of the BasiCare package will be conducted by an 8-member independent, expert commission. Half of the members will be appointed by the President, and the other half by the congressional leadership. All will serve on a full-time basis for five year terms.

3. The Commission will define a benefit plan which, in its judgment, represents a minimum but fair coverage package. At its discretion, the commission may recommend limited variation in plan structure to accommodate delivery of BasiCare services in a managed care setting, provided that such variation does not compromise the basic uniformity of the national BasiCare package.

4. As under the current system for closing military bases, Congress will have the power to approve or disapprove the Commission's recommendations, but only as an un-amendable package. The purpose of this mechanism is to help assure that the process of developing the benefit package is not unduly distorted by political pressure.

5. The BasiCare Commission will have authority to make adjustments in the plan's content, as needed, to reflect changes in technology or in the nation's health needs. It will also have significant oversight responsibility for the health care system as a whole.

6. The Commission will be charged with ongoing oversight of the quality of health care delivery—particularly as the system reacts to implementation of the new BasiCare structure. The Commission will be required to factor findings on quality into any recommendations it makes to Congress on the content or the cost of the BasiCare package. It will also be authorized to contract with local and regional entities for the collection and dissemination of health care quality and cost data to consumers.

B. BasiCare's role in the insurance market

1. All insurers in the health insurance market will be required to offer BasiCare and to accept its conditions.

2. Insurers will be barred from selling non-BasiCare policies that duplicate BasiCare benefits in any way. Supplemental policies, however, will be allowed (see Section F. below). Such supplemental policies will be permitted to cover only those benefits not covered by BasiCare.

3. When the program is fully implemented, BasiCare policies will be subject to strict rating and underwriting rules aimed at assuring availability and curbing risk selection. These will include:

a. Guaranteed issue and renewal: Insurers will be limited in applying pre-existing condition restrictions on the issuance of policies and will have to guarantee acceptance of all small groups and individuals wishing to purchase coverage. Similar standards will also be applied to policy renewal.

b. Community rating: Insurers will be required to set rates on the same terms to all BasiCare policyholders, both group members and individuals. Adjustments in community rating will be permitted for the age of enrollee, but will be held within limits, which will narrow over time. Community rating will apply both to group and individual policies.

c. Portability: Persons will no longer have to fear lack of access to coverage due to a change in employment.

4. Insurers failing to comply with the above reforms will be subject to a federal excise tax on gross premium income.

5. All persons will be required to carry a BasiCare policy, either through a group or individually. Low-income persons will receive direct public assistance for the cost of such coverage (see Section C below).

6. Employers will not be permitted to discriminate against employees based on health status.

7. Self-insured groups will be permitted to continue self-insuring, provided they can demonstrate that: 1) they are offering a BasiCare-equivalent benefit plan that adheres to all of BasiCare's conditions, 2) they can show that their costs do not differ substantially from those of insured BasiCare plans, 3) they can demonstrate sufficient financial reserves to assure solvency and protection of patient benefits.

8. "Stop/loss" coverage sold to self-insured groups will also have to follow the same rating, issue, and renewal standards specified for BasiCare (see above).

9. BasiCare policies will be exempt from all current or future state benefit mandates. The federal pre-emption for BasiCare would also apply to state legislation restricting the use of managed care.

10. The health insurance tax deduction for self-employed persons would become the same as that for incorporated group plans. Currently, the group deduction is 100 percent while the self-employed receive 25 percent. Under the new program, the deduction for both categories would be the same—100 percent for the cost of the BasiCare package (see Section E.2 below).

11. Insurers will likely find it desirable to coordinate the development of reinsurance mechanisms (risk pools) to better accommodate the rating and underwriting changes noted above. As under current law, state governments will also be permitted to create or contribute to such pools.

12. Timing: The above-described system for national standardization of the new BasiCare package will go into effect following congressional approval of the Commission-proposed BasiCare package. This should occur three years after enactment. Preceding this will be a phase-in-period, beginning at enactment, in which the small employer market will be subject to a variety of somewhat milder rating and underwriting reforms aimed at increasing fairness and availability of coverage in that market.

C. BasiCare coverage for low-income beneficiaries

1. The new BasiCare package will replace and supplant current Medicaid coverage. This will apply not only to Medicaid's acute care coverage, but to its long-term care coverage as well.

2. The low-income BasiCare assistance program will be administered through non-transferrable federal vouchers redeemable directly to BasiCare carriers or employer plans. Such vouchers will indicate the applicable percentage of BasiCare costs a person or family is eligible to receive. Amounts corresponding to that percentage will be credited to the carrier by the BasiCare program.

3. To facilitate "one-stop shopping" for recipients, the process of application and approval for assistance will be coordinated with actual enrollment in a BasiCare plan.

4. This legislation specifies minimum income levels for which voucher assistance must be provided, but it leaves the Commission discretion to propose increases in these levels, as it may deem appropriate to correspond with the new BasiCare benefits package. At a minimum, persons below 100 percent of the federal poverty line will receive full voucher assistance, and persons between 100 and 200 percent of poverty will receive assistance on a sliding scale based on income. Importantly, even persons receiving

full voucher assistance will be required to pay a small per-service copayment to discourage overutilization.

5. The switch from Medicaid to BasiCare will assure that medical providers are no longer reimbursed at a lower level for treating low-income patients, as they are under the current Medicaid system.

6. To provide for a smooth transition from Medicaid to BasiCare, the Medicaid program will be retained as an administrative unit for a period of 5 years following standardization of BasiCare. During this transition period, present Medicaid-eligible beneficiaries will continue to receive any current Medicaid benefits that may not be included in the new BasiCare package.

7. Federal matching funds for Medicaid benefits not included in the BasiCare package will be discontinued at the end of the transition period, unless the Commission has recommended—and Congress has approved—an alternate plan for disposition of such benefits.

8. Most federal and state funding currently going to Medicaid will be transferred to the BasiCare low-income assistance program (see Section E.1 below).

D. Cost-containment through BasiCare

The BasiCare system will put in place several strong levers for maintaining cost-control in the health care system. These include:

1. The benefit package itself: The BasiCare Commission will be charged with limiting the scope of benefits to a reasonable minimum. Recognizing that defining a core is necessarily a subjective and difficult task, the Commission will nevertheless be largely insulated from the strong provider and consumer pressure that has led, for example, to expensive state benefit mandates under the current system.

2. Global restraint of BasiCare premium increases: Insurers will be required to limit annual increases in BasiCare premiums to a federally defined maximum percentage. More specifically, the BasiCare Commission each year will set a maximum allowable percentage for such premium increases. This percentage will be binding on all insurers.

As it initiates this system of premium increase limits, the BasiCare Commission will also have authority to establish an average base premium for the BasiCare package from which future allowable increases will be measured. This is to guard against the possibility of insurers setting initial rates unreasonably high in anticipation of future increase limits. The Commission will be permitted to apply limited geographic variation in the base rate to reflect regional differences in the cost of providing the BasiCare package.

By establishing a single maximum allowable percentage of increase, government will be putting insurers themselves at risk for rising costs, thereby creating a strong incentive for efficiency. The government's role will be simply to set the overall budget parameters; responsibility for finding the best way to live within these means will be left to the health care system itself. Unlike other cost-control proposals, this approach will avoid the pitfalls of government micro-management of specific insurance rates and provider fees.

It is likely that insurers will react to the new budget controls by forming organized care relationships with providers in order to share the financial risk with those providers. Under such arrangements, both insurers and providers will have a direct financial stake in keeping costs down and delivering care as efficiently as possible.

3. Oversight of provider billing: It is anticipated that the BasiCare premium limits described above will create a market situation in which the only way either providers or insurers can survive financially will be to enter into organized networks of care with each other, under which provider payment would be limited to a negotiated amount.

However, to guard against the possibility of unreasonable provider overcharges to consumers, this plan also gives the BasiCare Commission clear authority to intervene with balance billing limitations in the event such charges do become a problem.

4. Paperwork standardization: All billing and claims paperwork associated with BasiCare will be standardized across carriers, and steps will be taken to provide for universal electronic billing.

E. Financing of BasiCare

The cost-controls noted above should create sizeable reductions in the out-of-pocket costs now paid by most Americans for health care. Unavoidably, however, these savings will be at least partially offset by new costs associated with expanding coverage to the currently uninsured (see Section C. above).

Revenue sources included in this bill are:

1. A limited draw of funds from the current Social Security payroll tax, not to exceed 1 percent of the tax: The Social Security payroll tax is now set at a level higher than is necessary to assure adequate reserves for present and future retirees. As the consumer group Families U.S.A. and others have argued, it is appropriate that at least a modest portion of these resources be devoted to the very useful purpose of overhauling our declining health care system. Just 1 percent of the current tax would equate to $56 billion a year in 1996, and even more as time goes by.

2. Limiting the tax deduction and exclusion for employer contributions to employee benefit plans: Under current law, 100 percent of employer payments to employee health plans are deductible to the employer and tax-exempt to the employee. This will be changed to allow such deduction and exemption only for contributions associated with BasiCare coverage. Additional payments for supplemental coverage will be taxable.

3. "Capturing" existing Medicaid funding: As Medicaid is replaced by BasiCare, its current funding will be redirected to the BasiCare program. At the federal level, this will be accomplished by posting existing Medicaid expenditures to BasiCare and indexing the amount upward each year according to inflation. Similarly, the states will be required to contribute to BasiCare an amount proportionate to their current Medicaid match. This too, will be indexed upward with inflation.

F. Role of supplemental insurance

1. As mentioned above, BasiCare will act as the primary health insurance source for all citizens, but persons or groups will be able to purchase supplemental policies for services not covered by BasiCare.

Leaving room in the market for a supplemental insurance market will serve a dual purpose. First, it will allow persons or groups the freedom of choice to tailor coverage to their own particular needs. And second, a private supplemental market will provide greater incentives for the development of innovative treatments than might be the case were BasiCare the only available option.

2. To guard against potential abuses of the supplemental market, the BasiCare Commission is given strong oversight authority to monitor behavior in the new supplemental market and to intervene with explicit consumer protection or cost controls should market abuses or unreasonable cost growth develop.

G. Assimilation of Medicare

1. The Commission will be directed to develop a comprehensive proposal for integration of the current Medicare program into the BasiCare system. Such proposal, in legislative form, will be required no later than the fifth year after the new BasiCare system has been implemented. Such proposal will be considered in Congress under the same terms of limited debate as the initial BasiCare package (see Section A, below).

2. CHAMPUS and FEHBP would also be assimilated into the BasiCare system.

H. Expansion of community health services

New federal funding will be allocated for Community Health Centers (CHCs) and for other state and local public health clinics. Such centers have a good record of providing inexpensive, cost-effective treatment to indigent and low-income persons. Authorizes $600 million annually in new funding for these programs.

I. Malpractice reform

1. Provides federal preemption for comprehensive medical liability reforms, including mandatory periodic payment of future awards, limits on awards for noneconomic ($250,000) and punitive damages (no greater than total award of compensatory damages), reducing awards by the amount of compensation from collateral sources, and court determination of reasonable attorneys' fees;

2. Establishes a program of grants to states to encourage implementation of alternative dispute resolution (ADR) systems, such as fault-based, no-fault, or binding arbitration. Authorization is $250 million annually for three years.

3. Establishes demonstration projects to test implementation of no-fault systems of compensation. Authorization is $20 million annually for three years.

J. Joint use of equipment and services

1. Clarifies antitrust law regarding joint service ventures to facilitate collaboration among hospitals for the purpose of sharing expensive high technology equipment or services.

2. Specifically, this provision amends the National Cooperative Research Act to allow joint service ventures by two or more hospitals for the delivery of costly services. It will apply the rule-of-reason standard to joint service ventures that are challenged, allowing the court to consider the competitive benefits of the venture.

K. Expanding the supply of health professionals in rural areas

1. Significantly expands funding for the National Health Service Corps, a program to place doctors and other health professionals in underserved areas in exchange for scholarship or loan repayment assistance. Authorization is $120 million for each of the next five years.

2. Physicians will be allowed a tax credit equal to $1,000 a month for practice in a rural health professions shortage area. Nurse practitioners and physician assistants will be eligible for a similar credit equal to $500 per month.

3. Provides additional tax incentives for rural practice, including deductibility of National Health Service Corps loan repayments and deductibility for the cost of basic medical equipment.

S. 2346

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

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the "BasiCare Health Access and Cost Control Act".

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

Sec. 1. Short title; table of contents.

TITLE I—IMMEDIATE REFORMS

Subtitle A—Small Employer Health Insurance Market Reform

Sec. 101. General requirements.
Sec. 102. General issuance requirements.
Sec. 103. Specific contractual requirements.
Sec. 104. State compliance agreements.
Sec. 105. Definitions and other rules.
Sec. 106. Amendment to the Internal Revenue Code of 1986.
Sec. 107. Effective date.

Subtitle B—Community Health Services Expansion

Sec. 111. Establishment of grant program.
Sec. 112. Program to provide for expansion of federally qualified health centers.

Subtitle C—Expansion of Tax Incentives for Self-Employed Individuals

Sec. 121. Permanent increase in deductible health insurance costs for self-employed individuals.

Subtitle D—Expanding the Supply of Health Professionals in Rural Areas

Sec. 131. Expansion of National Health Service Corps.
Sec. 132. Tax incentives for practice in rural areas.

Subtitle E—Malpractice Reform

PART I—DEFINITIONS

Sec. 141. Definitions.

PART II—TORT REFORM OF HEALTH CARE LIABILITY ACTIONS

Sec. 142. Application to civil actions.
Sec. 143. Damages.
Sec. 144. Joint and several liability.
Sec. 145. Statute of limitations.
Sec. 146. Preemption.
Sec. 147. Effective date.

PART III—ALTERNATIVE DISPUTE RESOLUTION SYSTEMS

Sec. 148. Grants for alternative dispute resolution systems.
Sec. 149. Establishment of advisory panel.
Sec. 150. Authorization.

PART IV—DEMONSTRATION PROJECTS FOR NO-FAULT COMPENSATION PROGRAMS

Sec. 151. Demonstration projects for no-fault compensation programs.

Subtitle F—Joint Ventures

Sec. 161. Amendment of the National Cooperative Research Act of 1984.

TITLE II—LONG-TERM REFORMS

Subtitle A—Establishment of Commission and Advisory Board

Sec. 201. The Commission on National Health Care Access and Reform.
Sec. 202. National Advisory Board.
Sec. 203. Authorization of appropriations.

Subtitle B—Reform and Standardization of Private Insurance

Sec. 211. Defining goals and guidelines of Commission.
Sec. 212. Development and submission of legislative proposal.
Sec. 213. Continuing duties and responsibilities of the Commission.
Sec. 214. Basicare benefits package.
Sec. 215. Insurance responsibilities under Basicare.
Sec. 216. Basicare base premium rate.
Sec. 217. Employer responsibilities under Basicare.
Sec. 218. Individual responsibilities under Basicare.
Sec. 219. Self-insured plan requirements.
Sec. 220. Development of standards for managed care plans.
Sec. 221. Preemption of provisions relating to managed care.

Subtitle C—Low-Income Assistance

Sec. 231. Transfer from Medicaid to BasiCare.
Sec. 232. Low-income assistance with costs of BasiCare insurance

Subtitle D—Congressional Consideration of Commission Recommendation

Sec. 241. Rules governing congressional consideration.

Subtitle E—Enforcement Provisions

Sec. 251. Enforcement provisions for carriers, providers, and employers.
Sec. 252. Enforcement provision for individuals.

Subtitle F—Financial Provisions

Sec. 261. BasiCare Trust Fund.
Sec. 262. Tax treatment of costs of BasiCare insurance.

Subtitle G—Definitions

Sec. 271. Definitions.

TITLE I—IMMEDIATE REFORMS

Subtitle A—Small Employer Health Insurance Market Reform

SEC. 101. GENERAL REQUIREMENTS.

Any person issuing an accident and health insurance contract to any small employer shall meet the requirements of sections 102 and 103.

SEC. 102. GENERAL ISSUANCE REQUIREMENTS.

(a) GENERAL RULE.—The requirements of this section are met if any person issuing an accident and health insurance contract to any small employer meets—

(1) the mandatory policy requirements of subsection (b), and

(2) the guaranteed issue requirements of subsection (c).

(b) MANDATORY POLICY REQUIREMENTS.—

(1) IN GENERAL.—The requirements of this subsection are met if any person issuing an accident and health insurance contract to any small employer makes available to such small employer an accident and health insurance contract which provides benefits which are identical to the core benefits described in subsection (d).

(2) PRICING AND MARKETING REQUIREMENTS.—The requirements of paragraph (1) are not met unless—

(A) the price at which the accident and health insurance contract is made available is not greater than the price for such contract determined on the same basis as prices for other accident and health insurance contracts within the same class of business made available by the person to small employers, and

(B) the accident and health insurance contract is made available to small employers using substantially the same marketing methods and other sales practices which are used in selling such other contracts.

(c) GUARANTEED ISSUE.—

(1) IN GENERAL.—The requirements of this subsection are met—

(A) if the person offering accident and health insurance contracts to small employers issues such contracts to any small employer seeking to enter into such a contract, and

(B) if the person offers a managed care arrangement in a State, or a geographic area within a State, to employers that are not small employers, the person offers such managed care arrangement to small employers in the State or geographic area.

(2) FINANCIAL CAPACITY EXCEPTION.—Paragraph (1)(A) shall not require any person to issue an accident and health insurance contract to the extent that the issuance of such contract would result in such person violating any financial solvency standards established by the State in which such contract is to be issued.

(3) EXCEPTIONS FOR CERTAIN EMPLOYERS.—Paragraph (1)(A) shall not apply to a failure to issue an accident and health insurance contract to a small employer if—

(A) the small employer is unable to pay the premium for such contract, or

(B) in the case of a small employer with fewer than 15 employees, such employer fails to enroll at least 60 percent of the employer's eligible employees for coverage under such contract.

(4) SIZE LIMITS FOR MANAGED CARE ARRANGEMENTS.—Paragraph (1)(B) shall not apply to any person who ceases to enroll new small employer groups in a managed care arrangement if it ceases to enroll any new employer groups in such arrangement.

(d) BENEFITS.—

(1) CORE BENEFITS.—For purposes of this section, the term "core benefits" means benefits which are the same benefits provided as of the date of the enactment of this Act under title XVIII of the Social Security Act to individuals entitled to benefits under part A, and enrolled for benefits under part B of such title.

(2) DEDUCTIBLES AND COPAYMENTS.—An accident and health insurance contract shall not be treated as providing the core benefits described in paragraph (1) unless the following requirements are met:

(A) DEDUCTIBLE.—The accident and health insurance contract does not require a deductible amount for any contract year in excess of $500 per individual or $1,000 per family with respect to the core benefits.

(B) LIMIT ON OUT-OF-POCKET EXPENSES.—The accident and health insurance contract does not require out-of-pocket expenses for any contract year in excess of $2,000 per individual or $3,000 per family for the core benefits.

(C) CHILDREN.—

(i) NO DEDUCTIBLES OR COINSURANCE.—In the case of children, there shall be no coinsurance, deductibles, or copayments applicable to covered benefits described in clause (ii).

(ii) ADDITIONAL PREVENTIVE BENEFITS.—Subject to the periodicity schedule established under clause (iii), benefits shall be available for children under the accident and health insurance contract for the following items and services:

(I) Newborn and well-baby care, including normal newborn care and pediatrician services for high-risk deliveries.

(II) Well-child care, including routine office visits, routine immunizations (including the vaccine itself), routine laboratory tests, and preventive dental care.

(iii) PERIODICITY SCHEDULE.—The Secretary, in consultation with the American Academy of Pediatrics, shall establish a schedule of periodicity which reflects the

general, appropriate frequency with which services listed in clause (ii) should be provided to healthy children.

(iv) CHILD DEFINED.—For purposes of this subparagraph, the term "child" means an individual who has not attained age 23.

(D) PREGNANCY-RELATED SERVICES.—

(i) NO DEDUCTIBLES OR COINSURANCE.—In the case of a pregnant woman, there shall be no coinsurance, deductibles, or copayments applicable to covered benefits described in clause (ii).

(ii) ADDITIONAL BENEFITS.—Subject to the periodicity schedule established under clause (iii), benefits shall be available for pregnant women under the accident and health insurance contract for the following items and services:

(I) Prenatal care, including care for all complications of pregnancy.

(II) Inpatient labor and delivery services.

(III) Postnatal care.

(IV) Postnatal family planning services.

(iii) PERIODICITY SCHEDULE.—The Secretary, in consultation with the American College of Obstetrics and Gynecology, shall establish a schedule of periodicity which reflects the general, appropriate frequency with which services listed in clause (ii) should be provided to pregnant women without complications of pregnancy.

(iv) PREGNANT WOMAN.—For purposes of this subparagraph, the term "pregnant woman" means a woman who has been certified by a physician (in a manner specified by the Secretary) as being pregnant and such woman shall be a pregnant woman for the purposes of this subparagraph until the last day of the month in which the 60-day period beginning on the date of termination of the pregnancy ends.

(3) PREEMPTION.—To the extent that the laws of any State or local government regulate or otherwise provide any requirement relating to the benefits to be provided under an accident and health insurance contract which are inconsistent with the provisions of this Act, they are preempted.

SEC. 103. SPECIFIC CONTRACTUAL REQUIREMENTS.

(a) GENERAL RULE.—The requirements of this section are met if any person issuing an accident and health insurance contract to any small employer meets—

(1) the coverage requirements of subsection (b), and

(2) the rating requirements of subsection (c).

(b) COVERAGE REQUIREMENTS.—

(1) IN GENERAL.—The requirements of this subsection are met with respect to any accident and health contract if, under the terms and operation of the contract, the following requirements are met:

(A) GUARANTEED ELIGIBILITY.—No eligible employee (and the spouse or any dependent child (as defined in section 102(d)(2)(C)(iv)) of the employee eligible for coverage) may be excluded from coverage under the contract.

(B) LIMITATIONS ON COVERAGE OF PREEXISTING CONDITIONS.—Any limitation under the contract on any preexisting condition—

(i) may not extend beyond the 6-month period beginning with the date an insured individual is first covered by the contract, and

(ii) may only apply to preexisting conditions which manifested themselves, or for which medical care or advice was sought or recommended, during the 3-month period preceding the date an insured individual is first covered by the contract.

(C) GUARANTEED RENEWABILITY.—

(i) IN GENERAL.—The contract must be renewed at the election of the small employer unless the contract is terminated for cause.

(ii) CAUSE.—For purposes of this subparagraph, the term "cause"—

(I) includes nonpayment of premiums, fraud or misrepresentation, noncompliance with contract provisions (including participation requirements), or misuse of network provisions, but

(II) does not include any reason related to risk characteristics.

(2) WAITING PERIODS.—Paragraph (1)(A) shall not apply to any period an eligible employee is excluded from coverage under the contract solely by reason of a requirement applicable to all employees that a minimum period of service with the employer is required before the employee is eligible for such coverage.

(3) DETERMINATION OF PERIODS FOR RULES RELATING TO PREEXISTING CONDITIONS.—For purposes of paragraph (1)(B), the date on which an insured individual is first covered by an accident and health insurance contract shall be the earlier of—

(A) the date on which coverage under such contract begins, or

(B) the first day of any continuous period—

(i) during which the insured individual was covered under 1 or more other health insurance arrangements, and

(ii) which does not end more than 120 days before the date employment for the employer begins.

(4) CESSATION OF SMALL EMPLOYER HEALTH INSURANCE BUSINESS.—

(A) IN GENERAL.—Except as otherwise provided in this paragraph, a person shall not be treated as failing to meet the requirements of paragraph (1)(C) if such person terminates the class of business which includes the accident and health insurance contract.

(B) NOTICE REQUIREMENT.—Subparagraph (A) shall apply only if the person gives notice of the decision to terminate at least 90 days before the expiration of the contract.

(C) 5-YEAR MORATORIUM.—If, within 5 years of the year in which a person terminates a class of business under subparagraph (A), such person establishes a new class of business which includes contracts within the class of business so terminated, the issuance of such contracts in that year shall be treated as a failure to meet the requirements of paragraph (1)(C).

(D) TRANSFERS.—If, upon a failure to renew a contract to which subparagraph (A) applies, a person transfers such contract to another class of business, such transfer must be made without regard to any risk characteristic.

(c) RATING REQUIREMENTS.—The requirements of this subsection are met with respect to any accident and health contract if the following requirements are met:

(1) LIMITATION ON VARIATION OF PREMIUMS BETWEEN CLASSES OF BUSINESS.—

(A) IN GENERAL.—The base premium rate for any class of business of a person issuing an accident and health insurance contract to a small employer may not exceed the base premium rate for any other class of business by more than 20 percent.

(B) EXCEPTIONS.—Subparagraph (A) shall not apply to a class of business if the applicable regulatory authority determines that—

(i) the class is one for which the person does not reject, and never has rejected, small employers included within the definition of employers eligible for the class of business or otherwise eligible employees and dependents who enroll on a timely basis, based upon their claims experience, health status, industry, or occupation,

(ii) the person does not transfer, and never has transferred, an accident and health insurance contract involuntarily into or out of the class of business, and

(iii) accident and health insurance contracts offered under the class of business are currently available for purchase by small employers at the time an exception to subparagraph (A) is sought by the person.

(2) LIMIT ON VARIATION IN PREMIUM RATES WITHIN A CLASS OF BUSINESS.—For a class of business of a person issuing an accident and health insurance contract to a small employer, the highest premium rates charged during a rating period to small employers with similar demographic characteristics (including age, sex, and geography and not relating to claims experience, health status, industry, occupation, or duration of coverage since issue) for the same or similar coverage, or the highest rates which could be charged to such employers under the rating system for that class of business, shall not exceed an amount that is 1.5 times the base premium rate for the class of business for a rating period (or portion thereof) that occurs in the first 3 years in which this subsection is in effect, and 1.35 times the base premium rate thereafter.

(3) CONSISTENT APPLICATION OF RATING FACTORS.—In establishing premium rates for any accident and health insurance contract offered to small employers—

(A) the person making adjustments with respect to age, sex, or geography must apply such adjustments consistently across small employers, and

(B) no person may use a geographic area that is smaller than a county or smaller than an area that includes all areas in which the first three digits of the zip code are identical, whichever is smaller.

(4) LIMIT ON TRANSFER OF EMPLOYERS AMONG CLASSES OF BUSINESS.—

(A) IN GENERAL.—A person issuing an accident and health insurance contract to a small employer may not transfer a small employer from one class of business to another without the consent of the employer.

(B) OFFERS TO TRANSFER.— The person may not offer to transfer a small employer from one class of business to another unless—

(i) the offer is made without regard to age, sex, geography, claims experience, health status, industry, occupation or the date on which the policy was issued, and

(ii) the same offer is made to all other small employers in the same class of business.

(5) LIMITS ON VARIATION IN PREMIUM INCREASES.—The percentage increase in the premium rate charged to a small employer for a new rating period (determined on an annual basis) may not exceed the sum of the percentage change in the base premium rate plus 5 percentage points.

(6) FULL DISCLOSURE OF RATING PRACTICES.—

(A) IN GENERAL.—At the time a person offers an accident and health insurance contract to a small employer, the person shall fully disclose to the employer all of the following:

(i) Rating practices for small employer accident and health insurance contracts, including rating practices for different populations and benefit designs.

(ii) The extent to which premium rates for the small employer are based on risk characteristics and on factors other than risk characteristics.

(iii) The provisions concerning the person's right to change premium rates, the extent to which premiums can be modified, and the factors which affect changes in premium rates.

(iv) The class of business within which the contract falls, including a description of the grouping of contracts within a class of business.

(B) NOTICE ON EXPIRATION.—A person issuing accident and health insurance contracts to small employers shall provide for notice, at least 60 days before the date of expiration of the accident and health insurance contract, of the terms for renewal of the contract. Such notice shall include an explanation of the extent to which any increase in premiums is due to actual or expected claims experience of the individuals covered under the small employer's accident and health insurance contract.

(7) ACTUARIAL CERTIFICATION.—Each person issuing an accident and health contract to a small employer shall file annually with the applicable regulatory authority a written statement by a qualified health actuary (or other individual acceptable to such authority) that, based upon an examination by the individual which includes a review of the appropriate records and of the actuarial assumptions of the person and methods used by the person in establishing premium rates for small employer accident and health insurance contracts—

(A) the person is in compliance with the applicable provisions of this subsection, and

(B) the rating methods are actuarially sound.

(8) RECORDKEEPING.—Each person issuing an accident and health insurance contract to a small employer shall retain for examination at its principal place of business a complete and detailed description of its rating and renewal underwriting practices and the information on which such practices are based, including the statement described in paragraph (7).

SEC. 104. STATE COMPLIANCE AGREEMENTS.

(a) AGREEMENTS.—The Secretary may, in the discretion of the Secretary, enter into an agreement with any State—

(1) to apply the standards set by the laws of such State for accident and health insurance contracts issued by any person to any small employer in lieu of the requirements of section 102, or

(2) to provide for the State to make the initial determination as to whether a person is in compliance with the provisions of section 102.

(b) STANDARDS.—An agreement may be entered into under subsection (a)(1) only if—

(1) the chief executive officer of the State requests such agreement be entered into,

(2) the Secretary determines that the State standards to be applied under the agreement will apply to substantially all accident and health insurance contracts issued to small employers in such State, and

(3) the Secretary determines that the application of the State standards will carry out the purposes of section 102.

(c) LIMITATION ON WAIVER.—Any agreement entered into under subsection (a)(1) shall not waive the mandatory policy requirements under section 102(b).

(d) TERMINATION.—The Secretary shall terminate any agreement if the Secretary determines that the application of State standards ceases to carry out the purposes of this section.

SEC. 105. DEFINITIONS AND OTHER RULES.

For purposes of this subtitle:

(1) ACCIDENT AND HEALTH INSURANCE CONTRACT.—

(A) IN GENERAL.—The term "accident and health insurance contract" means a contract under which a person authorized under applicable State insurance laws provides a health insurance plan or arrangement to a small employer. Such term does not include any self-insured plan of an employer.

(B) CERTAIN CONTRACTS NOT COVERED.—The term "accident and health insurance contract" does not include any contract—

(i) which provides for accident only, dental only, or disability only coverage,

(ii) which provides coverage as a supplement to liability insurance,

(iii) which provides insurance arising out of a workmen's compensation or similar law, or automobile medical-payment insurance, or

(iv) which provides insurance which is required by law to be contained under any self-insured plan of an employer.

(2) BASE PREMIUM RATE.—The term "base premium rate" means, for each class of business for each rating period, the lowest premium rate which could have been charged under a rating system for that class of business by the person issuing accident and health insurance contracts to small employers with similar demographic or other relevant characteristics (including age, sex, and geography and not relating to claims experience, health status, industry, occupation or duration of coverage since issue) for accident and health insurance contracts with the same or similar coverage.

(3) CLASS OF BUSINESS.—

(A) IN GENERAL.—Except as provided in subparagraph (B), the term "class of business" means, with respect to a person, all of the small employers with an accident and health insurance contract issued by the person.

(B) DISTINCT GROUPS.—

(i) IN GENERAL.—Subject to clause (ii), a distinct group of small employers with accident and health insurance contracts issued by a person may be treated as a class of business by such person if all of the contracts in such group—

(I) are marketed and sold through individuals and organizations that do not participate in the marketing or sale of other distinct groups by the person,

(II) have been acquired from another person as a distinct group, or

(III) are provided through an association with membership of not less than 25 small employers that has been formed for purposes other than obtaining health insurance.

(ii) EXCEPTION ALLOWED.—Except as provided in subparagraph (C), a person may not establish more than one distinct group of small employers for each category specified in clause (i).

(C) SPECIAL RULE.—A person may establish up to 2 groups under each category in subparagraph (A) or (B) to account for differences in characteristics (other than differences in contract benefits) of accident and health insurance contracts that are expected to produce substantial variation in health care costs.

(4) MANAGED HEALTH CARE ARRANGEMENT.—The term "managed health care arrangement" means an arrangement which integrates the financing and delivery of health care services to covered individuals by employing the following:

(A) Contracts with selected health care providers to furnish health care services to members.

(B) The adoption of explicit standards for the selection and recertification of providers.

(C) An explicit, formal program for ongoing quality assurance and utilization review.

(D) Significant financial incentives for members to use the providers and procedures associated with the arrangement.

(5) CHARACTERISTICS.—

(A) IN GENERAL.—The term "characteristics" means, with respect to any insurance rating system, the factors used in determining rates.

(B) RISK CHARACTERISTICS.—The term "risk characteristics" means factors related to the health risks of individuals, including health status, prior claims experience, the duration since the date of issue of a health insurance plan or arrangement, industry, and occupation.

(C) GEOGRAPHIC FACTORS.—In applying geographic location as a characteristic, a person may not use for purposes of this subtitle areas smaller than Census Bureau designations of metropolitan statistical areas and nonmetropolitan statistical areas.

(6) ELIGIBLE EMPLOYEE.—The term "eligible employee" means, with respect to an employer, any employee who normally works at least 30 hours per week for that employer. For purposes of this paragraph, the term "employee" includes a self-employed individual as defined in section 401(c)(1) of the Internal Revenue Code of 1986.

(7) PERSON.—The term "person" includes a licensed insurance company, a prepaid hospital or medical service plan, a health maintenance organization, or in States which have distinct insurance licensure requirements, a multiple employer welfare arrangement.

(8) QUALIFIED HEALTH ACTUARY.—The term "qualified health actuary" means a member of the American Academy of Actuaries who is qualified by reason of prior and continuing education and relevant experience to render the actuarial opinion.

(9) SECRETARY.—The term "Secretary" means the Secretary of Health and Human Services, or the delegate of the Secretary.

(10) SMALL EMPLOYER.—The term "small employer" means, with respect to a calendar year, an employer who normally employs more than 1 but less than 51 eligible employees on a typical business day. For purposes of the preceding sentence, all employers covered under the same health insurance plan or arrangement covered by a contract shall be treated as 1 employer.

SEC. 106. AMENDMENT TO THE INTERNAL REVENUE CODE OF 1986.

(a) IN GENERAL.—Chapter 47 of the Internal Revenue Code of 1986 (relating to excise taxes on qualified pension, etc. plans) is amended by adding at the end thereof the following new section:

"SEC. 5000A. FAILURE TO SATISFY CERTAIN STANDARDS FOR HEALTH INSURANCE.

"(a) GENERAL RULE.—In the case of any person issuing an accident and health insurance contract to a small employer, there is hereby imposed a tax on the failure of such person to meet at any time during any taxable year the applicable requirements of section 101 of the BasiCare Health Access and Cost Control Act. The Secretary of Health and Human Services shall determine whether any person meets the requirements of such section.

"(b) AMOUNT OF TAX.—

"(1) IN GENERAL.—The amount of tax imposed by subsection (a) by reason of 1 or more failures during a taxable year shall be equal to 35 percent of the gross premiums received during such taxable year with respect to all accident and health insurance contracts issued to a small employer by the person on whom such tax is imposed.

"(2) GROSS PREMIUMS.—For purposes of paragraph (1), gross premiums shall include any consideration received with respect to any accident and health insurance contract.

"(3) CONTROLLED GROUPS.—For purposes of paragraph (1)—

"(A) CONTROLLED GROUP OF CORPORATIONS.—All corporations which are members of the same controlled group of corporations shall be treated as 1 person. For purposes of the preceding sentence, the term 'controlled group of corporations' has the meaning given to such term by section 1563(a), except that—

"(i) 'more than 50 percent' shall be substituted for 'at least 80 percent' each place it appears in section 1563(a)(1), and

"(ii) the determination shall be made without regard to subsections (a)(4) and (e)(3)(C) of section 1563.

"(B) PARTNERSHIPS, PROPRIETORSHIPS, ETC., WHICH ARE UNDER COMMON CONTROL.—Under regulations prescribed by the Secretary, all trades or business (whether or not incorporated) which are under common control shall be treated as 1 person. The regulations prescribed under this subparagraph shall be based on principles similar to the principles which apply in the case of subparagraph (A).

"(c) LIMITATION ON TAX.—

"(1) TAX NOT TO APPLY WHERE FAILURE NOT DISCOVERED EXERCISING REASONABLE DILIGENCE.—No tax shall be imposed by subsection (a) with respect to any failure for which it is established to the satisfaction of the Secretary that the person on whom the tax is imposed did not know, and exercising reasonable diligence would not have known, that such failure existed.

"(2) TAX NOT TO APPLY WHERE FAILURES CORRECTED WITHIN 30 DAYS.—No tax shall be imposed by subsection (a) with respect to any failure if—

"(A) such failure was due to reasonable cause and not to willful neglect, and

"(B) such failure is corrected during the 30-day period beginning on the first date any of the persons on whom the tax is imposed knew, or exercising reasonable diligence would have known, that such failure existed.

"(3) WAIVER BY SECRETARY.—In the case of a failure which is due to reasonable cause and not to willful neglect, the Secretary may waive part or all of the tax imposed by subsection (a) to the extent that the payment of such tax would be excessive relative to the failure involved.

"(d) DEFINITIONS.—For purposes of this section the terms 'accident and health insurance contract', 'small employer', 'eligible employee', and 'person' shall have the same meanings given such terms under section 105 of the BasiCare Health Access and Cost Control Act.".

(b) NONDEDUCTIBILITY OF TAX.—Paragraph (6) of section 275(a) of such Code (relating to nondeductibility of certain taxes) is amended by inserting "47," after "46,".

(c) CLERICAL AMENDMENTS.—The table of sections for such chapter 47 is amended by adding at the end thereof the following new item:

"Sec. 5000A. Failure to satisfy certain standards for health insurance.".

(d) EFFECTIVE DATES.—

(1) IN GENERAL.—The amendments made by subsections (a) and (c) shall take effect on the date of the enactment of this Act.

(2) NONDEDUCTIBILITY OF TAX.—The amendment made by subsection (b) shall apply to taxable years beginning after December 31, 1992.

SEC. 107. EFFECTIVE DATE.

(a) IN GENERAL.—Except as provided in section 106 and subsection (b), this subtitle shall apply to contracts issued, or renewed, after the date of the enactment of this Act and before the effective date of the legislation described in section 212(a) or 213(a) of this Act.

(b) GUARANTEED ISSUE.—The provisions of section 102(c) shall apply to contracts which are issued, or renewed, after the date which is 12 months after the date of the enactment of this Act and before the effective date of the legislation described in section 212(a) or 213(a) of this Act.

Subtitle B—Community Health Services Expansion

SEC. 111. ESTABLISHMENT OF GRANT PROGRAM.

Subpart I of part D of title III of the Public Health Service Act (42 U.S.C. 254b et seq.) is amended by adding at the end thereof the following new section:

"SEC. 330A. COMMUNITY-BASED PRIMARY HEALTH CARE GRANT PROGRAM.

"(a) ESTABLISHMENT.—The Secretary shall establish and administer a program to provide allotments to States to enable such States to provide grants for the creation or enhancement of community-based primary health care entities that provide services to low-income or medically underserved populations.

"(b) ALLOTMENTS TO STATES.—

"(1) IN GENERAL.—From the amount available for allotment under subsection (h) for a fiscal year, the Secretary shall allot to each State an amount equal to the product of the grant share of the State (as determined under paragraph (2)) multiplied by such amount available.

"(2) GRANT SHARE.—

"(A) IN GENERAL.—For purposes of paragraph (1), the grant share of a State shall be the product of the need-adjusted population of the State (as determined under subparagraph (B)) multiplied by the Federal matching percentage of the State (as determined under subparagraph (C)), expressed as a percentage of the sum of the products of such factors for all States.

"(B) NEED-ADJUSTED POPULATION.—

"(i) IN GENERAL.—For purposes of subparagraph (A), the need-adjusted population of a State shall be the product of the total population of the State (as estimated by the Secretary of Commerce) multiplied by the need index of the State (as determined under clause (ii)).

"(ii) NEED INDEX.—For purposes of clause (i), the need index of a State shall be the ratio of—

"(I) the weighted sum of the geographic percentage of the State (as determined under clause (iii)), the poverty percentage of the State (as determined under clause (iv)), and the multiple grant percentage of the State (as determined under clause (v)); to

"(II) the general population percentage of the State (as determined under clause (vi)).

"(iii) GEOGRAPHIC PERCENTAGE.—

"(I) IN GENERAL.—For purposes of clause (ii)(I), the geographic percentage of the State shall be the estimated population of the State that is residing in nonurbanized areas (as determined under subclause (II)) expressed as a percentage of the total nonurbanized population of all States.

"(II) NONURBANIZED POPULATION.—For purposes of subclause (I), the estimated population of the State that is residing in nonurbanized areas shall be one minus the urbanized population of the State (as determined using the most recent decennial census), expressed as a percentage of the total population of the State (as determined using the most recent decennial census), multiplied by the current estimated population of the State.

"(iv) POVERTY PERCENTAGE.—For purposes of clause (ii)(I), the poverty percentage of the State shall be the estimated number of people residing in the State with incomes below 200 percent of the income official poverty line (as determined by the Office of Management and Budget) expressed as a percentage of the total number of such people residing in all States.

"(v) MULTIPLE GRANT PERCENTAGE.—For purposes of clause (ii)(I), the multiple grant percentage of the State shall be the amount of Federal funding received by the State under grants awarded under sections 329, 330, and 340, expressed as a percentage of the total amounts received under such grants by all States. With respect to a State, such percentage shall not exceed twice the general population percentage of the State under clause (vi) or be less than one-half of the States general population percentage.

"(vi) GENERAL POPULATION PERCENTAGE.—For purposes of clause (ii)(II), the general population percentage of the State shall be the total population of the State (as determined by the Secretary of Commerce) expressed as a percentage of the total population of all States.

"(C) FEDERAL MATCHING PERCENTAGE.—

"(i) IN GENERAL.—For purposes of subparagraph (A), the Federal matching percentage of the State shall be equal to one, less the State matching percentage (as determined under clause (ii)).

"(ii) STATE MATCHING PERCENTAGE.—For purposes of clause (i), the State matching percentage of the State shall be 0.25 multiplied by the ratio of the total taxable resource percentage (as determined under clause (iii)) to the need-adjusted population of the State (as determined under subparagraph (B)).

"(iii) TOTAL TAXABLE RESOURCE PERCENTAGE.—For purposes of clause (ii), the total taxable resources percentage of the State shall be the total taxable resources of a State (as determined by the Secretary of the Treasury) expressed as a percentage of the sum of the total taxable resources of all States.

"(3) ANNUAL ESTIMATES.—

"(A) IN GENERAL.—If the Secretary of Commerce does not produce the annual estimates required under paragraph (2)(B)(iv), such estimates shall be determined by multiplying the percentage of the population of the State that is below 200 percent of the income official poverty line as determined using the most recent decennial census by the most recent estimate of the total population of the State. Except as provided in subparagraph (B), the calculations required under this subparagraph shall be made based on the most recent 3-year average of the total taxable resources of individuals within the State.

"(B) DISTRICT OF COLUMBIA.—Notwithstanding subparagraph (A), the calculations required under such subparagraph with respect to the District of Columbia shall be based on the most recent 3-year average of the personal income of individuals residing within the District as a percentage of the personal income for all individuals residing within the District, as determined by the Secretary of Commerce.

"(4) MATCHING REQUIREMENT.—A State that receives an allotment under this section shall make available State resources (either directly or indirectly) to carry out this section in an amount that shall equal the State matching percentage for the State (as determined under paragraph (2)(C)(ii)) divided by the Federal matching percentage (as determined under paragraph (2)(C)).

"(c) APPLICATION.—

"(1) IN GENERAL.—To be eligible to receive an allotment under this section, a State shall prepare and submit an application to

the Secretary at such time, in such manner, and containing such information as the Secretary may by regulation require.

"(2) ASSURANCES.—A State application submitted under paragraph (1) shall contain an assurance that—

"(A) the State will use amounts received under its allotment consistent with the requirements of this section; and

"(B) the State will provide, from non-Federal sources, the amounts required under subsection (b)(4).

"(d) USE OF FUNDS.—

"(1) IN GENERAL.—The State shall use amounts received under this section to award grants to eligible public and nonprofit private entities, or consortia of such entities, within the State to enable such entities or consortia to provide services of the type described in paragraph (2) of section 329(h) to low-income or medically underserved populations.

"(2) ELIGIBILITY.—To be eligible to receive a grant under paragraph (1), an entity or consortium shall—

"(A) prepare and submit to the administering entity of the State, an application at such time, in such manner, and containing such information as such administering entity may require, including a plan for the provision of services of the type described in paragraph (3);

"(B) provide assurances that services will be provided under the grant at fee rates established or determined in accordance with section 330(e)(3)(F); and

"(C) provide assurances that in the case of services provided to individuals with health insurance, such insurance shall be used as the primary source of payment for such services.

"(3) SERVICES.—The services to be provided under a grant awarded under paragraph (1) shall include—

"(A) one or more of the types of primary health services described in section 330(b)(1);

"(B) one or more of the types of supplemental health services described in section 330(b)(2); and

"(C) any other services determined appropriate by the administering entity of the State.

"(4) TARGET POPULATIONS.—Entities or consortia receiving grants under paragraph (1) shall, in providing the services described in paragraph (3), substantially target populations of low-income or medically underserved populations within the State who reside in medically underserved or health professional shortage areas, areas certified as underserved under the rural health clinic program, or other areas determined appropriate by the administering entity of the State, within the State.

"(5) PRIORITY.—In awarding grants under paragraph (1), the State shall—

"(A) give priority to entities or consortia that can demonstrate through the plan submitted under paragraph (2) that—

"(i) the services provided under the grant will expand the availability of primary care services to the maximum number of low-income or medically underserved populations who have no access to such care on the date of the grant award; and

"(ii) the delivery of services under the grant will be cost-effective; and

"(B) ensure that an equitable distribution of funds is achieved among urban and rural entities or consortia.

"(e) REPORTS AND AUDITS.—Each State shall prepare and submit to the Secretary annual reports concerning the State's activities under this section which shall be in such form and contain such information as the Secretary determines appropriate. Each such State shall establish fiscal control and fund accounting procedures as may be necessary to assure that amounts received under this section are being disbursed properly and are accounted for, and include the results of audits conducted under such procedures in the reports submitted under this subsection.

"(f) PAYMENTS.—

"(1) ENTITLEMENT.—Each State for which an application has been approved by the Secretary under this section shall be entitled to payments under this section for each fiscal year in an amount not to exceed the State's allotment under subsection (b) to be expended by the State in accordance with the terms of the application for the fiscal year for which the allotment is to be made.

"(2) METHOD OF PAYMENTS.—The Secretary may make payments to a State in installments, and in advance or by way of reimbursement, with necessary adjustments on account of overpayments or underpayments, as the Secretary may determine.

"(3) STATE SPENDING OF PAYMENTS.—Payments to a State from the allotment under subsection (b) for any fiscal year must be expended by the State in that fiscal year or in the succeeding fiscal year.

"(g) DEFINITION.—As used in this section, the term 'administering entity of the State' means the agency or official designated by the chief executive officer of the State to administer the amounts provided to the State under this section.

"(h) FUNDING.—Notwithstanding any other provision of law, the Secretary shall use 50 percent of the amounts that the Secretary is required to utilize under section 330B(h) in each fiscal year to carry out this section.".

SEC. 112. PROGRAM TO PROVIDE FOR EXPANSION OF FEDERALLY QUALIFIED HEALTH CENTERS.

(a) IN GENERAL.—Subpart I of part D of title III of the Public Health Service Act (42 U.S.C. 254b et seq.) (as amended by section 111) is further amended by adding at the end thereof the following new section:

"SEC. 330B. PROGRAM TO PROVIDE FOR EXPANSION OF FEDERALLY QUALIFIED HEALTH CENTERS.

"(a) ESTABLISHMENT OF HEALTH SERVICES ACCESS PROGRAM.—From amounts appropriated under this section, the Secretary shall, acting through the Bureau of Health Care Delivery Assistance, award grants under this section to federally qualified health centers (hereafter referred to in this section as 'FQHCs') and other entities and organizations submitting applications under this section (as described in subsection (c)) for the purpose of providing access to services for medically underserved populations (as defined in section 330(b)(3)) or in high impact areas (as defined in section 329(a)(5)) not currently being served by a FQHC.

"(b) ELIGIBILITY FOR GRANTS.—

"(1) IN GENERAL.—The Secretary shall award grants under this section to entities or organizations described in this paragraph and paragraph (2) which have submitted a proposal to the Secretary to expand such entities or organizations operations (including expansions to new sites (as determined necessary by the Secretary)) to serve medically underserved populations or high impact areas not currently served by a FQHC and which—

"(A) have as of the date of enactment of the BasiCare Health Access and Cost Control Act, been certified by the Secretary as a FQHC under section 1905(l)(2)(B) of the Social Security Act;

"(B) have submitted applications to the Secretary to qualify as FQHCs under section 1905(l)(2)(B) of the Social Security Act; or

"(C) have submitted a plan to the Secretary which provides that the entity or organization will meet the requirements to qualify as a FQHC when operational.

"(2) NON-FQHC ENTITIES.—

"(A) ELIGIBILITY.—The Secretary shall also make grants under this section to any public or private nonprofit agency, or any health care entity or organization which—

"(i) meets the requirements necessary to qualify as a FQHC, except the requirement that such agency, entity, or organization has a consumer majority governing board,

"(ii) has submitted a proposal to the Secretary to provide those services provided by a FQHC as defined in section 1905(l)(2)(B) of the Social Security Act, and

"(iii) is designed to promote access to primary care services or to reduce reliance on hospital emergency rooms or other high cost providers of primary health care services,

provided that the proposal described in clause (ii) is developed by the agency, entity, or organization (or such agencies, entities, or organizations acting in a consortium in a community) with the review and approval of the Governor of the State in which such agency, entity, or organization is located.

"(B) LIMITATION.—The Secretary shall provide in making grants to entities or organizations described in this paragraph that not more than 10 percent of the funds provided for grants under this section shall be made available for grants to such entities or organizations.

"(c) APPLICATION REQUIREMENTS.—

"(1) IN GENERAL.—In order to be eligible to receive a grant under this section, a FQHC or other entity or organization must submit an application in such form and at such time as the Secretary shall prescribe and which meets the requirements of this subsection.

"(2) REQUIREMENTS.—An application submitted under this section must provide—

"(A)(i) for a schedule of fees or payments for the provision of the services provided by the entity or organization designed to cover its reasonable costs of operations; and

"(ii) for a corresponding schedule of discounts to be applied to such fees or payments, based upon the patient's ability to pay (determined by using a sliding scale formula based on the income of the patient);

"(B) assurances that the entity or organization provides services to persons who are eligible for benefits under title XVIII of the Social Security Act, for medical assistance under title XIX of such Act, or for assistance for medical expenses under any other public assistance program or private health insurance program; and

"(C) assurances that the entity or organization has made and will continue to make every reasonable effort to collect reimbursement for services—

"(i) from persons eligible for assistance under any of the programs described in subparagraph (B); and

"(ii) from patients not entitled to benefits under any such programs.

"(d) LIMITATIONS ON USE OF FUNDS.—

"(1) IN GENERAL.—From the amounts awarded to a FQHC or other entity or organization under this section, funds may be used for purposes of planning but may only be expended for the costs of—

"(A) assessing the needs of the populations or proposed areas to be served;

"(B) preparing a description of how the needs identified will be met; and

"(C) development of an implementation plan that addresses—

"(i) recruitment and training of personnel; and

"(ii) activities necessary to achieve operational status in order to meet FQHC requirements under 1905(l)(2)(B) of the Social Security Act.

"(2) RECRUITING, TRAINING AND COMPENSATION OF STAFF.—From the amounts awarded to an entity or organization under this section, funds may be used for the purposes of paying for the costs of recruiting, training, and compensating staff (clinical and associated administrative personnel (to the extent such costs are not already reimbursed under title XIX of the Social Security Act or any other State or Federal program)) to the extent necessary to allow the entity or organization to operate at new or expanded existing sites.

"(3) FACILITIES AND EQUIPMENT.—From the amounts awarded to an entity or organization under this section, funds may be expended for the purposes of acquiring facilities and equipment but only for the costs of—

"(A) construction of new buildings (to the extent that new construction is found to be the most cost-efficient approach by the Secretary);

"(B) acquiring, expanding, or modernizing existing facilities;

"(C) purchasing essential (as determined by the Secretary) equipment; and

"(D) amortization of principal and payment of interest on loans obtained for purposes of site construction, acquisition, modernization, or expansion, as well as necessary equipment.

"(4) SERVICES.—From the amounts awarded to an entity or organization under this section, funds may be expended for the payment of services but only for the costs of—

"(A) providing or arranging for the provision of all services through the entity or organization necessary to qualify such entity or organization as a FQHC under section 1905(l)(2)(B) of the Social Security Act;

"(B) providing or arranging for any other service that a FQHC may provide and be reimbursed for under title XIX of the Social Security Act; and

"(C) providing any unreimbursed costs of providing services as described in section 330(a) to patients.

"(e) PRIORITIES IN THE AWARDING OF GRANTS.—

"(1) CERTIFIED FQHCS.—The Secretary shall give priority in awarding grants under this section to entities and organizations which have, as of the date of enactment of the BasiCare Health Access and Cost Control Act, been certified as a FQHC under section 1905(l)(2)(B) of the Social Security Act and which have submitted a proposal to the Secretary to expand their operations (including expansion to new sites) to serve medically underserved populations for high impact areas not currently served by a FQHC. The Secretary shall give first priority in awarding grants under this section to those FQHCs or other entities or organizations which propose to serve populations with the highest degree of unmet need, and which can demonstrate the ability to expand their operations in the most efficient manner.

"(2) QUALIFIED FQHCS.—The Secretary shall give second priority in awarding grants to entities and organizations which have submitted applications to the Secretary which demonstrate that the entities or organizations will qualify as FQHCs under section 1905(l)(2)(B) of the Social Security Act before they provide or arrange for the provision of services supported by funds awarded under this section, and which are serving or proposing to serve medically underserved populations or high impact areas which are not currently served (or proposed to be served) by a FQHC.

"(3) EXPANDED SERVICES AND PROJECTS.—The Secretary shall give third priority in awarding grants in subsequent years to those FQHCs or other entities or organizations which have provided for expanded services and projects and are able to demonstrate that such entities or organizations will incur significant unreimbursed costs in providing such expanded services.

"(f) RETURN OF FUNDS TO SECRETARY FOR COSTS REIMBURSED FROM OTHER SOURCES.—To the extent that a FQHC or other entity or organization receiving funds under this section is reimbursed from another source for the provision of services to an individual, and does not use such increased reimbursement to expand services furnished, to expand areas served, to compensate for costs of unreimbursed services provided to patients, or to promote recruitment, training, or retention of personnel, such excess revenues shall be returned to the Secretary.

"(g) TERMINATION OF GRANTS.—

"(1) FAILURE TO MEET FQHC REQUIREMENTS.—

"(A) IN GENERAL.—With respect to any entity or organization that is receiving funds awarded under this section and which subsequently fails to meet the requirements to qualify as a FQHC under section 1905(l)(2)(B) of the Social Security Act or is an entity or organization that is not required to meet the requirements to qualify as a FQHC under section 1905(l)(2)(B) of the Social Security Act but fails to meet the requirements of this section, the Secretary shall terminate the award of funds under this section to such entity or organization.

"(B) NOTICE.—Prior to any termination of funds under this section to an entity or organization, the entity or organization shall be entitled to 60 days' prior notice of termination and, as provided by the Secretary in regulations, an opportunity to correct any deficiencies in order to allow the entity or organization to continue to receive funds under this section.

"(2) REQUIREMENTS.—Upon any termination of funding under this section, the Secretary may (to the extent practicable)—

"(A) sell any property (including equipment) acquired or constructed by the entity or organization using funds made available under this section or transfer such property to another FQHC, except that the Secretary shall reimburse any costs which were incurred by the entity or organization in acquiring or constructing such property (including equipment) which were not supported by grants under this section; and

"(B) recoup any funds provided to an entity or organization terminated under this section.

"(h) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out this section $600,000,000 for each of the fiscal years 1993 through 1997.".

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall become effective with respect to services furnished by a federally qualified health center or other qualifying entity or organization described in this section beginning on or after the date of enactment of this Act.

Subtitle C—Expansion of Tax Incentives for Self-Employed Individuals

SEC. 121. PERMANENT INCREASE IN DEDUCTIBLE HEALTH INSURANCE COSTS FOR SELF-EMPLOYED INDIVIDUALS.

(a) IN GENERAL.—Paragraph (1) of section 162(l) of the Internal Revenue Code of 1986 (relating to special rules for health insurance costs of self-employed individuals) is amended by striking "25 percent" and inserting "100 percent".

(b) PERMANENT DEDUCTION.—Section 162(l) of such Code is amended by striking paragraph (6).

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

Subtitle D—Expanding the Supply of Health Professionals in Rural Areas

SEC. 131. EXPANSION OF NATIONAL HEALTH SERVICE CORPS.

Section 338H(b) of the Public Health Service Act (42 U.S.C. 254q(b)) is amended—

(1) in paragraph (1), by striking "and such sums" and all that follows through the end thereof and inserting "$120,000,000 for each of the fiscal years 1992 through 1996."; and

(2) in paragraph (2)—

(A) by redesignating subparagraphs (A) and (B) as subparagraphs (B) and (C), respectively; and

(B) by inserting before subparagraph (B) (as so redesignated) the following new subparagraph:

"(A) IN GENERAL.—Of the amount appropriated under paragraph (1) for each fiscal year, the Secretary shall utilize 25 percent of such amount to carry out section 338A and 75 percent of such amount to carry out section 338B.".

SEC. 132. TAX INCENTIVES FOR PRACTICE IN RURAL AREAS.

(a) NONREFUNDABLE CREDIT FOR CERTAIN PRIMARY HEALTH SERVICES PROVIDERS.—

(1) IN GENERAL.—Subpart A of part IV of subchapter A of chapter 1 of the Internal Revenue Code of 1986 (relating to nonrefundable personal credits) is amended by inserting after section 25 the following new section:

"SEC. 25A. PRIMARY HEALTH SERVICES PROVIDERS.

"(a) ALLOWANCE OF CREDIT.—In the case of a qualified primary health services provider, there is allowed as a credit against the tax imposed by this chapter for any taxable year in a mandatory service period an amount equal to the product of—

"(1) the lesser of—

"(A) the number of months of such period occurring in such taxable year, or

"(B) 36 months, reduced by the number of months taken into account under this paragraph with respect to such provider for all preceding taxable years (whether or not in the same mandatory service period), multiplied by

"(2) $1,000 ($500 in the case of a qualified primary health services provider who is a physician assistant or a nurse practitioner).

"(b) QUALIFIED PRIMARY HEALTH SERVICES PROVIDER.—For purposes of this section, the term 'qualified primary health services provider' means any physician, physician assistant, or nurse practitioner who for any month during a mandatory service period is certified by the Bureau to be a primary health services provider who—

"(1) is providing primary health services—

"(A) full time, and

"(B) to individuals at least 80 percent of whom reside in a rural health professional shortage area,

"(2) is not receiving during such year a scholarship under the National Health Service Corps Scholarship Program or a loan repayment under the National Health Service Corps Loan Repayment Program,

"(3) is not fulfilling service obligations under such Programs, and

"(4) has not defaulted on such obligations.

"(c) MANDATORY SERVICE PERIOD.—For purposes of this section, the term 'mandatory service period' means the period of 60 consecutive calendar months beginning with the first month the taxpayer is a qualified primary health services provider.

"(d) DEFINITIONS AND SPECIAL RULES.—For purposes of this section—

"(1) BUREAU.—The term 'Bureau' means the Bureau of Health Care Delivery and Assistance, Health Resources and Services Administration of the United States Public Health Service.

"(2) PHYSICIAN.—The term 'physician' has the meaning given to such term by section 1861(r) of the Social Security Act.

"(3) PHYSICIAN ASSISTANT; NURSE PRACTITIONER.—The terms 'physician assistant' and 'nurse practitioner' have the meanings given to such terms by section 1861(aa)(3) of the Social Security Act.

"(4) PRIMARY HEALTH SERVICES PROVIDER.—The term 'primary health services provider' means a provider of primary health services (as defined in section 330(b)(1) of the Public Health Service Act).

"(5) RURAL HEALTH PROFESSIONAL SHORTAGE AREA.—The term 'rural health professional shortage area' means—

"(A) a class 1 or class 2 rural health professional shortage area (as defined in section 332(a)(1)(A) of the Public Health Service Act) in a rural area (as determined under section 1886(d)(2)(D) of the Social Security Act), or

"(B) an area which is determined by the Secretary of Health and Human Services as equivalent to an area described in subparagraph (A) and which is designated by the Bureau of the Census as not urbanized.

"(C) a community that is certified as underserved by the Secretary for purposes of participation in the rural health clinic program under title XVIII of the Social Security Act.

"(e) RECAPTURE OF CREDIT.—

"(1) IN GENERAL.—If, during any taxable year, there is a recapture event, then the tax of the taxpayer under this chapter for such taxable year shall be increased by an amount equal to the product of—

"(A) the applicable percentage, and

"(B) the aggregate unrecaptured credits allowed to such taxpayer under this section for all prior taxable years.

"(2) APPLICABLE RECAPTURE PERCENTAGE.—

"(A) IN GENERAL.—For purposes of this subsection, the applicable recapture percentage shall be determined from the following table:

"If the recapture event occurs during:	The applicable recapture percentage during:
Months 1-24	100
Months 25-36	75
Months 37-48	50
Months 49-60	25
Months 61 and thereafter	0.

"(B) TIMING.—For purposes of subparagraph (A), month 1 shall begin on the first day of the mandatory service period.

"(3) RECAPTURE EVENT DEFINED.—

"(A) IN GENERAL.—For purposes of this subsection, the term 'recapture event' means the failure of the taxpayer to be a qualified primary health services provider for any month during any mandatory service period.

"(B) CESSATION OF DESIGNATION.—The cessation of the designation of any area as a rural health professional shortage area after the beginning of the mandatory service period for any taxpayer shall not constitute a recapture event.

"(C) SECRETARIAL WAIVER.—The Secretary may waive any recapture event caused by extraordinary circumstances.

"(4) NO CREDITS AGAINST TAX.—Any increase in tax under this subsection shall not be treated as a tax imposed by this chapter for purposes of determining the amount of any credit under subpart A, B, or D of this part.".

(2) CLERICAL AMENDMENT.—The table of sections for subpart A of part IV of subchapter A of chapter 1 of such Code is amended by inserting after the item relating to section 25 the following new item:

"Sec. 25A. Primary health services providers.".

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

(b) NATIONAL HEALTH SERVICE CORPS LOAN REPAYMENTS EXCLUDED FROM GROSS INCOME.—

(1) IN GENERAL.—Part III of subchapter B of chapter 1 of the Internal Revenue Code of 1986 (relating to items specifically excluded from gross income) is amended by redesignating section 136 as section 137 and by inserting after section 135 the following new section:

"SEC. 136. NATIONAL HEALTH SERVICE CORPS LOAN REPAYMENTS.

"(a) GENERAL RULE.—Gross income shall not include any qualified loan repayment.

"(b) QUALIFIED LOAN REPAYMENT.—For purposes of this section, the term 'qualified loan repayment' means any payment made on behalf of the taxpayer by the National Health Service Corps Loan Repayment Program under section 338B(g) of the Public Health Service Act.".

(2) CONFORMING AMENDMENT.—Paragraph (3) of section 338B(g) of the Public Health Service Act is amended by striking "Federal, State, or local" and inserting "State or local".

(3) CLERICAL AMENDMENT.—The table of sections for part III of subchapter B of chapter 1 of the Internal Revenue Code of 1986 is amended by striking the item relating to section 136 and inserting the following:

"Sec. 136. National Health Service Corps loan repayments.

"Sec. 137. Cross references to other Acts.".

(4) EFFECTIVE DATE.—The amendments made by this subsection shall apply to payments made under section 338B(g) of the Public Health Service Act after the date of the enactment of this Act.

(c) EXPENSING OF MEDICAL EQUIPMENT.—

(1) IN GENERAL.—Section 179 of the Internal Revenue Code of 1986 (relating to election to expense certain depreciable business assets) is amended—

(A) by striking paragraph (1) of subsection (b) and inserting the following:

"(1) DOLLAR LIMITATION.—

"(A) GENERAL RULE.—The aggregate cost which may be taken into account under subsection (a) for any taxable year shall not exceed $10,000.

"(B) RURAL HEALTH CARE PROPERTY.—In the case of rural health care property, the aggregate cost which may be taken into account under subsection (a) for any taxable year shall not exceed $25,000, reduced by the amount otherwise taken into account under subsection (a) for such year."; and

(B) by adding at the end of subsection (d) the following new paragraph:

"(11) RURAL HEALTH CARE PROPERTY.—For purposes of this section, the term 'rural health care property' means section 179 property used by a physician (as defined in section 1861(r) of the Social Security Act) in the active conduct of such physician's full-time trade or business of providing primary health services (as defined in section 330(b)(1) of the Public Health Service Act) in a rural health professional shortage area (as defined in section 25A(d)(5)).".

(2) EFFECTIVE DATE.—The amendments made by this subsection shall apply to property placed in service in taxable years beginning after the date of enactment of this Act.

(d) DEDUCTION FOR STUDENT LOAN PAYMENTS BY MEDICAL PROFESSIONALS PRACTICING IN RURAL AREAS.—

(1) INTEREST ON STUDENT LOANS NOT TREATED AS PERSONAL INTEREST.—Section 163(h)(2) of the Internal Revenue Code of 1986 (defining personal interest) is amended by striking "and" at the end of subparagraph (D), by striking the period at the end of subparagraph (E) and inserting ", and", and by adding at the end thereof the following new subparagraph:

"(F) any qualified medical education interest (within the meaning of subsection (k)).".

(2) QUALIFIED MEDICAL EDUCATION INTEREST DEFINED.—Section 163 of such Code (relating to interest expenses) is amended by redesignating subsection (k) as subsection (l) and by inserting after subsection (j) the following new subsection:

"(k) QUALIFIED MEDICAL EDUCATION INTEREST OF MEDICAL PROFESSIONALS PRACTICING IN RURAL AREAS.—

"(1) IN GENERAL.—For purposes of subsection (h)(2)(F), the term 'qualified medical education interest' means an amount which bears the same ratio to the interest paid on qualified educational loans during the taxable year by an individual performing services under a qualified rural medical practice agreement as—

"(A) the number of months during the taxable year during which such services were performed, bears to

"(B) the number of months in the taxable year.

"(2) DOLLAR LIMITATION.—The aggregate amount which may be treated as qualified medical education interest for any taxable year with respect to any individual shall not exceed $5,000.

"(3) QUALIFIED RURAL MEDICAL PRACTICE AGREEMENT.—For purposes of this subsection—

"(A) IN GENERAL.—The term 'qualified rural medical practice agreement' means a written agreement between an individual and an applicable rural community under which the individual agrees—

"(i) in the case of a medical doctor, upon completion of the individual's residency (or internship if no residency is required), or

"(ii) in the case of a registered nurse, nurse practitioner, or physician's assistant, upon completion of the education to which the qualified education loan relates,

to perform full-time services as such a medical professional in the applicable rural community for a period of 24 consecutive months. An individual and an applicable rural community may elect to have the agreement apply for 36 consecutive months rather than 24 months.

"(B) SPECIAL RULE FOR COMPUTING PERIODS.—An individual shall be treated as meet-

ing the 24 or 36 consecutive month requirement under subparagraph (A) if, during each 12-consecutive month period within either such period, the individual performs full-time services as a medical doctor, registered nurse, nurse practitioner, or physician's assistant, whichever applies, in the applicable rural community during 9 of the months in such 12-consecutive month period. For purposes of this subsection, an individual meeting the requirements of the preceding sentence shall be treated as performing services during the entire 12-month period.

"(C) APPLICABLE RURAL COMMUNITY.—The term 'applicable rural community' means—

"(i) any political subdivision of a State which—

"(I) has a population of 5,000 or less, and

"(II) has a per capita income of $15,000 or less, or

"(ii) an Indian reservation which has a per capita income of $15,000 or less.

"(4) QUALIFIED EDUCATIONAL LOAN.—The term 'qualified educational loan' means any indebtedness to pay qualified tuition and related expenses (within the meaning of section 117(b)) and reasonable living expenses—

"(A) which are paid or incurred—

"(i) as a candidate for a degree as a medical doctor at an educational institution described in section 170(b)(1)(A)(ii), or

"(ii) in connection with courses of instruction at such an institution necessary for certification as a registered nurse, nurse practitioner, or physician's assistant, and

"(B) which are paid or incurred within a reasonable time before or after such indebtedness is incurred.

"(5) RECAPTURE.—If an individual fails to carry out a qualified rural medical practice agreement during any taxable year, then—

"(A) no deduction with respect to such agreement shall be allowable by reason of subsection (h)(2)(F) for such taxable year and any subsequent taxable year, and

"(B) there shall be included in gross income for such taxable year the aggregate amount of the deductions allowable under this section (by reason of subsection (h)(2)(F)) for all preceding taxable years.

"(6) DEFINITIONS.—For purposes of this subsection, the terms 'registered nurse', 'nurse practitioner', and 'physician's assistant' have the meaning given such terms by section 1861 of the Social Security Act.".

(3) DEDUCTION ALLOWED IN COMPUTING ADJUSTED GROSS INCOME.—Section 62(a) of such Code is amended by inserting after paragraph (13) the following new paragraph:

"(14) INTEREST ON STUDENT LOANS OF RURAL HEALTH PROFESSIONALS.—The deduction allowable by reason of section 163(h)(2)(F) (relating to student loan payments of medical professionals practicing in rural areas).".

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

Subtitle E—Malpractice Reform

PART I—DEFINITIONS

SEC. 141. DEFINITIONS.

For purposes of this subtitle:

(1) ALTERNATIVE DISPUTE RESOLUTION SYSTEM.—The term "alternative dispute resolution system" means a system that is enacted or adopted by a State to resolve health care liability actions as an alternative to a judicial proceeding in a Federal or State court.

(2) CONCERTED ACTION AND ACTING IN CONCERT.—The terms "concerted action" and "acting in concert" mean the participation in joint conduct by two or more persons who agree to jointly participate in such conduct with actual knowledge of the wrongfulness of the conduct.

(3) ECONOMIC LOSSES.—The term "economic losses" means losses for health care provider and medical expenses, lost wages, lost employment, and other pecuniary losses.

(4) HEALTH CARE LIABILITY ACTION.—The term "health care liability action" means any civil action or proceeding in any judicial tribunal brought pursuant to Federal or State law against a health care provider alleging that injury was suffered by the claimant as a result of any act or omission by such provider, without regard to the theory of liability asserted in the action. Such term includes a claim, third-party claim, cross-claim, counter-claim, or contribution claim.

(5) HEALTH CARE PROVIDER.—The term "health care provider" means—

(A) any individual who provides health care services in a State and who is required by State law or regulation to be licensed or certified by the State to provide such services in the State; and

(B) any organization or institution that is engaged in the delivery of health care services in a State and that is required by State law or regulation to be licensed or certified by the State to engage in the delivery of such services in the State.

(6) INJURY.—The term "injury" means any injury, illness, disease, or other harm suffered by an individual as a result of the provision of health care services by a health care provider.

(7) NONECONOMIC LOSSES.—The term "noneconomic losses" means losses for physical and emotional pain, suffering, physical impairment, mental anguish, disfigurement, loss of enjoyment of life, loss of companionship, consortium, and other nonpecuniary losses.

(8) SECRETARY.—The term "Secretary" means the Secretary of Health and Human Services.

(9) STATE.—The term "State" means each of the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, and Guam.

PART II—TORT REFORM OF HEALTH CARE LIABILITY ACTIONS

SEC. 142. APPLICATION TO CIVIL ACTIONS.

This part shall apply to any health care liability action brought in any Federal or State court. This part shall not be construed to create or effect any cause of action or theory of liability recognized in any Federal or State proceeding.

SEC. 143. DAMAGES.

(a) LIMITATION ON NONECONOMIC DAMAGES.—The total amount of damages which may be awarded to an individual and the family members of such individual for noneconomic losses resulting from an injury which is the subject of a health care liability action may not exceed $250,000, regardless of the number of health care providers against whom such action is brought or the number of such actions brought with respect to the injury.

(b) PAYMENTS.—With respect to a health care liability action, no person may be required to pay more than $100,000 in a single payment for an award of damages for economic or noneconomic losses, but such person shall be permitted to make such payments on a periodic basis. The periods for such payments shall be determined by the court.

(c) MANDATORY OFFSETS FOR DAMAGES PAID BY A COLLATERAL SOURCE.—

(1) IN GENERAL.—The total amount of damages received by an individual in connection with a health care liability action shall be reduced, in accordance with paragraph (2), by any other payment which has been made or which will be made to such individual to compensate such individual for an injury, including payments under—

(A) Federal or State disability or sickness programs;

(B) Federal, State, or private health insurance programs;

(C) private disability insurance programs;

(D) employer wage continuation programs; and

(E) any other source of payment intended to compensate such individual for such injury.

(2) AMOUNT OF REDUCTION.—The amount by which an award of damages to an individual for an injury shall be reduced under paragraph (1) shall be—

(A) the total amount of any payments (other than such award) which have been made or which will be made to such individual to compensate such individual for such injury; minus

(B) the amount paid by such individual (or by the spouse, parent, or legal guardian of such individual) to secure the payments described in subparagraph (A).

(d) PUNITIVE DAMAGES.—

(1) LIMITATION.—With respect to a health care liability action, punitive damages may not exceed the sum of damages awarded for economic and noneconomic losses.

(2) DETERMINATION OF AMOUNT.—In determining the amount of punitive damages in a health care liability action, the trier of fact shall consider all relevant evidence, including—

(A) the severity of the harm caused by the conduct of the defendant;

(B) the duration of the conduct or any concealment of the conduct by the defendant;

(C) awards of punitive or exemplary damages to persons similarly situated to the claimant; and

(D) prospective awards of economic and noneconomic losses to persons similarly situated to the claimant.

(e) ATTORNEYS' FEES.—Compensation for reasonable attorneys' fees to be paid by each party in connection with a health care liability action shall be determined by the court after an evidentiary hearing and prior to final disposition of the action. Attorneys' fees shall be calculated on the basis of an hourly rate or as a percentage of the total damages awarded for economic and noneconomic losses and shall not exceed an amount that would be considered reasonable based on the following:

(1) The time, labor, and skill necessary to properly perform the legal services required by the action.

(2) The novelty and difficulty of the questions involved in the action.

(3) The likelihood, if apparent to the client, that the acceptance of employment with respect to the client's action will preclude other employment by the attorney.

(4) The fee customarily charged in the locality for similar legal services.

(5) The amount involved in the action and the results obtained.

(6) The time limitations imposed by the client or by the circumstances of the action.

(7) The nature and length of the professional relationship between the attorney or attorneys and the client.

(8) The experience, reputation, and ability of the attorney or attorneys performing the services in connection with the action.

(9) Whether the fee for services in connection with the action is fixed or contingent.

SEC. 144. JOINT AND SEVERAL LIABILITY.

(a) IN GENERAL.—With respect to a health care liability action, joint and several liability shall apply—

(1) to the liability of each defendant for damages for economic losses; and

(2) as between persons acting in concert where the concerted action proximately caused the injury for which one or more persons are found liable for damages.

(b) NONECONOMIC DAMAGES.—With respect to a health care liability action, joint and several liability shall not apply to the liability of each defendant for damages for noneconomic losses. A person found liable for damages for noneconomic losses in any such action may—

(1) be found liable, if at all, only for those damages directly attributable to the pro rata share of fault or responsibility of such person for the injury; and

(2) not be found liable for damages attributable to the pro rata share of fault or responsibility of any other person (without regard to whether that person is a party to the action) for the injury, including any person bringing the action.

SEC. 145. STATUTE OF LIMITATIONS.

(a) IN GENERAL.—Except as provided in subsection (b), no health care liability action may be initiated after the expiration of the 2-year period that begins on the date on which the alleged injury should reasonably have been discovered, but in no event later than 4 years after the date of the alleged occurrence of the injury.

(b) EXCEPTION FOR MINORS.—In the case of an alleged injury suffered by a minor who has not attained 6 years of age, no health care liability action may be initiated after the expiration of the 2-year period that begins on the date on which the alleged injury should reasonably have been discovered, but in no event later than 4 years after the date of the alleged occurrence of the injury or the date on which the minor attains 8 years of age, whichever is later.

SEC. 146. PREEMPTION.

(a) IN GENERAL.—This part supersedes any state law only to the extent that state law establishes higher payment limits, permits the recovery of a greater amount of damages or the awarding of a greater amount of attorneys' fees, or establishes a longer period during which a health care liability action may be initiated.

(b) EFFECT ON SOVEREIGN IMMUNITY AND CHOICE OF LAW OR VENUE.—Nothing in this part shall be construed to—

(1) waive or affect any defense of sovereign immunity asserted by any State under any provision of law;

(2) waive or affect any defense of sovereign immunity asserted by the United States;

(3) affect the applicability of any provision of the Foreign Sovereign Immunities Act of 1976 (28 U.S.C. 1602 et seq.);

(4) preempt State choice-of-law rules with respect to actions brought by a foreign nation or a citizen of a foreign nation; or

(5) affect the right of any court to transfer venue or to apply the law of a foreign nation or to dismiss an action of a foreign nation or of a citizen of a foreign nation on the ground of inconvenient forum.

SEC. 147. EFFECTIVE DATE.

This part shall apply to any health care liability action initiated after the expiration of the 2-year period that begins on the date of the enactment of this Act.

PART III—ALTERNATIVE DISPUTE RESOLUTION SYSTEMS

SEC. 148. GRANTS FOR ALTERNATIVE DISPUTE RESOLUTION SYSTEMS.

(a) IN GENERAL.—The Secretary shall make grants to States from amounts appropriated under section 150 for the development and implementation of alternative dispute resolution systems, under such terms as the Secretary may require.

(b) APPLICATION.—

(1) IN GENERAL.—No grant may be made under this section unless an application is submitted to the Secretary. Any such application shall—

(A) be submitted to the Secretary within 1 year after the notification of availability of funds by the Secretary; and

(B) either—

(i) contain a certification by the chief executive officer of the State that, on the date the application is submitted, the State has enacted, adopted, or otherwise has in effect an alternative dispute resolution system; or

(ii) contain a certification by the chief executive officer of the State that, on the date the application is submitted, the State plans to develop an alternative dispute resolution system.

(2) SUPPORTING DOCUMENTATION.—The certification required—

(A) under paragraph (1)(B)(i) shall be accompanied by supporting documentation, including copies of relevant State statutes, rules, procedures, regulations, judicial decisions, and opinions of the State attorney general; and

(B) under paragraph (1)(B)(ii) shall be accompanied by supporting documentation, including a detailed plan of the alternative dispute resolution system to be developed by the State.

(c) REVIEW OF APPLICATIONS.—Within 90 days after receiving an application under subsection (b), the Secretary shall review and approve the application if, in the determination of the Secretary, the application demonstrates that—

(1) the State has enacted, adopted, or otherwise has in effect an alternative dispute resolution system; or

(2) the State has a plan to develop an alternative dispute resolution system.

(d) AMOUNT OF GRANT.—

(1) IN GENERAL.—The amount of a grant under this section shall be an amount that the Secretary finds reasonable and necessary for the development and implementation of the alternative dispute resolution system of the State.

(2) REDUCTIONS FOR EXPENSES OF SUPPLIES, EQUIPMENT, AND EMPLOYEE DETAIL.—The Secretary may reduce the amount of a grant by—

(A) the fair market value of any supplies or equipment furnished to the recipient by the Secretary;

(B) the amount of pay, allowances, and travel expenses incurred by any officer or employee of the Federal Government when such officer or employee has been detailed to the recipient; and

(C) the amount of any other costs incurred in connection with the detail of an officer or employee as described in subparagraph (B),

when the furnishing of such supplies or equipment or the detail of such an officer or employee is for the convenience, and at the request, of such recipient and for the purpose of carrying out activities under the grant.

(3) OPTION TO REFUSE GRANT.—Not later than 90 days after the Secretary makes a grant under this section to a State, that State may send notice to the Secretary that it refuses the grant. At the time the State sends such notice, the State shall return any amounts paid to it under such grant to the Secretary.

(e) SUPPLEMENTAL GRANTS.—If amounts appropriated for grants under this section remain available because—

(1) a State has notified the Secretary that it refuses the grant made to the State;

(2) a State has notified the Secretary that it does not intend to use the full amount of a grant awarded to the State; or

(3) the amount paid to a State under a grant is reduced, offset, or repaid under subsection (d)(2),

the Secretary shall have the discretion to make supplemental grants to States, to the extent such amounts are available, for the implementation of alternative dispute resolution systems. A grant received by a State under this subsection shall be used by the State to further implement and evaluate the effectiveness of such a system.

(f) RECORDS.—

(1) IN GENERAL.—Each recipient of a grant under this section shall keep such records as the Secretary determines appropriate.

(2) AUDIT AND EXAMINATION OF RECORDS.—The Secretary and the Comptroller General of the United States shall have access to any books, documents, papers, and records of the recipient of a grant under this section, for the purpose of conducting audits and examinations of such recipient that are pertinent to such grant.

(g) REPORTS.—

(1) REPORTS ON COMPLIANCE.—

(A) SUBMISSION OF REPORTS.—Each State shall annually submit a report to the Secretary containing such information as the Secretary may require to determine whether the State is in compliance with the terms of the grant made under this section.

(B) DETERMINATION OF NONCOMPLIANCE.—If, after reviewing the report submitted under subparagraph (A), the Secretary determines that a State receiving a grant under this section is not in compliance with the terms of the grant, the Secretary shall provide the State with written notice of such determination. Such notice shall specify—

(i) the reasons for the determination of the Secretary;

(ii) that the Secretary will require the State, not later than 60 days after receipt of such notice, to return all funds provided to the State under the grant, unless the State—

(I) takes such corrective action as may be necessary to ensure that the State is in compliance with the terms of the grant; or

(II) requests a hearing under clause (iii); and

(iii) that the State may request a hearing on the record before an administrative law judge under section 554 of title 5, United States Code, concerning the allegations set forth in the notice.

(2) ADDITIONAL REPORTS.—Each State receiving a grant under this section shall, not later than 2 years after the approval of its application for such grant and every 2 years thereafter, prepare and submit to the Commission on National Health Care Access and Reform established under section 201 (hereafter in this subtitle referred to as the "Commission"), the Secretary, and the appropriate committees of Congress, a report and evaluation concerning the alternative dispute resolution systems implemented by the State, including information—

(A) on the effect of such systems on the cost of health care within the State;

(B) on the impact of such systems on the access of individuals to health care within the State; and

(C) on the effect of such systems on the quality of health care provided within the State;

SEC. 149. ESTABLISHMENT OF ADVISORY PANEL.

(a) IN GENERAL.—The Commission shall make recommendations to the Secretary concerning the eligibility, approval, and review requirements for alternative dispute resolution systems described in applications submitted under section 148(b).

(b) ADVISORS.—The Commission shall—

(1) direct the National Advisory Board established under section 202 to assist in carrying out the Commission's activities under this section, or

(2) establish a panel of advisors to assist in carrying out the Commission's activities under this section.

(c) MEMBERS OF THE ADVISORY PANEL.—If the Commission establishes an advisory panel under subsection (b)(2), the members of the advisory panel shall include representatives from each of the following:

(1) Patient advocacy groups.

(2) Groups representing State governments.

(3) Health care provider groups, including organized medicine.

(4) Health care insurers.

(5) Health care employers.

(6) Academic researchers from disciplines such as medicine, economics, law or health services, with expertise in alternative dispute resolution models.

(d) DUTIES OF ADVISORS.—The advisors appointed under paragraph (1) or (2) of subsection (b) shall—

(1) assist in the development of criteria for alternative dispute resolution systems that States must meet to be eligible to receive grants under section 148 and make information on such criteria available to the States to assist such States in preparing applications for grants;

(2) as part of the criteria developed under paragraph (1), require that the alternative dispute resolution systems for which States receive grants under section 148—

(A) support access to health care;

(B) encourage improvements in the quality of care;

(C) enhance the patient-provider relationship;

(D) encourage innovation in health care delivery systems;

(E) provide prompt resolution and fair compensation;

(F) provide predictable outcomes; and

(G) operate efficiently in terms of costs and processes;

(3) provide advice and assistance to representatives from State governments concerning the establishment of alternative dispute resolution systems;

(4) not later than 7 years after the date of enactment of this Act, submit to the Commission, the Secretary, and to the appropriate committees of Congress, a recommendation on the feasibility of a national alternative dispute resolution system; and

(5) perform the duties set forth in part IV.

(e) COMPENSATION.—All members of the advisory panel established under subsection (b)(2) shall be reimbursed by the Commission for travel and per diem expenses in lieu of subsistence expenses during the performance of duties of the Panel in accordance with subchapter I of chapter 57 of title 5, United States Code.

(f) FACA NOT APPLICABLE.—The provisions of the Federal Advisory Committee Act shall not apply to an advisory panel established under subsection (b)(2).

(g) PROVISION OF INFORMATION BY THE SECRETARY.—The Secretary shall make available to the advisors appointed under paragraph (1) or (2) of subsection (b) any information concerning the grants made under section 148 that is necessary for such advisors to complete the duties set forth in subsection (d).

SEC. 150. AUTHORIZATION.

(a) IN GENERAL.—There are authorized to be appropriated $250,000,000 for each of the fiscal years 1993, 1994, and 1995, for grants under section 148.

(b) AVAILABILITY OF FUNDS.—Amounts appropriated for grants under section 148 shall remain available until expended.

PART IV—DEMONSTRATION PROJECTS FOR NO-FAULT COMPENSATION PROGRAMS

SEC. 151. DEMONSTRATION PROJECTS FOR NO-FAULT COMPENSATION PROGRAMS.

(a) ESTABLISHMENT.—The Secretary shall establish a program to award grants to private entities for the development and implementation of demonstration no-fault compensation programs in the private sector.

(b) APPLICATION.—To be eligible to receive a grant under this section a private entity shall prepare and submit to the Secretary an application at such time, in such form, and containing such information as the Secretary may require including a description of the no-fault compensation program that the private entity intends to develop or implement.

(c) REVIEW AND APPROVAL OF APPLICATIONS.—The Secretary shall review and approve applications received under subsection (b) in accordance with recommendations made by the Commission with the advice of the advisors appointed under section 149(b).

(d) AMOUNT OF GRANT.—The amount of a grant to a private entity under this section shall be an amount that the Secretary finds reasonable and necessary for the development and implementation of the no-fault compensation program.

(e) DUTIES OF ADVISORS.—

(1) IN GENERAL.—The advisors appointed under section 149(b) shall—

(A) develop criteria for no-fault compensation programs in the private sector that private entities must meet to be eligible to receive grants under this section; and

(B) make information on such criteria available to the private entities to assist such entities in preparing applications for grants.

(2) CRITERIA.—As part of the criteria developed under paragraph (1), the advisors shall require that the no-fault compensation programs for which States receive grants under this section—

(A) provide that health care providers offer their patients a no-fault compensation scheme in exchange for a waiver of common law tort liability for all injuries;

(B) provide that patients are fully informed of the common law tort rights they are surrendering and the no-fault benefits they are eligible to receive; and

(C) provide that the health care facility operate an effective quality assurance program, including measures for reporting and accountability for all adverse events identified through this claims process.

(f) REPORTS AND RECOMMENDATIONS.—

(1) REPORTS BY RECIPIENTS OF GRANTS.—Not later than 2 years after the approval of its application, each private entity that is a grant recipient shall prepare and submit a report to the Commission, the Secretary, and the appropriate committees of Congress, which contains—

(A) an analysis of the feasibility and desirability of developing and implementing no-fault compensation programs; and

(B) a recommendation for legislation on the development and implementation of no-fault compensation programs.

(2) RECOMMENDATIONS.—The Commission shall review the reports made by grant recipients pursuant to paragraph (1) and make recommendations to the Secretary regarding proposals for legislation to develop and implement national no-fault compensation programs.

(g) AUTHORIZATION OF APPROPRIATIONS.—

(1) IN GENERAL.—There are authorized to be appropriated for grants under this section $20,000,000 for each of the fiscal years 1993, 1994, and 1995.

(2) AVAILABILITY OF FUNDS.—Amounts appropriated for grants under this section shall remain available until expended.

Subtitle F—Joint Ventures

SEC. 161. AMENDMENT OF THE NATIONAL COOPERATIVE RESEARCH ACT OF 1984.

(a) DEFINITIONS.—Section 2(a) of the National Cooperative Research Act of 1984 (15 U.S.C. 4301(a)) is amended by adding at the end the following new paragraph:

"(7) The term 'joint health care provider venture' means a group of activities, as determined by the Commission on National Health Care Access and Reform (established under section 201 of the BasiCare Health Access and Cost Control Act), by 2 or more hospitals for the provision or delivery of health care services.".

(b) EXCLUSIONS.—Section 2(b) of such Act (15 U.S.C. 4301(b)) is amended—

(1) in the matter preceding paragraph (1) by striking "excludes" and inserting "and the term 'joint health care provider venture' exclude"; and

(2) in paragraph (1) by striking "conduct the research and development that is" and inserting "carry out".

(c) TECHNICAL AMENDMENTS.—(1) Section 3 of such Act (15 U.S.C. 4302) is amended by inserting "or joint health care provider venture" after "joint research and development venture".

(2) Section 4 of such Act (15 U.S.C. 4303) is amended in subsections (a)(1), (b)(1), (c)(1), and (e) by inserting "or joint health care provider venture" after "joint research and development venture" each place it appears.

(3) Section 5(a) of such Act (15 U.S.C. 4304(a)) is amended in the matter preceding paragraph (1) by inserting "or joint health care provider venture" after "joint research and development venture".

(4) Section 6 of such Act (15 U.S.C. 4305) is amended—

(A) in the heading by striking "RESEARCH AND DEVELOPMENT";

(B) in subsections (a), (d)(2), and (e) by inserting "or joint health care provider venture" after "joint research and development venture" each place it appears; and

(C) in the first sentence of subsection (a) by inserting "(or in the case of a joint health care provider venture, the date of enactment of the BasiCare Health Access and Cost Control Act)" after "this Act".

TITLE II—LONG-TERM REFORMS

Subtitle A—Establishment of Commission and Advisory Board

SEC. 201. THE COMMISSION ON NATIONAL HEALTH CARE ACCESS AND REFORM.

(a) ESTABLISHMENT.—There is established an independent commission to be known as the Commission on National Health Care Access and Reform (hereinafter referred to as the "Commission").

(b) DUTIES.—The Commission shall carry out the duties specified for it in this title.

(c) APPOINTMENT.—

(1) COMPOSITION.—

(A) SIZE AND MANNER OF APPOINTMENT.—The Commission shall consist of—

(i) five members to be appointed by the President, by and with the advice and consent of the Senate, one of whom shall, at the time of appointment, be designated as Chairperson of the Commission;

(ii) two members to be appointed by the Speaker of the House of Representatives upon the recommendations of the Majority Leader and Minority Leader of the House of Representatives; and

(iii) two members to be appointed by the President pro tempore of the Senate upon the recommendations of the Majority Leader and Minority Leader of the Senate.

(B) POLITICAL AFFILIATION.—At no time shall more than three of the members appointed by the President, one of the members appointed by the Speaker of the House of Representatives, or one of the members appointed by the President pro tempore of the Senate be members of the same political party.

(C) MEMBERSHIP QUALIFICATIONS.—The membership of the Commission shall consist of individuals who are of recognized standing and distinction and who possess the demonstrated capacity to discharge the duties imposed on the Commission, and shall include persons possessing substantial knowledge or expertise in health care delivery, health care insurance, or health care economics. No individual who is otherwise an officer or full-time employee of the United States shall serve as a member of the Commission. No member while serving on the Commission may receive financial gain from direct investments, employment or associations from any entity with demonstrable financial interest in matters over which the Commission has jurisdiction.

(D) CHAIRPERSON.—The Chairperson of the Commission shall designate a member of the Commission to act as Vice Chairperson of the Commission.

(E) QUORUM.—A majority of the members of the Commission shall constitute a quorum, but a lesser number may conduct hearings.

(F) TERM.—Members of the Commission shall be appointed for a term of 5 years, except that with respect to the members first appointed—

(i) the Chairperson and 2 members, 1 each appointed under clauses (ii) and (iii) of paragraph (1)(A), respectively, shall be appointed for a term of 5 years;

(ii) 3 members, 1 each appointed under clauses (i), (ii) and (iii) of paragraph (1)(A), respectively, shall be appointed for a term of 4 years; and

(iii) the remaining members shall be appointed for a term of 3 years.

(G) VACANCY.—A vacancy in the Commission shall not affect its powers, but shall be filled in the same manner as the original appointment, but the individual appointed shall serve only for the unexpired portion of the term for which the individual's predecessor was appointed.

(2) EFFECTIVE DATE.—Appointments to the Commission shall be made no later than 90 days after the date of enactment of this Act.

(d) MEETINGS.—The Commission shall meet at the call of the Chairperson, or at the call of a majority of the members of the Commission; but meetings shall not be held less frequently than once in each calendar month which begins after a majority of the membership of the Commission has been appointed.

(e) HEARINGS.—In carrying out its duties under this section, the Commission, or any duly authorized committee thereof, is authorized to hold such hearings, sit and act at such times and places, and take such testimony, with respect to matters with respect to which it has a responsibility under this title, as the Commission or such committee may deem advisable. The Chairperson of the Commission or any member authorized by the Chairperson may administer oaths or affirmations to witnesses appearing before the Commission or before any committee thereof.

(f) PAY AND TRAVEL EXPENSES.—

(1) PAY.—

(A) MEMBERS.—Each member, other than the Chairperson, shall be paid at a rate equal to the daily equivalent of the minimum annual rate of basic pay payable for level IV of the Executive Schedule under section 5315 of title 5, United States Code, for each day (including travel time) during which the member is engaged in the actual performance of duties vested in the Commission.

(B) CHAIRPERSON.—The Chairperson shall be paid for each day referred to in subparagraph (A) at a rate equal to the daily equivalent of the minimum annual rate of basic pay payable for level III of the Executive Schedule under section 5314 of title 5, United States Code.

(2) TRAVEL EXPENSES.—Members shall receive travel expenses, including per diem in lieu of subsistence, in accordance with sections 5702 and 5703 of title 5, United States Code.

(g) STAFF.—

(1) APPOINTMENT.—Subject to paragraphs (2) and (3), the Chairperson, with the approval of the Commission, may appoint and fix the pay of additional personnel.

(2) INAPPLICABILITY OF CIVIL SERVICE LAWS.—The Chairperson may make such appointments without regard to the provisions of title 5, United States Code, governing appointments in the competitive service, and any personnel so appointed may be paid without regard to the provisions of chapter 51 and subchapter III of chapter 53 of that title relating to classification and General Schedule pay rates, except that an individual so appointed shall receive pay—

(A) not less than 120 percent of the minimum rate of basic pay payable for GS-15 of the General Schedule, and

(B) no greater than the rate of basic pay payable for level IV of the executive schedule.

(3) DETAIL OF PERSONNEL FROM FEDERAL AGENCIES.—Upon request of the Chairperson, the head of any Federal department or agency may detail any of the personnel of that department or agency to the Commission to assist the Commission in carrying out its duties under this title.

(4) FEDERAL AGENCY ASSISTANCE.—The Comptroller General of the United States, the Secretary of Health and Human Services, and the Administrator of General Services shall provide assistance on a reimbursable basis, including the detailing of employees, to the Commission in accordance with an agreement entered into with the Commission.

(h) OTHER AUTHORITY.—

(1) CONSULTANT SERVICES.—The Commission may procure by contract, to the extent funds are available, the temporary or intermittent services of experts or consultants pursuant to section 3109 of title 5, United States Code.

(2) PROPERTY MATTERS.—The Commission may lease space and acquire personal property to the extent funds are available.

SEC. 202. NATIONAL ADVISORY BOARD.

(a) APPOINTMENT.—The Commission shall provide for appointment of a National Advisory Board (hereinafter referred to as the "Board") to advise the Commission on its activities.

(b) MEMBERSHIP.—The Board shall consist of 15 members who are representatives of employers, unions, health care providers, health care carriers, consumer organizations, State health programs, and public health professionals, as well as the general public. Such members shall serve for terms of 3 years, except that, in the initial appointment, 5 members shall be each appointed for terms of 1 year, 2 years, and 3 years.

(c) VACANCIES.—

(1) IN GENERAL.—The Commission shall fill any vacancy in the membership of the Board in the same manner as the original appointment. The vacancy shall not affect the power of the remaining members to execute the duties of the Board.

(2) VACANCY APPOINTMENTS.—Any member appointed to fill a vacancy shall serve for the remainder of the term for which the predecessor of the member was appointed.

(3) REAPPOINTMENT.—The Commission may reappoint an appointed member of the Board for a second term in the same manner as the original appointment.

(d) CHAIRPERSON AND VICE CHAIRPERSON.—The Board shall select a Chairperson and a Vice Chairperson from among the members of the Board.

(e) COMPENSATION.—All members of the Board and the committees established under subsection (h) shall be reimbursed by the Commission for travel and per diem in lieu of subsistence expenses during the performance of duties of the Board in accordance with subchapter I of chapter 57 of title 5, United States Code.

(f) FACA NOT APPLICABLE.—The provisions of the Federal Advisory Committee Act shall not apply to the Board.

(g) DUTIES.—As directed by the Commission, the Board shall undertake such projects as the Commission may deem necessary. Such projects may include site visits and studies that are concerned with issues of access to health care services, utilization of health care services, consumer participation and satisfaction in the provision of health care services, education of health personnel, medical practice, medical technology, quality of insurance plans and health care delivery, and malpractice liability. The Board shall not undertake studies, visits, or projects, nor shall it issue recommendations, except at the request of the Commission.

(h) COMMITTEES.—The Board shall create such committees (composed of Commission members and others as appointed by the Chairperson) as necessary to enable the Board to meet its responsibilities and functions.

SEC. 203. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated to the Commission such funds as are necessary to carry out its duties under this title. Such funds shall remain available until expended.

Subtitle B—Reform and Standardization of Private Insurance

SEC. 211. DEFINING GOALS AND GUIDELINES OF COMMISSION.

(a) DEFINING GOALS.—In carrying out the responsibilities assigned to it under this Act, the Commission shall at all times seek to—

(1) improve access to basic health coverage and services;

(2) control the cost of health care coverage and services;

(3) safeguard the quality of health care services;

(4) assure equity in the availability and cost of health care coverage and services; and

(5) minimize administrative complexity and duplication in the health care system.

(b) GUIDELINES.—In carrying out the responsibilities assigned to it under this Act, the Commission shall in developing or evaluating any health care proposal or modification be guided by the anticipated effect on—

(1) the cost of health care to medical consumers;

(2) the quality of health care services;

(3) access to health care services;

(4) the financial viability of health care providers;

(5) the financial viability of health care carriers;

(6) the provision of health benefits to employees by employers; and

(7) the administrative complexity of the health care system.

(c) CONSULTATIONS.—In carrying out the responsibilities assigned to it under this Act, the Commission shall seek out and consider recommendations from a broad range of interested individuals and organizations, including organizations representing health care consumers, health care providers, health care carriers, representatives of State health programs, public health professionals, and the general public.

SEC. 212. DEVELOPMENT AND SUBMISSION OF LEGISLATIVE PROPOSAL.

(a) IN GENERAL.—By not later than January 1, of the 2nd year following the date of enactment of this Act, the Commission shall develop and submit to Congress a legislative proposal which provides for the following:

(1) BASICARE BENEFITS PACKAGE.—A uniform national health benefits package (hereinafter referred to as the "BasiCare benefits package") specifying minimum benefits applicable to all carriers which meets the requirements of section 214.

(2) INSURANCE RESPONSIBILITIES UNDER BASICARE.—A national health care insurance reform plan which meets the requirements of section 215 and which shall apply to all carriers selling health insurance in the United States.

(3) ESTABLISHMENT OF BASICARE BASE PREMIUM RATE.—A base premium rate (hereinafter referred to as the "BasiCare base premium rate") to apply to the BasiCare benefits package, which meets the requirements of section 216.

(4) EMPLOYER RESPONSIBILITIES UNDER BASICARE.—Employer responsibilities to offer the basicare health benefit plan as described in section 217.

(5) INDIVIDUAL RESPONSIBILITIES UNDER BASICARE.—Individual responsibilities to obtain the BasiCare health benefit plan coverage as described in section 218.

(6) SELF-INSURED REQUIREMENTS.—Self-insured plan requirements with respect to certification as described in section 219.

(7) TREATMENT OF MANAGED CARE PLANS.—Federal standards for managed care plans as described in section 220 and preemption of State provisions relating to such plans, as described in section 221.

(8) LOW-INCOME ASSISTANCE.—A program to provide low-income individuals and families—

(A) an orderly transfer from medicaid program coverage under title XIX of the Social Security Act to BasiCare health benefit plan coverage, and

(B) financial assistance in obtaining BasiCare health benefit plan coverage,

as specified in subtitle C.

(b) CONSIDERATION.—The legislative proposal described in subsection (a) shall be considered by the Congress under the procedures for consideration of an "approval resolution" as described in subtitle D.

(c) EFFECTIVE DATE OF IMPLEMENTATION.—The provisions of the recommendation shall become effective on January 1 of the year following the year of the date of approval of the Commission's recommendation (unless such period of time is less than 9 months, in which case such provisions shall become effective on January 1 of the second year following the date of approval of the Commission's recommendation).

SEC. 213. CONTINUING DUTIES AND RESPONSIBILITIES OF THE COMMISSION.

(a) PERIOD FOR RESUBMISSION OF BASICARE PACKAGE AND BASE RATE IN CASE OF NON-APPROVAL.—If the recommendation of the Commission submitted under section 212 is not approved by Congress in a year, the Commission shall by not later than January 1 of each year thereafter, for a period not to exceed 2 years (unless such recommendation is approved in a year) submit a new recommendation to Congress subject to the guidelines and requirements of this title.

(b) CONTINUING REVIEW OF BASICARE BENEFITS PACKAGE AND BASICARE BASE PREMIUM RATE.—

(1) MODIFICATIONS IN BASICARE BENEFITS PACKAGE.—The Commission may by not later than September 30 of any year following the effective date of implementation of the Commission's recommendation under section 212, subject to the guidelines and goals applicable to its initial recommendation, publish in the Federal Register revisions to the BasiCare benefits package, which revisions shall become effective on January 1 of the immediately following calendar year unless rescinded by Congress.

(2) MODIFICATIONS TO VARIATIONS IN BASICARE BASE PREMIUM RATE.—The Commission may by not later than September 30 of any year following the effective date of implementation of the Commission's recommendation under section 212, subject to the guidelines and goals applicable to its initial recommendation, publish in the Federal Register revisions to any variations provided in the BasiCare base premium rate, which revisions shall become effective on January 1 of the immediately following calendar year unless rescinded by Congress.

(c) ESTABLISHMENT OF ANNUAL ALLOWABLE RATES OF INCREASE IN BASICARE PREMIUM RATES.—The Commission shall by not later than September 30 of each year following the effective date of implementation of the Commission's recommendation under section 212, subject to the guidelines and goals applicable to its initial recommendation, publish in the Federal Register a percentage figure for a single allowable rate of increase in BasiCare premiums to become effective on January 1 of the immediately following calendar year unless such percentage figure is modified or rescinded by Congress. Such rate of increase shall be binding on all carriers offering benefits covered under the BasiCare benefits package, as provided in section 215.

(d) OVERSIGHT OF PROVIDER PARTICIPATION AND BILLING.—

(1) IN GENERAL.—The Commission shall conduct ongoing oversight of provider response to the imposition of annual limits in the allowable rate of increase in BasiCare premiums, as provided in this Act. The findings of such oversight shall be expressed in annual reports to Congress.

(2) CONSIDERATIONS.—Matters to be examined in such oversight shall include, but are not limited to, the following:

(A) The incidence of balance billing by providers to patients of amounts in excess of such payments as may be made to providers by BasiCare carriers.

(B) The effect of any such balance billing on the accessibility of affordable health care services to health care consumers.

(C) The incidence of participation (or nonparticipation) of health care providers in BasiCare health benefit plans.

(D) The effect of such participation (or nonparticipation) on the availability and affordability of health care services to health care consumers.

(E) The extent to which the incidence of provider balance billing or nonparticipation in BasiCare health benefit plans may vary according to professional specialty or region.

(3) OPTION FOR BILLING AND PARTICIPATION REQUIREMENTS.—At any time following the standardization of the BasiCare health benefit plan under this Act, the Commission may submit to Congress a legislative proposal providing for one or both of the following:

(A) Such balance billing limits as the Commission may deem necessary to assure affordable access by health care consumers to services covered under the BasiCare health benefit plan.

(B) Such participation requirements as the Commission may deem necessary to assure a level of provider participation in BasiCare health benefit plans sufficient to assure affordable access to quality health care services by BasiCare enrollees.

(4) CONGRESSIONAL CONSIDERATION.—Any proposal made to Congress under this subsection shall be considered by Congress under the procedures for consideration of an "approval resolution" as described in subtitle D.

(e) OVERSIGHT OF SUPPLEMENTAL HEALTH INSURANCE MARKET.—

(1) IN GENERAL.—The Commission shall, upon implementation of the Commission's recommendations under section 212, commence an ongoing assessment of the condition of the supplemental health insurance market for insurance benefits which are beyond the scope of the BasiCare benefits package. The findings of such assessment shall be transmitted in annual reports to the appropriate committees of Congress.

(2) CONSIDERATIONS.—Matters to be addressed in such assessment shall include, but not be limited to—

(A) the rate of cost growth in the supplemental market, and the extent to which such growth may be contributing to growth in national health care expenditures;

(B) the affordability and availability of supplemental policies to employers, families, and individuals;

(C) the extent to which the terms and cost of coverage vary among beneficiaries based on health and claims status;

(D) the value of supplemental policies to beneficiaries, as measured by loss ratios;

(E) the extent of questionable marketing practices, such as misrepresentation of policy benefits or provisions, or the selling of policies that duplicate existing coverage; and

(F) the extent to which State insurance regulation is addressing perceived problems in the supplemental market.

(3) RECOMMENDATION TO CONGRESS.—No later than January 1 of the second year following the effective date of implementation of the Commission's recommendations under this title, the Commission shall include in its annual report to Congress (under this subsection) a recommendation regarding the advisability of Federal regulation of the supplemental health insurance market. If the Commission's recommendation is that such

regulation is needed, the Commission shall prepare and submit to Congress draft legislation to carry out the terms of such regulation as it may deem necessary.

(4) SUBSEQUENT RECOMMENDATIONS.—At any time following submission of its recommendation to Congress under paragraph (3), the Commission may, based on the findings of its continuing assessment under paragraphs (1) and (2), submit additional recommendations or draft legislation to Congress regarding action it may consider advisable relative to the supplemental market.

(5) CONGRESSIONAL CONSIDERATION.—Proposals made to Congress under this subsection shall be considered by Congress under the procedures for consideration of an "approval resolution" as described in subtitle D.

(f) SAFEGUARDING QUALITY OF HEALTH CARE.—

(1) ANNUAL REPORT.—The Commission shall by no later than January 1 of each year following the date of enactment of this Act, submit an annual report to Congress assessing the quality of health care in the United States, and outlining areas of significant progress or decline in the delivery of or accessibility to health care. In preparing such reports, the Commission shall conduct such studies, hearings, or other evaluations as it deems necessary to accomplish a comprehensive and continuing evaluation of health care quality in the United States.

(2) CONTRACTS FOR PROVISION OF INFORMATION TO CONSUMERS REGARDING QUALITY OF HEALTH CARE SERVICES AND INSURANCE.—The Commission shall enter into contracts with public or private nonprofit entities in each State for the collection and dissemination to consumers of information regarding the quality and cost-effectiveness of services provided by health care providers and carriers in the State.

(3) REQUIREMENT TO CONSIDER HEALTH CARE QUALITY DATA.—Information regarding health care quality obtained through the activities described in this subsection shall be considered and incorporated by the Commission in carrying out the other continuing duties and responsibilities assigned to it under this section including setting annual premium limits and other rates as provided in this title.

(g) UNIFORM CLAIMS FORMS AND ELECTRONIC PROCESSING.—

(1) IN GENERAL.—The Commission shall develop in consultation with entities offering health insurance, health care providers, and the Secretary, a uniform claims form to be used by both private health plans and by the Medicare program under title XVIII of the Social Security Act.

(2) APPLICATION AND REVISION.—The Commission shall by no later than 1 year after the effective date of implementation of the Commission's recommendation under section 212, require that the uniform claims form developed under paragraph (1), be utilized by all carriers offering benefits covered under the BasiCare benefits package and under title XVIII of the Social Security Act. The Commission shall revise such form, as necessary, to reflect changes in the health care insurance market.

(3) UNIFORM REPORTING STANDARDS.—In developing the claims form under paragraph (1), the Commission in consultation with the entities described in such paragraph, shall develop standards for uniform reporting (while preserving individual patient identity) concerning—

(A) the types and amounts of required health services provided; and

(B) the costs of such facilities providing such services.

The Commission shall periodically collect, analyze, and disseminate information received under this paragraph.

(4) UNIVERSAL ELECTRONIC PAYMENT AND BILLING CARD.—In conjunction with development of the standard claims form under paragraph (1), the Commission shall develop, and all private and public health insurance programs shall be required to participate in, a program to provide a universal health insurance card to every individual or family which shall be accepted by all health care providers for purposes of payment and billing. Such cards shall be imprinted electronically with necessary and appropriate information concerning coverage and billing, and to the maximum extent practicable, with information to assist in the management of a uniform system of computerized patient records.

(h) LONG-TERM DISPOSITION OF MEDICAID BENEFITS AND PROGRAM.—

(1) IN GENERAL.—At any time following the effective date of implementation of the Commission's recommendation under section 212, the Commission may submit to Congress a proposed plan for long-term disposition of any benefits of the medicaid program not covered under or subsumed by the BasiCare benefits package.

(2) PROPOSED PLAN.—In preparing a proposed plan described in paragraph (1), the Commission shall consult with representatives of State medicaid programs, and shall follow the goals and guidelines described in section 211.

(3) CONGRESSIONAL CONSIDERATION.—Proposals made to Congress under this subsection shall be considered by the Congress under the procedures for consideration of an "approval resolution" as described in subtitle D.

(4) PERIOD FOR RESUBMISSION OF PROPOSAL.—If the recommendation of the Commission submitted under this subsection is not approved by Congress in a year, the Commission shall by not later than January 1 of each year thereafter, for a period not to exceed 2 years (unless such recommendation is approved in a year) submit a new recommendation to Congress subject to the guidelines and requirements of this title.

(i) ASSIMILATION OF MEDICARE INTO BASICARE SYSTEM.—

(1) IN GENERAL.—The Commission shall by no later than January 1 of the fifth year following the effective date of implementation of the Commission's recommendation under section 212, submit to the Congress draft legislation providing for the assimilation of the medicare program under title XVIII of the Social Security Act into the BasiCare system. The Commission shall include with such draft legislation, an accompanying report detailing and explaining the provisions of such draft legislation.

(2) CONGRESSIONAL CONSIDERATION.—Proposals made to Congress under this subsection shall be considered by Congress under the procedures for consideration of an "approval resolution" as described in subtitle D.

(3) PERIOD FOR RESUBMISSION OF PROPOSAL.—If the proposal of the Commission submitted under this subsection is not approved by Congress in a year, the Commission shall by not later than January 1 of each year thereafter, for a period not to exceed 2 years (unless such recommendation is approved in a year) submit a new proposal to Congress subject to the guidelines and requirements of this title.

(j) ASSIMILATION OF OTHER PROGRAMS INTO BASICARE SYSTEM.—

(1) IN GENERAL.—The Commission shall by no later than January 1 of the fifth year following the effective date of implementation of the Commission's recommendation under section 212, submit to the Congress draft legislation providing for the assimilation of the CHAMPUS program under title 10, United States Code, and the Federal employees program under chapter 89 of title 5, United States Code, into the BasiCare system. The Commission shall include with such draft legislation, an accompanying report detailing and explaining the provisions of such draft legislation.

(2) CONGRESSIONAL CONSIDERATION.—Proposals made to Congress under this subsection shall be considered by Congress under the procedures for consideration of an "approval resolution" as described in subtitle D.

(3) PERIOD FOR RESUBMISSION OF PROPOSAL.—If the proposal of the Commission submitted under this subsection is not approved by Congress in a year, the Commission shall by not later than January 1 of each year thereafter, for a period not to exceed 2 years (unless such recommendation is approved in a year) submit a new proposal to Congress subject to the guidelines and requirements of this title.

(k) OVERSIGHT OF SUCH UNCOMPENSATED CARE AS MAY REMAIN.—To the extent it deems necessary, and to the extent practicable, the Commission may provide to Congress recommendations for the establishment of national or regional compensation pools, or other mechanisms, for the payment of providers who furnish BasiCare-covered services to individuals who, through choice or inadvertence, fail to secure BasiCare coverage as provided in this Act.

(l) MEDICAL EDUCATION ASSISTANCE.—In conjunction with the duties assigned to it under section 212 of this Act, and in conjunction with its proposal to assimilate the medicare program into BasiCare under subsection (i) of this section, the Commission shall consider and develop methods to assure support for academic health centers and the provision of quality training to health professionals.

SEC. 214. BASICARE BENEFITS PACKAGE.

(a) CRITERIA.—In preparing the BasiCare benefits package described in section 212(a)(1), the Commission shall, subject to the requirements of this title, develop and recommend the BasiCare benefits package as it deems appropriate, adhering to the goals and guidelines described in this subtitle. The BasiCare benefits package developed and recommended by the Commission shall at a minimum provide for—

(1) basic hospitalization coverage;

(2) basic outpatient services;

(3) protection against catastrophic out-of-pocket costs;

(4) coverage against extraordinary long-term care costs; and

(5) coverage for preventive care services of significant proven and recognized value in averting serious and costly medical conditions.

(b) UNIFORMITY.—

(1) IN GENERAL.—Subject to the exceptions described in paragraph (2), the BasiCare benefits package recommended by the Commission shall provide for uniform national deductibles, copayments, and benefit applications and standards.

(2) LIMITED VARIATION ALLOWED.—In order to accommodate systems for providing health care in a managed system, the Com-

mission may provide for variations in the structure of BasiCare cost-sharing requirements for such systems, but only to the extent such variations do not significantly compromise the national uniformity of a single BasiCare benefits package.

(c) FLEXIBILITY REGARDING LONG-TERM CARE.—

(1) MODIFIED BENEFIT PLAN FOR MEDICARE BENEFICIARIES.—The Commission may include in its proposal under section 212 provisions for the establishment of a modified BasiCare long-term care benefits plan for persons currently enrolled in the medicare program under title XVIII of the Social Security Act. If the Commission includes such a plan, the plan shall—

(A) consist only of long-term care benefits included in the BasiCare benefits package, and

(B) be subject to the rules and requirements applicable to the BasiCare health benefit plan under this title, except as may be modified by the Commission in its proposal to Congress under section 212.

(2) CONTINUITY OF LONG-TERM CARE COVERAGE.—The Commission may include in its proposal under section 212 such special provisions as it may deem necessary to assure portability of coverage consistent with the requirements of section 215.

(3) INTERACTION WITH OTHER PROGRAMS.—The Commission may include such provisions as it deems necessary to coordinate BasiCare long-term care coverage with coverage provided under the medicare program under title XVIII of the Social Security Act, and with coverage provided by the medicaid program under title XIX of the Social Security Act, as modified by the terms of this Act.

(d) PREFERENCE FOR COPAYMENTS IN COST-SHARING.—To the extent practicable, the Commission shall employ copayments rather than deductibles in providing for such cost-sharing requirements as may be included in the BasiCare benefits package under this section.

SEC. 215. INSURANCE RESPONSIBILITIES UNDER BASICARE.

(a) IN GENERAL.—In developing the legislative proposal described in section 212(a)(2), the Commission shall provide that the requirements of this section are incorporated as part of its recommendation for national health care insurance reform.

(b) GENERAL REQUIREMENT.—Each carrier shall offer the BasiCare health benefit plan as specified in this section.

(c) PREEMPTION OF STATE MANDATED BENEFIT LAWS.—To the extent that laws of any State or local government regulate or otherwise provide any requirement relating to the benefits to be provided under contracts or policies of insurance issued to, or under, a BasiCare health benefit plan, such laws are preempted.

(d) NONDUPLICATION OF BASICARE.—Health benefit plans may be issued for benefits other than those covered by the BasiCare benefits package described in section 214, but no health benefit plans may be offered by any carrier in any State which duplicate, either in whole or in part, the benefits described in the BasiCare benefits package.

(e) NONDISCRIMINATION BASED ON HEALTH STATUS.—

(1) IN GENERAL.—BasiCare health benefit plans offered by carriers may not deny, limit, or condition the coverage under (or benefits of) the plan based on the health status, claims experience, receipt of health care, medical history, or lack of evidence of insurability, of an individual.

(2) TREATMENT OF PREEXISTING CONDITION EXCLUSIONS FOR ALL SERVICES.—BasiCare health benefit plans provided by carriers may not exclude or otherwise discourage coverage with respect to services related to treatment of a preexisting condition.

(f) REGISTRATION WITH APPLICABLE REGULATORY AUTHORITY.—

(1) IN GENERAL.—Each carrier shall register with the applicable regulatory authority for each State in which it issues or offers health benefit plans.

(2) NO PREEMPTION OF STATE INFORMATION REQUIREMENTS.—Nothing in paragraph (1) shall be construed as preventing the applicable regulatory authority from requiring, in the case of BasiCare carriers that are not self-insurance carriers, such additional information in conjunction with, or apart from, the registration required under paragraph (1) as the applicable regulatory authority may be authorized to require under State law.

(g) GUARANTEED ISSUE.—

(1) IN GENERAL.—Subject to the succeeding provisions of this subsection, a carrier that offers a BasiCare health benefit plan (including a reinsurance plan) to groups or individuals located in a community must offer the same plan to any other group or individual located in the community, and shall participate in a program developed by the Commission for assigning high-risk groups or individuals among all such carriers.

(2) TREATMENT OF HEALTH MAINTENANCE ORGANIZATIONS.—

(A) GEOGRAPHIC LIMITATIONS.—A health maintenance organization may deny coverage under a BasiCare health benefit plan to an individual or group whose members are located outside the service area of the organization, but only if such denial is applied uniformly without regard to health status or insurability.

(B) SIZE LIMITS.—A health maintenance organization may apply to the applicable regulatory authority to cease enrolling new groups or individuals in its BasiCare health benefit plan (or in a geographic area served by the plan) if it can demonstrate that its financial or administrative capacity to serve previously enrolled groups and individuals (and additional individuals who will be expected to enroll because of affiliation with such previously enrolled groups) will be impaired if it is required to enroll new groups or individuals.

(3) GROUNDS FOR REFUSAL TO ISSUE OR RENEW.—

(A) IN GENERAL.—A carrier may refuse to issue or renew or terminate a BasiCare health benefit plan under this part only for—

(i) nonpayment of premiums,

(ii) fraud or misrepresentation, and

(iii) failure to meet minimum participation rates (consistent with subparagraph (B)).

(B) MINIMUM PARTICIPATION RATES.—A carrier may require, with respect to an employment-related group BasiCare health benefit plan, that a minimum percentage of full-time employees eligible to enroll under the plan be enrolled, so long as such percentage is enforced uniformly for all employment groups of comparable size.

(h) MINIMUM PLAN PERIOD.—A carrier may not offer, or issue a BasiCare health benefit plan with a term of less than 12 months.

(i) GUARANTEED RENEWABILITY.—

(1) IN GENERAL.—

(A) GENERAL RULE.—Subject to the succeeding provisions of this subsection, a carrier shall ensure that a BasiCare health benefit plan issued to a group or individual be renewed, at the option of the policyholder, unless the plan is terminated for the reasons specified in subsection (h)(3)(A) or under subparagraph (B).

(B) TERMINATION OF BUSINESS.—A carrier need not renew a BasiCare health benefit plan with respect to such a policyholder if the carrier—

(i) is terminating provision of all health insurance in the community; and

(ii) provides notice to the policyholder covered under the plan of such termination at least 90 days before the date of expiration of the plan.

In the case of such a termination, the carrier may not provide for issuance of any health benefit plan in such community during the 5-year period beginning on the date of termination of such block of business.

(C) CONSTRUCTION RESPECTING ADDITIONAL STATE DISCLOSURE REQUIREMENTS.—Subparagraph (B)(ii) shall not be construed as preventing the applicable regulatory authority from specifying the information to be included in the notice under such subparagraph or in requiring such notice to be provided at an earlier date.

(2) NOTICE AND SPECIFICATION OF RATES AND ADMINISTRATIVE CHANGES.—

(A) NOTICE.—A carrier offering BasiCare health benefit plans shall provide for notice, at least 30 days before the date of expiration of the health benefit plan, of the terms for renewal of the plan. Except with respect to rates and administrative changes, the terms of renewal (including benefits) shall be the same as the terms of issuance.

(B) RENEWAL RATES SAME AS ISSUANCE RATES.—The carrier may change the terms for such renewal, but the premium rates charged with respect to such renewal shall be the same as that for a new issue.

(C) RATES CANNOT CHANGE MORE OFTEN THAN MONTHLY.—

(i) IN GENERAL.—A carrier may not change the premium rates established with respect to BasiCare health benefit plans in a community more often than monthly.

(ii) APPLICATION OF NEW RATES.—A carrier that offers BasiCare health benefit plans which become effective in a month, shall ensure that the premium rates established under clause (i) for that month shall apply to all months during the 12-month period beginning with that month. In the case of a plan renewal which is effective for a 12-month period beginning with a month, the premium rates established under clause (i) with respect to that month shall apply to all months during 12-month renewal period.

(3) PERIOD OF RENEWAL.—The period of renewal of each health benefit plan offered by a carrier shall be for a period of not less than 12 months.

(j) COMMUNITY RATING.—

(1) IN GENERAL.—A carrier may not charge premium rates for BasiCare health benefit plans in excess of the average per capita cost of providing such coverage to all individuals covered under BasiCare policies issued by that carrier in a community. A BasiCare health benefit plan meeting such criteria will be considered "actuarially certified" for purposes of this subsection.

(2) ACTUARIALLY CERTIFIED DEFINED.—A BasiCare health benefit plan is considered to be "actuarially certified" if there is a written statement by a member of the American Academy of Actuaries or other individual acceptable to the applicable regulatory authority that a carrier is in compliance with this section, based upon the individual's examination, including a review of the appropriate records and of the actuarial assumptions and methods utilized by the carrier in

establishing premium rates for applicable health benefit plans.

(k) ADJUSTMENTS TO COMMUNITY RATING.—

(1) IN GENERAL.—A BasiCare health benefit plan offered by a carrier to a group or individual may provide for an adjustment to the average community rate based on the age of covered individuals. Any such adjustment shall be applied by the carrier consistently to all policyholders, and no other adjustments shall be permitted.

(2) LIMITATION ON ADJUSTMENT,—

(A) IN GENERAL.—The adjustment under paragraph (1) may not result, with respect to BasiCare health benefit plans offered by carriers to groups and individuals in the same community, in a premium rate for the most expensive age group exceeding the average community rate by more than the applicable percent (as defined in subparagraph (B)).

(B) APPLICABLE PERCENT DEFINED.—In subparagraph (A), the term "applicable percent" means—

(i) for the first effective year, 50 percent,

(ii) for the second effective year, 40 percent,

(iii) for the third effective year, 30 percent, and

(iv) for any subsequent year, 20 percent.

(l) APPLICATION OF STANDARDS TO REINSURANCE POLICIES.—The requirements of this section shall apply to all reinsurance policies sold by an entity to a carrier offering BasiCare health benefit plans through self-insured employment-related health benefit plans.

(m) APPLICATION OF BASICARE BASE PREMIUM RATE.—For the first year of standardization of the BasiCare health benefit plan under this Act, premiums charged for BasiCare health benefit plans may not exceed the BasiCare base premium rate, as provided in section 216.

(n) APPLICATION OF ALLOWED RATE OF INCREASE.—

(1) IN GENERAL.—A carrier may not charge premiums with respect to BasiCare health benefit plans in any calendar year which exceed the greater of—

(A) the previous year's rate plus the annual allowable percentage rate of increase for the year as provided in section 213; or

(B) the applicable base premium rate, as provided in section 213, plus amounts corresponding to the cumulative total of annual allowable percentage rates of increase up to the current year.

(2) EXCEPTION.—Notwithstanding paragraph (1)(B), in any single calendar year a carrier may not increase its premium with respect to a BasiCare health benefit plan by an amount exceeding 120 percent of the national annual allowable percentage rate of increase for that year, as provided in section 213.

(o) TREATMENT OF CERTAIN CARRIERS.—In preparing its recommendation to Congress under section 212 of this Act, the Commission may, as it deems necessary, provide for limited and temporary adjustments in the requirements under subsection (k) of this section for carriers who can demonstrate a continued and significantly disproportionate share of high-risk insureds among its policyholders.

SEC. 216. BASICARE BASE PREMIUM RATE.

(a) CRITERIA.—In developing the legislative proposal described in section 212(a)(3), the BasiCare base premium rate established and recommended by the Commission shall be based on the anticipated average cost of providing the BasiCare benefits package to an average group of beneficiaries (as determined by the Commission in consultation with the Board).

(b) LIMITED VARIATION ALLOWED.—In establishing the BasiCare base premium rate, the Commission may propose limited variations in such rate to accommodate geographic variables, or other variables as described in paragraphs (1) and (2).

(1) GEOGRAPHIC VARIABLES.—In order to accommodate differences in costs in delivering health care in different geographical areas, the Commission may provide for limited geographical variations in the BasiCare base premium rate to the extent such variations are—

(A) based on statistically verifiable differences in the cost of providing the BasiCare benefits package, and

(B) not provided for geographic areas smaller than areas that encompass at least—

(i) one or more adjacent metropolitan statistical areas (as defined by the Commission, in consultation with the Bureau of the Census); or

(ii) the total remaining area within a State not otherwise included in a geographic area described under clause (i).

(2) OTHER VARIABLES.—If the Commission has provided for variation in the BasiCare benefits package under paragraph (2) of section 214(b), the Commission may provide for variations in the BasiCare base premium rate to reflect such variations in the benefit package, to the extent such variations meet the criteria for allowing variations under paragraph (2) of such section. Also, to the extent that adjustments to community rating of BasiCare health benefit plans are permitted under section 215(k), the Commission may provide for corresponding variation in the BasiCare base premium rate to reflect such permitted adjustments. If variations are provided for in the BasiCare base premium rate, such variations shall be expressed in terms of percentage variation from a single standard national rate.

SEC. 217. EMPLOYER RESPONSIBILITIES UNDER BASICARE.

(a) NO DISCRIMINATION BASED ON HEALTH STATUS FOR CERTAIN SERVICES.—An employment-related BasiCare health benefit plan may not deny, limit, or condition coverage based on the health status, claims experience, receipt of health care, medical history, or lack of evidence of insurability, of an individual.

(b) TREATMENT OF PREEXISTING CONDITION EXCLUSIONS.—An employment-related BasiCare health benefit plan may not exclude or otherwise discourage coverage with respect to services related to treatment of a preexisting condition.

(c) TREATMENT OF WAITING PERIODS.—An employment-related BasiCare health benefit plan may not impose waiting periods of any length.

(d) NO DISCRIMINATION BASED ON INCOME LEVEL.—An employment-related BasiCare health benefit plan shall apply equally to employees of all income levels.

(e) EQUAL CONTRIBUTION LEVELS.—The total amount of an employer's contribution to the cost of coverage under an employment-related BasiCare health benefit plan for employees with incomes less than 200 percent of the income official poverty line (as described in section 232(g)(1)) shall equal or exceed such total amount for employees with incomes greater than 200 percent of such income official poverty line.

SEC. 218. INDIVIDUAL RESPONSIBILITIES UNDER BASICARE.

Subject to the provisions of subsections (h) and (i) of section 213, in developing the legislative proposal described in section 212(a)(5), the Commission shall require that to be eligible for benefits under a Federal program, an individual seeking benefits under such program shall certify to the administrator of such program that such individual and the dependents of such individual possess BasiCare health insurance coverage that meets the applicable minimum standards under this title. Except as may be provided by the Commission under section 214(c)(1), this section shall not apply to persons eligible for enrollment in the medicare program.

SEC. 219. SELF-INSURED PLAN REQUIREMENTS.

(a) IN GENERAL.—In developing the legislative proposal described in section 212(a)(6), the Commission shall require that no self-insured BasiCare health benefit plan may be offered on or after the effective date of implementation of the Commission's recommendation under this title, unless the plan has been certified by the Commission (in accordance with such procedures as the Commission establishes) as qualifying as a BasiCare health benefit plan. The Commission may enter into an agreement with the Secretary of Health and Human Services in providing for administration of certification under this subsection.

(b) LOOK-BEHIND AUTHORITY.—If the BasiCare Commission determines that a self-insured health benefit plan does not qualify on or after the effective date specified in subsection(a), no coverage may be provided under the plan to individuals not enrolled as of the date of the determination, and the plan may not be continued for plan years beginning after the date of such determination until the Commission determines that such plan so qualifies.

(c) CERTIFICATION REQUIREMENTS.—

(1) IN GENERAL.—In order to obtain certification as a BasiCare health benefit plan as provided in this section, a self-insured health benefit plan must demonstrate to the satisfaction of the Commission that—

(A) the benefits and conditions of such plan (including copayments and deductibles) are substantially equivalent to those of a BasiCare health benefit plan as provided under this Act;

(B) the self-insuring entity is adhering to nondiscrimination standards substantially equivalent to those provided for carriers in section 215 (insurance reform requirements) and described in paragraph (2);

(C) the average per capita cost of providing BasiCare equivalent benefits to enrollees in the self-insured plan differs no more than 10 percent (either above or below) from the average per capita cost of providing BasiCare benefits package to non-self-insured beneficiaries in the community (or communities) in which the self-insured group is located; and

(D) the self-insuring entity possesses adequate financial reserves, as determined by the Commission, to assure the immediate and long-term solvency of the entity and the benefits of individuals receiving coverage through such entity.

(2) STANDARDS DESCRIBED.—Standards described in this paragraph shall include (but are not limited to) the following:

(A) NO DISCRIMINATION BASED ON HEALTH STATUS.—No self-insured BasiCare health benefit plan may deny, limit, or condition the coverage under (or benefits of) the plan with respect to health status, claims experience, receipt of health care, medical history, or lack of evidence of insurability, of an individual or group.

(B) TREATMENT OF PREEXISTING CONDITIONS.—No self-insured BasiCare health benefit plan may exclude or otherwise discourage coverage with respect to services related to treatment of a preexisting condition.

(C) WAITING PERIODS.—No self-insured BasiCare health benefit plan may impose waiting periods of any length.

(d) NONAPPLICATION TO SUPPLEMENTAL INSURANCE.—The provisions described in this section shall apply only to coverage for benefit equivalent to the BasiCare health benefit plan and do not apply to other health benefits.

SEC. 220. DEVELOPMENT OF STANDARDS FOR MANAGED CARE PLANS.

(a) IN GENERAL.—In preparing the legislative proposal described in section 212(a)(7), the Commission, taking into account recommendations of the Managed Care Advisory Committee (as described in subsection (b)), shall develop recommended standards that carriers offering managed care plans should meet with respect to the benefits, coverage, and delivery systems provided under such plans. Such standards shall encompass the standards by which managed care entities operate.

(b) MANAGED CARE ADVISORY COMMITTEE.—

(1) ESTABLISHMENT.—There shall be established a Managed Care Advisory Committee (hereinafter referred to as the "Committee").

(2) MEMBERSHIP.—The Committee shall be composed of 5 members appointed by the Chairperson of the Commission, each member representing 1 of the following areas:

(A) Health care professionals.

(B) Managed care industry.

(C) Academia (with specific expertise in managed care plans).

(D) Business management.

(E) Organized labor.

(3) COMPENSATION.—

(A) IN GENERAL.—Members of the Committee shall serve without compensation.

(B) EXPENSES, ETC., REIMBURSED.—While away from their homes or regular places of business on the business of the Committee, the members may be allowed travel expenses, including per diem in lieu of subsistence, as authorized by section 5703 of title 5, United States Code, for persons employed intermittently in Government service.

(C) APPLICATION OF ACT.—The provisions of the Federal Advisory Committee Act (5 U.S.C. App.) shall not apply with respect to the Committee.

(D) SUPPORT.—The Commission shall supply such necessary office facilities, office supplies, support services, and related expenses as necessary to carry out the functions of the Committee.

SEC. 221. PREEMPTION OF PROVISIONS RELATING TO MANAGED CARE.

In developing the legislative proposal described in section 212(a)(7), the Commission shall provide that in the case of a managed care plan meeting the recommended standards under section 220 that is offered by a carrier, the following provisions of State law are preempted and may not be enforced against the managed care plan with respect to a carrier offering such plan:

(1) RESTRICTIONS ON REIMBURSEMENT RATES OR SELECTIVE CONTRACTING.—Any law that restricts the ability of the carrier to negotiate reimbursement rates with health care providers or to contract selectively with one provider or a limited number of providers.

(2) RESTRICTIONS ON DIFFERENTIAL FINANCIAL INCENTIVES.—Any law that limits the financial incentives that the managed care plan may require a beneficiary to pay when a non-plan provider is used on a non-emergency basis.

(3) RESTRICTIONS ON UTILIZATION REVIEW METHODS.—

(A) IN GENERAL.—Any law that—

(i) prohibits utilization review of any or all treatments and conditions;

(ii) requires that such review be made by a resident of the State in which the treatment is to be offered or by an individual licensed in such State, or by a physician in any particular specialty or with any board certified specialty of the same medical specialty as the provider whose services are being rendered;

(iii) requires the use of specified standards of health care practice in such review or requires the disclosure of the specific criteria used in such review;

(iv) requires payments to providers for the expenses of responding to utilization review requests; or

(v) imposes liability for delays in performing such review.

(B) CONSTRUCTION.—Nothing in subparagraph (A)(ii) shall be construed as prohibiting a State from requiring that utilization review be conducted by a licensed health care professional, or requiring that any appeal from such a review be made by a licensed physician or by a licensed physician in any particular specialty or with any board certified specialty of the same medical specialty as the provider whose services are being rendered.

(4) RESTRICTIONS ON BENEFITS.—Any law that mandates benefits under the managed care plan that are greater that the benefits recommended under the standards developed under section 220.

Subtitle C—Low-Income Assistance

SEC. 231. TRANSFER FROM MEDICAID TO BASICARE.

(a) IN GENERAL.—In developing the legislative proposal described in section 212(a)(8)(A), the Commission shall provide for the orderly termination of medicaid program coverage under title XIX of Social Security Act, to the extent that such coverage duplicates the BasiCare benefits package.

(b) TRANSFER OF COVERED INDIVIDUALS FROM MEDICAID TO BASICARE.—Such proposal shall require each State—

(1) to notify medicaid beneficiaries of the impending transfer of coverage of such beneficiaries to the BasiCare program not later than 1 year prior to the date of transfer from medicaid to the BasiCare program; and

(2) to provide such information and assistance as may be necessary to assure the enrollment of all medicaid beneficiaries in BasiCare health benefit plans upon the establishment of such plans.

(c) PROVISIONAL TREATMENT OF MEDICAID BENEFITS NOT COVERED BY BASICARE.—Such proposal shall require—

(1) that for a period of 5 years following the termination of medicaid benefits that duplicate the BasiCare benefits package, the medicaid program shall continue to operate with respect to the provision of any existing benefits which are not covered under the BasiCare benefits package; and

(2) Federal rules and regulations regarding the medicaid program shall remain in effect during a transition period subject to such adjustments deemed necessary by the Commission to carry out the medicaid-to-BasiCare transfer described in this section.

(d) FINAL DISPOSITION OF MEDICAID BENEFITS.—Upon expiration of the 5-year transition period described in subsection (c)(1), Federal funding for any existing medicaid benefits which are not covered under the BasiCare benefits package shall be discontinued, unless Congress has approved a plan for alternate disposition of such benefits, as provided in section 213.

SEC. 232. LOW-INCOME ASSISTANCE WITH COSTS OF BASICARE INSURANCE

(a) IN GENERAL.—In developing the legislative proposal described in section 212(a)(8)(B), the Commission shall provide for a BasiCare public assistance program (hereafter in this section referred to as 'BasiCare Assist') which, at a minimum, meets the requirements of the following subsections of this section.

(b) ASSISTANCE FOR UNDER-POVERTY FAMILIES.—In the case of an individual who is a member of an under-poverty family, BasiCare Assist shall provide for payment of—

(1) premiums charged the individual for coverage under a BasiCare health benefit plan in which the individual is enrolled; and

(2) deductibles and other cost-sharing imposed on the individual under such plan, other than a per service copayment, not to exceed $5 per service, as determined by the Commission.

(c) ASSISTANCE FOR NEAR-POVERTY FAMILIES.—

(1) IN GENERAL.—In the case of an individual who is a member of a near-poverty family, BasiCare Assist shall provide for payment of the applicable percentage of any premiums, deductibles, and other cost-sharing charged the individual for coverage under a BasiCare health benefit plan in which the individual is enrolled.

(2) APPLICABLE PERCENTAGE.—For purposes of paragraph (1), the term 'applicable percentage' means 100 percent reduced (but not below zero percent) by 10 percentage points for each 10 percentage point bracket (or portion thereof) such family's income equals or exceeds 100 percent of the income official poverty line (as defined by the Office of Management and Budget, and revised annually in accordance with section 673(2) of the Omnibus Budget Reconciliation Act of 1981) applicable to a family of the size involved.

(d) ADJUSTMENT OF ASSISTANCE.—The Commission shall provide for appropriate adjustments to any assistance under this section to reflect partial family coverage under an employment-related BasiCare health benefit plan.

(e) APPLICATION FOR ASSISTANCE.—BasiCare Assist shall use a standard Federal application which shall be as simple in form as possible and understandable to the average individual, and shall require attachment of such documentation as deemed necessary by the Commission in order to ensure eligibility for assistance. Such application shall be available to any individual or family, may be filed at any time, and as provided in subsection (f), may initiate coverage under a BasiCare health benefit plan. The Commission shall use, as deemed practicable by the Commission, any existing forms employed for Federal income tax filings as an application for BasiCare Assist.

(f) ENROLLMENT AT POINT OF APPLICATION.—To the extent practicable, the Commission shall provide for the option of enrollment in a BasiCare health benefit plan as part of the application and approval process for assistance under this section. In providing for such an option, the Commission may require carriers of BasiCare Health benefit plans to provide such information and assistance as may be necessary.

(g) PAYMENT OF PREMIUMS, DEDUCTIBLES, AND OTHER COST-SHARING.—BasiCare Assist shall provide to an individual a voucher for the applicable percentage of BasiCare premiums, deductibles, and other cost-sharing for which such individual qualifies under subsection (b) or (c). Such voucher shall be remitted by the individual to the carrier of

BasiCare health benefit plans (or, in the case of an employment-related BasiCare health benefit plan, to the individual's employer) for payment by BasiCare Assist. Such carrier shall make proper adjustments in billing statements to reflect such individual's remaining premium obligations, deductibles, and other cost-sharing (if any).

(h) DOCUMENTATION OF ELIGIBILITY.—

(1) REQUIREMENT FOR FILING OF INCOME STATEMENT.—In the case of a family which is receiving assistance under BasiCare Assist for any month in a year, a member of the family shall file a statement with the Commission, at such intervals during such year as the Commission deems necessary, and by not later than April 15 of the following year. Such a statement shall provide information necessary to determine the family income and the number of family members in the family during the year.

(2) RECONCILIATION OF ASSISTANCE BASED ON ACTUAL INCOME.—Based on and using the income reported in the statement filed under paragraph (1) with respect to a family, the Commission shall compute the amount of assistance that should have been provided under BasiCare Assist with respect to the family in the year involved and make proper adjustments in future assistance. If the amount of such assistance computed is—

(A) greater than the amount of assistance provided, the Commission shall provide for payment to the family involved of an amount equal to the amount of the deficit, or

(B) less than the amount of assistance provided, the Commission shall require the family to pay to the Federal Government (to the credit of BasiCare Assist) an amount equal to the amount of the excess payment.

(3) DISQUALIFICATION FOR FAILURE TO FILE.—In the case of any family that is required to file an information statement under paragraph (1) for a year and that fails to file such a statement by the deadline specified by the Commission, no member of the family shall be eligible for assistance under this section after such deadline. The Commission shall waive the application of this paragraph if the family establishes, to the satisfaction of the Commission, good cause for the failure to file the statement on a timely basis.

(4) PENALTIES FOR FALSE INFORMATION.—

(A) INTEREST FOR UNDERSTATEMENTS.—Each individual who knowingly understates income reported in an application for assistance under BasiCare Assist or any statement described in paragraph (1), or otherwise makes a material misrepresentation of information in such an application or statement shall be liable to the Federal Government for excess payments made based on such understatement or misrepresentation, and for interest on such excess payments at a rate specified by the Commission.

(B) PENALTIES FOR MISREPRESENTATION.—Each individual who knowingly misrepresents material information in an application for assistance under BasiCare Assist or any statement described in paragraph (1) shall be liable to the Federal Government for $1,000 or, if greater, 3 times the excess payments made based on such misrepresentation.

(5) NOTICE OF REQUIREMENT.—The Commission shall provide for written notice, in March of each year, of the requirement of paragraph (1) to each family which received assistance under BasiCare Assist in any month during the preceding year and to which such requirement applies.

(6) TRANSMITTAL OF INFORMATION.—The Secretary of the Treasury shall transmit annually to the Commission such information relating to the total income of individuals and families for the taxable year ending in the previous year as may be necessary to verify the reconciliation of assistance under BasiCare Assist.

(i) DEFINITIONS AND SPECIAL RULES.—For purposes of this section—

(1) UNDER-POVERTY FAMILY.—The term "under-poverty family" means a family whose income is less than 100 percent of the income official poverty line (as defined by the Office of Management and Budget, and revised annually in accordance with section 673(2) of the Omnibus Budget Reconciliation Act of 1981) applicable to a family of the size involved.

(2) NEAR-POVERTY FAMILY.—The term "near-poverty family" means a family whose income equals or exceeds 100 percent of the income official poverty line (as described in paragraph (1)), but is less than 200 percent of such income official poverty line.

(3) DETERMINATIONS OF INCOME.—

(A) IN GENERAL.—The term "income" means—

(i) adjusted gross income (as defined in section 62(a) of the Internal Revenue Code of 1986), determined without the application of paragraphs (6) and (7) of such section and without the application of section 162(l) of such Code, plus

(ii) the amount of social security benefits (described in section 86(d) of such Code) which is not includable in gross income under section 86 of such Code.

(B) FAMILY INCOME.—The term "family income" means, with respect to an individual, the sum of the income for the individual and all the other family members.

(C) FAMILY SIZE.—The family size to be applied under this section, with respect to family income, is the number of individuals included in the family for purposes of coverage of a BasiCare health benefit plan.

(D) TIMING OF DETERMINATION.—Income shall be determined in accordance with one of the following methods, at the option of the applicant, for coverage under this section:

(i) Multiplying by a factor of 4 the family income of the applicant for the 3-month period immediately preceding the month in which the application for assistance under BasiCare is made.

(ii) Determining the family income of the applicant for the month in which the application for such assistance is made.

(j) EFFECTIVE DATE.—The provisions of this section shall take effect on the effective date of the legislation described in section 212(a) or 213(a) of this Act.

Subtitle D—Congressional Consideration of Commission Recommendation

SEC. 241. RULES GOVERNING CONGRESSIONAL CONSIDERATION.

(a) RULES OF HOUSE OF REPRESENTATIVES AND SENATE.—This section is enacted by the Congress—

(1) as an exercise of the rulemaking power of the House of Representatives and the Senate, respectively, and as such is deemed a part of the rules of each House, respectively, but applicable only with respect to the procedure to be followed in that House in the case of approval resolutions described in subsection (b), and supersedes other rules only to the extent that such rules are inconsistent therewith; and

(2) with full recognition of the constitutional right of either House to change the rules (so far as relating to the procedure of that House) at any time, in the same manner and to the same extent as in the case of any other rule of that House.

(b) TERMS OF THE RESOLUTION.—For purposes of section 212(b), the term "approval resolution" means only a joint resolution of the two Houses of the Congress, providing in—

(1) the matter after the resolving clause of which is as follows: "That the Congress approves the recommendations of the Commission on National Health Care Access and Reform as submitted by the Commission on _____", the blank space being filled in with the appropriate date; and

(2) the title of which is as follows: "Joint Resolution approving the recommendation of the Commission on National Health Care Access and Reform".

(c) INTRODUCTION AND REFERRAL.—On the day on which the recommendation of the Commission is transmitted to the House of Representatives and the Senate, an approval resolution with respect to such recommendation shall be introduced (by request) in the House of Representatives by the Majority Leader of the House, for himself and the Minority Leader of the House, or by Members of the House designated by the Majority Leader of the House, for himself and the Minority Leader of the House, or by Members of the House designated by the Majority Leader and Minority Leader of the House; and shall be introduced (by request) in the Senate by the Majority Leader of the Senate, for himself and the Minority Leader of the Senate, or by Members of the Senate designated by the Majority Leader and Minority Leader of the Senate. If either House is not in session on the day on which such recommendation is transmitted, the approval resolution with respect to such recommendation shall be introduced in the House, as provided in the preceding sentence, on the first day thereafter on which the House is in session. The approval resolution introduced in the House of Representatives and the Senate shall be referred to the appropriate committees of each House.

(d) AMENDMENTS PROHIBITED.—No amendment to an approval resolution shall be in order in either the House of Representatives or the Senate; and no motion to suspend the application of this subsection shall be in order in either House, nor shall it be in order in either House for the Presiding Officer to entertain a request to suspend the application of this subsection by unanimous consent.

(e) PERIOD FOR COMMITTEE AND FLOOR CONSIDERATION.—

(1) IN GENERAL.—Except as provided in paragraph (2), if the committee or committees of either House to which an approval resolution has been referred have not reported it at the close of the 45th day after its introduction, such committee or committees shall be automatically discharged from further consideration of the approval resolution and it shall be placed on the appropriation calendar. A vote on final passage of the approval resolution shall be taken in each House on or before the close of the 45th day after the approval resolution is reported by the committees or committee of that House to which it was referred, or after such committee or committees have been discharged from further consideration of the approval resolution. If prior to the passage by one House of an approval resolution of that House, that House receives the same approval resolution from the other House then—

(A) the procedure in that House shall be the same as if no approval resolution had been received from the other House; but

(B) the vote on final passage shall be on the approval resolution of the other House.

(2) COMPUTATION OF DAYS.—For purposes of paragraph (1), in computing a number of days in either House, there shall be excluded any day on which the House is not in session.

(f) FLOOR CONSIDERATION IN THE HOUSE OF REPRESENTATIVES.—

(1) MOTION TO PROCEED.—A motion in the House of Representatives to proceed to the consideration of an approval resolution shall be highly privileged and not debatable. An amendment to the motion shall not be in order, nor shall it be in order to move to reconsider the vote by which the motion is agreed to or disagreed to.

(2) DEBATE.—Debate in the House of Representatives on an approval resolution shall be limited to not more than 20 hours, which shall be divided equally between those favoring and those opposing the bill or resolution. A motion further to limit debate shall not be debatable. It shall not be in order to move to recommit an approval resolution or to move to reconsider the vote by which an approval resolution is agreed to or disagreed to.

(3) MOTION TO POSTPONE.—Motions to postpone, made in the House of Representatives with respect to the consideration of an approval resolution, and motions to proceed to the consideration of other business, shall be decided without debate.

(4) APPEALS.—All appeals from the decisions of the Chair relating to the application of the Rules of the House of Representatives to the procedure relating to an approval resolution shall be decided without debate.

(5) GENERAL RULES APPLY.—Except to the extent specifically provided in the preceding provisions of this subsection, consideration of an approval resolution shall be governed by the Rules of the House of Representatives applicable to other bills and resolutions in similar circumstances.

(g) FLOOR CONSIDERATION IN THE SENATE.—

(1) MOTION TO PROCEED.—A motion in the Senate to proceed to the consideration of an approval resolution shall be privileged and not debatable. An amendment to the motion shall not be in order, nor shall it be in order to move to reconsider the vote by which the motion is agreed to or disagreed to.

(2) GENERAL DEBATE.—Debate in the Senate on an approval resolution, and all debatable motions and appeals in connection therewith, shall be limited to not more than 20 hours. The time shall be equally divided between, and controlled by, the Majority Leader and the Minority Leader or their designees.

(3) DEBATE OF MOTIONS AND APPEALS.—Debate in the Senate on any debatable motion or appeal in connection with an approval resolution shall be limited to not more than 1 hour, to be equally divided between, and controlled by, the mover and the manager of the approval resolution, except that in the event the manager of the approval resolution is in favor of any such motion or appeal, the time in opposition thereto, shall be controlled by the Minority Leader or his designee. Such leaders, or either of them, may, from time under their control on the passage of an approval resolution, allot additional time to any Senator during the consideration of any debatable motion or appeal.

(4) OTHER MOTIONS.—A motion in the Senate to further limit debate is not debatable. A motion to recommit an approval resolution is not in order.

(h) POINT OF ORDER REQUIRING SUPERMAJORITY FOR MODIFICATIONS TO RECOMMENDATION ONCE APPROVED.—

(1) IN GENERAL.—It shall not be in order in the House of Representatives or the Senate to consider any amendment to the provisions of the BasiCare Health Access and Reform Act except as provided in paragraph (2).

(2) WAIVER.—The point of order described in paragraph (1) may be waived or suspended in the House of Representatives or the Senate only, by the affirmative vote of three-fifths of the Members duly chosen and sworn.

Subtitle E—Enforcement Provisions

SEC. 251. ENFORCEMENT PROVISIONS FOR CARRIERS, PROVIDERS, AND EMPLOYERS.

(a) IN GENERAL.—Chapter 47 of the Internal Revenue Code of 1986 (relating to excise taxes on qualified pension, etc. plans) is amended by striking section 5000 and section 5000A (as added by section 106) and inserting the following new sections:

"SEC. 5000. FAILURE OF CARRIERS WITH RESPECT TO BASICARE INSURANCE.

"(a) GENERAL RULE.—In the case of any carrier offering any health benefit plan, there is hereby imposed a tax on such carrier if such plan fails to qualify as a Basicare health benefit plan.

"(b) AMOUNT OF TAX.—

"(1) IN GENERAL.—The amount of tax imposed by subsection (a) by reason of 1 or more failures during a taxable year shall be equal to 50 percent of the gross premiums received during such taxable year with respect to all health benefit plans issued by the carrier on whom such tax is imposed.

"(2) GROSS PREMIUMS.—For purposes of paragraph (1), gross premiums shall include any consideration received with respect to any health benefit contract.

"(3) CONTROLLED GROUPS.—For purposes of paragraph (1)—

"(A) CONTROLLED GROUP OF CORPORATIONS.—All corporations which are members of the same controlled group of corporations shall be treated as 1 carrier. For purposes of the preceding sentence, the term 'controlled group of corporations' has the meaning given to such term by section 1563(a), except that—

"(i) 'more than 50 percent' shall be substituted for 'at least 80 percent' each place it appears in section 1563(a)(1), and

"(ii) the determination shall be made without regard to subsections (a)(4) and (e)(3)(C) of section 1563.

"(B) PARTNERSHIPS, PROPRIETORSHIPS, ETC., WHICH ARE UNDER COMMON CONTROL.—Under regulations prescribed by the Secretary, all trades or business (whether or not incorporated) which are under common control shall be treated as 1 carrier. The regulations prescribed under this subparagraph shall be based on principles similar to the principles which apply in the case of subparagraph (A).

"(c) LIMITATION ON TAX.—

"(1) TAX NOT TO APPLY WHERE FAILURE NOT DISCOVERED EXERCISING REASONABLE DILIGENCE.—No tax shall be imposed by subsection (a) with respect to any failure for which it is established to the satisfaction of the Secretary that the carrier on whom the tax is imposed did not know, and exercising reasonable diligence would not have known, that such failure existed.

"(2) TAX NOT TO APPLY WHERE FAILURES CORRECTED WITHIN 30 DAYS.—No tax shall be imposed by subsection (a) with respect to any failure if—

"(A) such failure was due to reasonable cause and not to willful neglect, and

"(B) such failure is corrected during the 30-day period beginning on the 1st date any of the carriers on whom the tax is imposed knew, or exercising reasonable diligence would have known, that such failure existed.

"(3) WAIVER BY SECRETARY.—In the case of a failure which is due to reasonable cause and not to willful neglect, the Secretary may waive part or all of the tax imposed by subsection (a) to the extent that the payment of such tax would be excessive relative to the failure involved.

"(d) COMPLIANCE DETERMINATION.—

"(1) IN GENERAL.—The Commission on National Health Care Access and Reform (hereafter in this subsection referred to as the 'Commission' shall determine whether any health benefit plan qualifies as a BasiCare health benefit plan.

"(2) STATE AGREEMENTS.—

"(A) IN GENERAL.—The Commission may, in its discretion, enter into an agreement with any State to provide for the State to make the initial determination described in paragraph (1).

"(B) STANDARDS.—An agreement may be entered into under subparagraph (A) only if—

"(i) the chief executive officer of the State requests such agreement be entered into,

"(ii) the Commission determines that the State agreement will apply to substantially all health benefit plans issued in such State, and

"(iii) the Commission determines that the application of the State agreement will carry out the purposes of this section.

"(3) TERMINATION.—The Commission shall terminate any agreement if the Commission determines that the application of the State agreement ceases to carry out the purposes of this section.

"(e) DEFINITIONS.—For purposes of this section the terms 'health benefit plan', 'BasiCare health benefit plan', and 'carrier' shall have the same meanings given such terms under section 271 of the BasiCare Health Access and Cost Control Act.

"SEC. 5000A. FAILURE OF PROVIDERS WITH RESPECT TO BASICARE INSURANCE.

"(a) GENERAL RULE.—There is hereby imposed a tax on the failure of any person who provides any service under a BasiCare health benefit plan to comply with the requirements of section 213(d)(3) of the BasiCare Health Access and Cost Control Act.

"(b) AMOUNT OF TAX.—

"(1) IN GENERAL.—The amount of tax imposed by subsection (a) by reason of 1 or more failures during a taxable year shall be equal to 50 percent of the gross income received during such taxable year with respect to all services provided by the person on whom such tax is imposed.

"(2) CONTROLLED GROUPS.—For purposes of paragraph (1)—

"(A) CONTROLLED GROUP OF CORPORATIONS.—All corporations which are members of the same controlled group of corporations shall be treated as 1 person. For purposes of the preceding sentence, the term 'controlled group of corporations' has the meaning given to such term by section 1563(a), except that—

"(i) 'more than 50 percent' shall be substituted for 'at least 80 percent' each place it appears in section 1563(a)(1), and

"(ii) the determination shall be made without regard to subsections (a)(4) and (e)(3)(C) of section 1563.

"(B) PARTNERSHIPS, PROPRIETORSHIPS, ETC., WHICH ARE UNDER COMMON CONTROL.—Under regulations prescribed by the Secretary, all trades or business (whether or not incorporated) which are under common control shall be treated as 1 person. The regulations prescribed under this subparagraph shall be based on principles similar to the principles which apply in the case of subparagraph (A).

"(c) LIMITATION ON TAX.—

"(1) TAX NOT TO APPLY WHERE FAILURE NOT DISCOVERED EXERCISING REASONABLE DILIGENCE.—No tax shall be imposed by sub-

section (a) with respect to any failure for which it is established to the satisfaction of the Secretary that the person on whom the tax is imposed did not know, and exercising reasonable diligence would not have known, that such failure existed.

"(2) TAX NOT TO APPLY WHERE FAILURES CORRECTED WITHIN 30 DAYS.—No tax shall be imposed by subsection (a) with respect to any failure if—

"(A) such failure was due to reasonable cause and not to willful neglect, and

"(B) such failure is corrected during the 30-day period beginning on the 1st date any of the persons on whom the tax is imposed knew, or exercising reasonable diligence would have known, that such failure existed.

"(3) WAIVER BY SECRETARY.—In the case of a failure which is due to reasonable cause and not to willful neglect, the Secretary may waive part or all of the tax imposed by subsection (a) to the extent that the payment of such tax would be excessive relative to the failure involved.

"(d) COMPLIANCE DETERMINATION.—

"(1) IN GENERAL.—The Commission on National Health Care Access and Reform (hereafter in this subsection referred to as the 'Commission') shall determine compliance with the requirements of section 217 of the BasiCare Health Access and Cost Control Act.

"(2) STATE AGREEMENTS.—

"(A) IN GENERAL.—The Commission may, in its discretion, enter into an agreement with any State to provide for the State to make the initial determination described in paragraph (1).

"(B) STANDARDS.—An agreement may be entered into under subparagraph (A) only if—

"(i) the chief executive officer of the State requests such agreement be entered into,

"(ii) the Commission determines that the State agreement will apply to substantially all providers of services under health benefit plans issued in such State, and

"(iii) the Commission determines that the application of the State agreement will carry out the purposes of this section.

"(3) TERMINATION.—The Commission shall terminate any agreement if the Commission determines that the application of the State agreement ceases to carry out the purposes of this section.

"(e) DEFINITIONS.—For purposes of this section the terms 'health benefit plan' and 'BasiCare health benefit plan' shall have the same meanings given such terms under section 271 of the BasiCare Health Access and Cost Control Act.

"SEC. 5000B. FAILURE OF EMPLOYERS WITH RESPECT TO BASICARE INSURANCE.

"(a) GENERAL RULE.—There is hereby imposed a tax on the failure of any person to comply with the requirements of sections 217 and 219 of the BasiCare Health Access and Cost Control Act with respect to any full-time employee of the person.

"(b) AMOUNT OF TAX.—

"(1) IN GENERAL.—The amount of the tax imposed by subsection (a) on any failure with respect to a full-time employee shall be $50 for each day in the noncompliance period with respect to such failure.

"(2) NONCOMPLIANCE PERIOD.—For purposes of this section, the term 'noncompliance period' means, with respect to any failure, the period—

"(A) beginning on the date such failure first occurs, and

"(B) ending on the date such failure is corrected.

"(3) CORRECTION.—A failure of a person to comply with the requirements of sections 217 and 219 of the BasiCare Health Access and Cost Control Act with respect to any full-time employee of the person shall be treated as corrected if—

"(A) such failure is retroactively undone to the extent possible, and

"(B) the employee is placed in a financial position which is as good as such employee would have been in had such failure not occurred.

For purposes of applying subparagraph (B), the employee shall be treated as if the employee had elected the most favorable coverage in light of the expenses incurred since the failure first occurred.

"(c) LIMITATIONS ON AMOUNT OF TAX.—

"(1) TAX NOT TO APPLY WHERE FAILURE NOT DISCOVERED EXERCISING REASONABLE DILIGENCE.—No tax shall be imposed by subsection (a) on any failure during any period for which it is established to the satisfaction of the Secretary that none of the persons referred to in subsection (d) knew, or exercising reasonable diligence would have known, that such failure existed.

"(2) TAX NOT TO APPLY TO FAILURES CORRECTED WITHIN 30 DAYS.—No tax shall be imposed by subsection (a) on any failure if—

"(A) such failure was due to reasonable cause and not to willful neglect, and

"(B) such failure is corrected during the 30-day period beginning on the first date any of the persons referred to in subsection (d) knew, or exercising reasonable diligence would have known, that such failure existed.

"(3) WAIVER BY SECRETARY.—In the case of a failure which is due to reasonable cause and not to willful neglect, the Secretary may waive part or all of the tax imposed by subsection (a) to the extent that the payment of such tax would be excessive relative to the failure involved.

"(d) LIABILITY FOR TAX.—

"(1) IN GENERAL.—Except as otherwise provided in this subsection, the following shall be liable for the tax imposed by subsection (a) on a failure:

"(A) In the case of a BasiCare health benefit plan other than a multiemployer plan, the employer.

"(B) In the case of a multiemployer plan, the plan.

"(C) Each person who is responsible (other than in a capacity as an employee) for administering or providing benefits under the BasiCare health benefit plan and whose act or failure to act caused (in whole or in part) the failure.

"(2) SPECIAL RULES FOR PERSONS DESCRIBED IN PARAGRAPH (1)(C).—A person described in subparagraph (C) (and not in subparagraphs (A) and (B)) of paragraph (1) shall be liable for the tax imposed by subsection (a) on any failure only if such person assumed (under a legally enforceable written agreement) responsibility for the performance of the act to which the failure relates.

"(e) DEFINITIONS.—For purposes of this section, the terms 'BasiCare health benefit plan' and 'full-time employee' shall have the same meanings given such terms under section 271 of the BasiCare Health Access and Cost Control Act.".

(b) CLERICAL AMENDMENTS.—The table of sections for such chapter 47 is amended by adding at the end thereof the following new items:

"Sec. 5000. Failure of carriers with respect to BasiCare insurance.

"Sec. 5000A. Failure of providers with respect to BasiCare insurance.

"Sec. 5000B. Failure of employers with respect to BasiCare insurance.".

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect on the effective date of the legislation described in section 212(a) or 213(a) of this Act.

SEC. 232. ENFORCEMENT PROVISION FOR INDIVIDUALS.

(a) IN GENERAL.—Subsection (d) of section 151 of the Internal Revenue Code of 1986 (relating to allowance of deductions for personal exemptions) is amended by adding at the end thereof the following new paragraph:

"(5) EXEMPTION AMOUNT DISALLOWED FOR UNINSURED INDIVIDUALS.—The exemption amount for any individual for such individual's taxable year shall be zero, unless the policy number of the BasiCare health benefit plan (as defined in section 271 of the BasiCare Health Access and Cost Control Act) for such individual is included in the return claiming such exemption amount for such individual.".

(b) EFFECTIVE DATE.—The amendment made by this section shall take effect on the effective date of the legislation described in section 212(a) or 213(a) of this Act.

Subtitle F—Financial Provisions

SEC. 261. BASICARE TRUST FUND.

(a) TRUST FUND ESTABLISHED.—There is hereby created on the books of the Treasury of the United States a trust fund to be known as the BasiCare Trust Fund (hereafter in this section referred to as the "Trust Fund"). The Trust Fund shall consist of such gifts and bequests as may be made and such amounts as may be deposited in, appropriated to, or credited to such Trust Fund as provided in this section.

(b) TRANSFER OF AMOUNTS EQUIVALENT TO CERTAIN TAXES.—

(1) IN GENERAL.—There are hereby appropriated to the Trust Fund amounts equivalent to 100 percent of—

(A) 1 percent of the wages (as defined in section 3121 of the Internal Revenue Code of 1986) paid on or after the first day of the calendar year following the date of the enactment of this Act, and reported to the Secretary of the Treasury or the Secretary's delegate pursuant to subtitle F of the Internal Revenue Code of 1986, and

(B) 1 percent of the amount of self-employment income (as defined in section 1402 of the Internal Revenue Code of 1986) reported to the Secretary of the Treasury or the Secretary's delegate on tax returns under subtitle F of the Internal Revenue Code of 1986 for any taxable year beginning on or after the first day of the calendar year following the date of the enactment of this Act.

(2) PENALTIES.—There are hereby appropriated to the Trust Fund amounts equivalent to 100 percent of the taxes imposed under sections 5000, 5000A, and 5000B of the Internal Revenue Code of 1986.

(3) ADDITIONAL REVENUES.—There are hereby appropriated to the Trust Fund amounts equivalent to the additional revenues received in the Treasury as the result of the amendments made by section 262 of this Act.

(4) TRANSFERS BASED ON ESTIMATES.—The amounts appropriated by paragraphs (1), (2), and (3) shall be transferred from time to time (not less frequently than monthly) from the general fund in the Treasury to the Trust Fund, such amounts to be determined on the basis of estimates by the Secretary of the Treasury of the taxes, specified in such subparagraphs, paid to or deposited into the Treasury; and proper adjustments shall be made in amounts subsequently transferred to the extent prior estimates were in excess of or were less than the taxes specified in such subparagraphs.

(c) TRANSFER OF ADDITIONAL FUNDS.—

(1) STATE SHARE OF MEDICAID FUNDING.—

(A) IN GENERAL.—On a fiscal year basis, each State shall remit to the Trust Fund the State's medicaid share for that fiscal year.

(B) STATE'S MEDICAID SHARE.—

(i) IN GENERAL.—With respect to any fiscal year beginning after the applicable effective date of the legislation described in section 212(a) or 213(a) of this Act, a State's Medicaid share shall equal the amount such State expended under title XIX of the Social Security Act for the fiscal year preceding such applicable effective date for benefits equal to the BasiCare benefits package, as determined by the Commission, in consultation with the Secretary of Health and Human Services and State Medicaid authorities. Such amount shall be adjusted each fiscal year by the increase in the Consumer Price Index (as determined by the Department of Labor) for the previous fiscal year.

(ii) AMOUNT UPON COMPLETE ASSIMILATION OF MEDICAID.—The amount otherwise determined under clause (i) for the fiscal year beginning after the applicable effective date of the legislation described in section 213(h) of this Act shall be increased by the amount such State expended under title XIX of the Social Security Act for the fiscal year preceding such applicable effective date.

(C) COMPLIANCE.—The requirements of this paragraph shall be subject to the provisions of section 1904 of the Social Security Act.

(2) FEDERAL SHARE OF MEDICAID FUNDING.—There are hereby appropriated for each fiscal year described in paragraph (1) the comparable Federal share expended under title XIX of the Social Security Act for such fiscal year, as adjusted under paragraph (1)(B)(i).

(3) MEDICARE FUNDS.—All amounts, not otherwise obligated, that remain in the Federal Hospital Insurance Trust Fund and the Federal Supplemental Medical Insurance Trust Fund on the applicable effective date of the legislation described in section 213(i) of this Act shall be transferred to the Trust Fund.

(4) ADDITIONAL FEDERAL FUNDS.—There are hereby appropriated to the Trust Fund for each fiscal year beginning after the applicable effective date of the legislation described in 213(j) of this Act, amounts equal to the amounts appropriated with respect to section 1079 of title 10, United States Code (CHAMPUS) and chapter 89 of title 5, United States Code, as in effect on the day before such applicable effective date, as adjusted under paragraph (1)(B)(i).

(5) APPROPRIATION OF ADDITIONAL SUMS.—There are hereby authorized to be appropriated to the Trust Fund such additional sums as may be required to make expenditures referred to in subsection (e).

(e) EXPENDITURES.—

(1) LOW-INCOME ASSISTANCE.—There are hereby authorized and appropriated such sums as are necessary in each fiscal year for the expenses of the program described in section 241.

(2) ADMINISTRATIVE EXPENSES.—There are hereby appropriated such sums as are authorized under section 203 for the administrative and other expenses of the Commission for each fiscal year.

(3) TITLE I EXPENDITURES.—Amounts in the Trust Fund shall be available, as provided in appropriation Acts, for authorized expenditures described in—

(A) sections 330A(h) and 330B(h) of the Public Health Service Act, as added by sections 111 and 112 of this Act, and

(B) sections 150 and 151(g) of this Act.

(e) INVESTMENT OF TRUST FUND.—

(1) IN GENERAL.—It shall be the duty of the Secretary of the Treasury to invest such portion of the Trust Fund as is not, in the Secretary's judgment, required to meet current withdrawals. Such investments may be made only in interest-bearing obligations of the United States or in obligations guaranteed as to both principal and interest by the United States. For such purpose, such obligations may be acquired—

(A) on original issue at the issue price, or

(B) by purchase of outstanding obligations at the market price.

The purposes for which obligations of the United States may be issued under chapter 31 of title 31, of the United States Code, are hereby extended to authorize the issuance at par of special obligations exclusively to the Trust Fund. Such special obligations shall bear interest at a rate equal to the average rate of interest, computed as to the end of the calendar month next preceding the date of such issue, borne by all marketable interest-bearing obligations of the United States then forming a part of the Public Debt; except that where such average rate is not a multiple of one-eighth of 1 percent, the rate of interest of such special obligations shall be the multiple of one-eighth of 1 percent next lower than such average rate. Such special obligations shall be issued only if the Secretary of the Treasury determines that the purchase of other interest-bearing obligations of the United States, or of obligations guaranteed as to both principal and interest by the United States on original issue or at the market price, is not in the public interest.

(2) SALE OF OBLIGATION.—Any obligation acquired by the Trust Fund (except special obligations issued exclusively to the Trust Fund) may be sold by the Secretary of the Treasury at the market price, and such special obligations may be redeemed at par plus accrued interest.

(3) CREDITS TO TRUST FUND.—The interest on, and the proceeds from the sale or redemption of, any obligations held in the Trust Fund shall be credited to and form a part of the Trust Fund.

(f) REPORT TO CONGRESS.—It shall be the duty of the Secretary of the Treasury to hold the Trust Fund, and (after consultation with the Commission) to report to the Congress each year on the financial condition and the results of the operations of the Trust Fund during the preceding fiscal year and on its expected condition and operations during the next fiscal year. Such report shall be printed as both a House and Senate document of the session of the Congress to which the report is made.

(g) CONFORMING AMENDMENT.—Paragraph (4) of section 201(a) of the Social Security Act (42 U.S.C. 401(a)) is amended by inserting "and section 261(1)(1) of the BasiCare Health Access and Cost Control Act" before the end period.

SEC. 262. TAX TREATMENT OF COSTS OF BASICARE INSURANCE.

(a) TAX EXCLUSIONS FOR EMPLOYER-PROVIDED HEALTH INSURANCE.—Section 106 of the Internal Revenue Code of 1986 (relating to contributions by employer to accident and health plans) is amended by striking "an accident or health plan" and inserting "a BasiCare health benefit plan (as defined in section 271(1) of the BasiCare Health Access and Cost Control Act)".

(b) BUSINESS EXPENSE DEDUCTION FOR HEALTH INSURANCE.—Section 162 of the Internal Revenue Code of 1986 (relating to trade or business expenses) is amended by redesignating subsection (m) as subsection (n) and by inserting after subsection (l) the following new subsection:

"(m) GROUP HEALTH PLANS.—The expenses paid or incurred by an employer for a group health plan shall not be allowed as a deduction under this section unless the plan qualifies as a BasiCare health benefit plan (as defined in section 271(1) of the BasiCare Health Access and Cost Control Act).".

(c) RULES RELATING TO DEDUCTIONS FOR INDIVIDUALS.—Subparagraph (C) of section 213(g)(1) of such Code (defining medical care) is amended by striking "for insurance" and inserting "for a Basicare health benefit plan (as defined in section 271(1) of the BasiCare Health Access and Cost Control Act).".

(d) EFFECTIVE DATE.—The amendments made by this section shall apply with respect to any taxable year beginning after the applicable effective date of the legislation described in section 212(a) or 213(a) of this Act.

Subtitle G—Definitions

SEC. 271. DEFINITIONS.

For purposes of this title:

(1) BASICARE HEALTH BENEFIT PLAN.—The term "BasiCare health benefit plan" means a health benefit plan which—

(A) offers the BasiCare benefits package described in section 214;

(B) applies the BasiCare base premium rate described in section 216; and

(C) meets the requirements of this title.

(2) HEALTH BENEFIT PLAN AND OTHER DEFINITIONS RELATING TO HEALTH PLANS.—For purposes of this section:

(A) HEALTH BENEFIT PLAN.—

(i) IN GENERAL.—The term "health benefit plan" means any hospital or medical expense incurred policy or certificate, hospital or medical service plan contract, health maintenance subscriber contract, other employee welfare plan (as defined in the Employee Retirement Income Security Act of 1964), or any other health insurance arrangement, and includes an employment-related reinsurance plan (as defined in paragraph (3)).

(ii) EXCLUSIONS.—The term 'health benefit plan' does not include—

(I) accident-only, credit, dental, or disability income insurance,

(II) coverage issued as a supplement to liability insurance,

(III) worker's compensation or similar insurance, or

(IV) automobile medical-payment insurance;

that is offered by a carrier.

(B) REINSURANCE PLAN.—The term "reinsurance plan" means any reinsurance or similar mechanism that underwrites a portion of the risk for a health benefit plan.

(C) SELF-INSURED HEALTH BENEFIT PLAN.—The term "self-insured health benefit plan" means a health benefit plan in which an employment-related group assumes the underwriting risk for the plan (whether or not there is any reinsurance or similar mechanism to underwrite a portion of that risk).

(3) CARRIER; HEALTH MAINTENANCE ORGANIZATION; AND OTHER DEFINITIONS RELATING TO CARRIERS.—For purposes of this title:

(A) CARRIER.—The term "carrier" means any person that offers a health benefit plan, whether through insurance or otherwise, including a licensed insurance company, a prepaid hospital or medical service plan, a health maintenance organization, a self-insurer carrier, a reinsurance carrier, and a multiple small employer welfare arrangement (a combination of small employers associated for the purpose of providing health benefit plan coverage for their employees).

(B) HEALTH MAINTENANCE ORGANIZATION.—The term "health maintenance organiza-

tion" has the meaning given the term 'eligible organization' in section 1876(b) of the Social Security Act, as in effect on the date of enactment of this Act.

(C) REINSURANCE CARRIER.—The term "reinsurance carrier" means the entity assuming responsibility for underwriting under an employment-related reinsurance plan, but does not include a carrier insofar as it directly offers a health benefit plan.

(D) SELF-INSURER CARRIER.—The term "self-insurer carrier" means a carrier that is not a licensed insurance company, a prepaid hospital or medical service plan, or a health maintenance organization, that offers a health benefit plan directly with respect to an employment-related group.

(4) GENERAL DEFINITIONS.—For purposes of this title:

(A) APPLICABLE REGULATORY AUTHORITY.—The term "applicable regulatory authority" means, with respect to a health benefit plan offered in a State, the State commissioner or superintendent of insurance or other State authority responsible for regulation of health insurance.

(B) COMMUNITY.—The term "community" means a geographic area that encompasses at least—

(i) one or more adjacent metropolitan statistical areas (as defined by the Commission, in consultation with the Bureau of the Census); or

(ii) the total remaining area within a State not otherwise included in a geographic area described under clause (i).

(C) FULL-TIME EMPLOYEE.—The term "full-time employee" means, with respect to an employer, an employee who normally performs on a monthly basis at least 30 hours of service per week for such employer.

[From the Washington Post, June 3, 1991]

AVERTING THE NEXT CRISIS

(By Ron Pollack)

There is a growing consensus that the health care crisis deserves to be at or near the top of the congressional domestic agenda. As Senate Majority Leader George Mitchell said in his response to the State of the Union address, health care costs are too high and are unaffordable for too many Americans, and "we don't have any policy on what will be the crisis of this decade: long-term care for the elderly."

A successful congressional solution to the health care crisis would have to include two crucial elements: effective cost containment and universal access to acute and chronic care. While projected overall health spending would be significantly reduced under such a solution, government health spending would inevitably rise. This is because the costs of the uninsured, the poor and families needing long-term care would inevitably be borne, in a much larger way than they are today, by government.

This inescapable fact, in the context of federal fiscal woes and a reluctance to increase taxes, is the stumbling block to major congressional action. A growing number of health care bills are being offered in the House and Senate but, largely because of fiscal constraints, action on them is not scheduled.

The key question, therefore, is: how can Congress raise the necessary funds to facilitate comprehensive reform? A key answer may lie in a modified version of Sen. Daniel Patrick Moynihan's proposal for restructuring the Social Security payroll tax—a proposal recently defeated but likely to come up again and again in the years ahead.

By 1996, the Social Security trust funds are projected to reach a reserve balance equal to one and one-half times annual expenditures. These reserves would provide a totally adequate margin of safety to operate Social Security on a modified pay-as-you-go basis. Under the Social Security legislation of 1983, however, the trust funds are expected to grow well beyond this safety margin, and huge additional reserves will be accumulated.

Sen. Moynihan would eliminate this excess reserve by reducing the Social Security payroll tax from 6.2 to 5.2 percent and placing Social Security funding on a modified pay-as-you-go basis. A worker with $15,000 in income would save $150 in payroll taxes, and a $40,000 earner would save $400.

Reducing the payroll tax by one percent for employers and employees would cost the government $56 billion in lost revenues in 1996 (and even more in subsequent years)—an amount that might otherwise help pay government's increased costs for comprehensive health care reform. Wouldn't it be odd if Congress, with one hand, cut this $56 billion in taxes and then, with the other hand, sought to levy a new health care tax for a comparable amount? A far better alternative would be to shift one percent of the payroll tax to health care reform.

Almost everyone would benefit by the use of these funds to help make health care affordable for all. U.S. businesses are now spending as much on employee health care costs as they earn in profit. Labor is seeing hard-won health benefits erode with each new collective bargaining agreement. Consumers are increasingly denied insurance due to existing health problems. Almost no families except the very rich can afford to pay for long-term care. And startlingly, within the next three years, more than one out of every four Americans are likely to find themselves uninsured for a significant period of time.

For congressional leaders interested in health care reform but stymied by the politics of "no new taxes," the one percent shift in payroll taxes offers a sensible solution.

To be sure, such a shift in payroll taxes, like the Moynihan proposal, would require payroll tax increases beginning by 2010 to ensure undiminished Social Security benefits for baby boomers. It would also have an adverse impact on the federal budget by spending funds that would otherwise accumulate. But, unlike the Moynihan plan, it would dedicate these funds to highest priority domestic needs: the growing health care crisis. And, if the one percent shift commenced in 1996, it would occur when the federal budget is projected to have a $20 billion surplus—a huge change from the $318 billion deficit projected for this year.

America must contain its health care costs effectively, and it must do so while guaranteeing high-quality health care for all. The urgency of this agenda is real, and the payroll tax shift can help us achieve it.

(The writer is executive director of Families USA, a national advocacy organization focused on health and long-term care reform.)

By Mr. MCCAIN (for himself and Mr. NICKLES)

S. 2347. A bill to improve the health of the Nation's children, and for other purposes; to the Committee on Finance.

CHILDREN'S HEALTH CARE IMPROVEMENT ACT OF 1992

• Mr. MCCAIN. Mr. President, I rise today to introduce the Children's Health Care Improvement Act of 1992.

America is in the throes of a health care crisis, and most at risk are our children. This legislation, which has been more than a year in the making, directly addresses the problem of many American children lacking health care coverage.

While the quality of the American health care system is revered around the world, more than 37 million have no health care coverage—nearly 10 million of which are children. And, costs continue to go through the roof—with no apparent end in sight.

It was once said that "the strength and energy of a society may be measured today and predicted for tomorrow by the health of its children". Applying such a measurement today would reveal that we are clearly a nation at risk.

The medical chart on the end of the health system's bed reveals some grim realities about our current health system and children:

Nearly 10 million American children are without health care coverage, making up more than one-fourth of the uninsured;

There is a lack of access to primary and preventive care;

Many American children use the emergency room for their primary care because they lack insurance;

America's infant mortality rate exceeds that of every other industrialized country;

Some 24 percent of pregnant women in America lack access to pre-natal care; and

Of American children aged 2 and younger, 20–30 percent go without the necessary immunizations.

Without the excellent efforts of our Nation's Medicaid programs, these statistics would be even more grim. Medicaid, however, is not able to address the whole problem.

Today, after nearly a year's worth of work, I am introducing one of the final planks in my health reform agenda—a comprehensive children's health initiative.

The Children's Health Care Improvement Act of 1992 addresses the health care crisis facing our Nation's children head on. It will ensure access to coverage and bring down costs, while preserving quality and choice.

First, it would make a basic health insurance policy available to every child in our Nation's school system.

In the same way the school lunch program has guaranteed that no child will go without a nutritious lunch, this legislation would guarantee that no child has to go without health insurance.

In Arizona, Blue Cross and Blue Shield has developed a policy that could serve as a model for this program. There are also managed care plans that could serve as models.

Second, it would expand the excellent Community and Migrant Health Center

program which provides ready access to primary and preventive care for lower income Americans, and those residing in underserved areas. In Arizona, last year, this excellent program accommodated nearly 700,000 patient visits—many of them children.

Third, to make sure all of our Nation's children are immunized, it would increase funding for the critical Childhood Immunization Program.

Fourth, to reach out and serve the needs of mothers and/or children at high risk for abuse and neglect, this legislation would provide funding to assist States in establishing a program to track at-risk children and pregnant women to ensure they are receiving the care and assistance they need.

And, fifth, it will eliminate needless bureaucracy by permitting States to combine the application and eligibility process for Medicaid, WIC, and Maternal and Child Health Programs. Together, these programs serve the nutritional, health screening, and basic health services needs of many low-income expectant mothers and children. As currently configured in most States, needy women and children face a redtape barrier to service because these programs usually operate independent of one another.

Together with a provision prohibiting discrimination based on preexisting conditions, and reform of the small employer insurance marketplace, which are contained in other pieces of my health reform package, and which have been reported out of the Finance Committee by Chairman BENTSEN, this initiative will ensure that all of our Nation's children have access to health coverage.

Before I close, I would like to take a moment to express my gratitude to Ms. Debbie Steelman, who headed the bipartisan and multigenerational Advisory Council on Social Security for her assistance with this initiative and the excellent work done by the Commission in this area.

One area not covered by this initiative is that of school nurses. As the Flynn Foundation put it, in a recent report on the health status of Arizona's children, school nurses are the MASH Unit of health care for children. So right they are. Currently, the Arizona Medical Association and the Arizona Nurses Association are working jointly on a project to expand the role and presence of school nurses. I look forward to working with them and supporting their efforts. And will be helpful where I can.

Does the initiative I am introducing today cost money? Sure it does. But, so, too, does sending a child to the emergency room for non-trauma cases, overusing the neo-natal care wards due to a lack of adequate prenatal care, and the like. If adopted, this legislation will actually end up reducing costs and ultimately holding costs in check by giving all children access to primary and preventive care.

For example, we know that every dollar spend on prenatal care saves $3 in the child's first year of life. Every dollar spend on immunization saves $10-$14 by reducing illness, disease and death. Poor children who have comprehensive primary and preventive care have been shown to have annual health costs 10 percent lower than those children who did not receive such care. We will save a great deal of money by delivering basic care outside of the emergency room.

Addressing this aspect of our health care crisis is a national imperative. The current situation just cannot continue. If this package is adopted in Congress, we will no longer risk sacrificing the future of this great country because of inadequate health care for our children. Under this initiative, all of our children will have access to health coverage.

Mr. President, I encourage my colleagues to review this legislation and consider joining me as a cosponsor. I look forward to continuing to work with all of my colleagues as we grapple with how best to address the critical problem of 10 million children who lack health care coverage.

I ask unanimous consent that the full text of the Children's Health Care Improvement Act of 1992 be printed in the RECORD.●

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

S. 2347

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 "Children's Health Care Improvement Act of 1992".

SEC. 2. FINDINGS.

Congress finds that—

America's children represent the hope and future of our country, and are a resource we cannot afford to squander.

Americans under 18 represent one fourth of those without health insurance, with nearly 9.8 million children completely uninsured.

Uninsured children are less likely to see a doctor for preventive or basic care and more likely to visit the more expensive emergency room setting for care when they become ill.

Uninsured children are more likely to miss school and may not learn as effectively as insured children.

Elementary and secondary schools provide a large applicant pool for insurance, much like that of university. Permitting children to join with their peers in purchasing insurance will result in lower rates.

The WIC, Medicaid, and Maternal and Child Health block grant programs each provide critical services to low income mothers and children, but barriers to services exist due to the fact that in most states these programs have individual eligibility processes.

Routine immunization of children against common disease is cost effective and an effective measure against disease proliferation.

Migrant and community health centers are a critical link to preventive and primary health care services, and there is a need for expansion of this critical program.

Early identification and monitoring of those children and mothers at risk of abuse or neglect to ensure that they have access to health and social services is cost effective.

TITLE I—SCHOOL-BASED HEALTH INSURANCE

SEC. 101. ESTABLISHMENT OF PROGRAM.

(a) IN GENERAL.—The Secretary of Education, in consultation with the Secretary of Health and Human Services, shall establish a program under which local educational agencies (as such term is defined in section 1471(12) of the Elementary and Secondary Education Act of 1965) shall offer basic health insurance coverage to eligible students in such schools.

(b) REQUIREMENTS.—

(1) APPLICABILITY.—The provisions of this section shall apply to each local education agency that receives Federal educational assistance.

(2) STATE EDUCATION DEPARTMENTS.—

(A) POLICIES.—The department of education for a State shall determine the types of health insurance policies that should be offered under this section by local education agencies of such State. In making such determination, the department shall ensure that coverage under a fee-for-service plan and a managed care plan is available to the local educational agencies in the State.

(B) ANNUAL REPORTS.—The department of education for a State shall annually prepare and submit to the Secretary of Education a report that describes the health insurance policies offered under this section in the public schools in such State.

(3) HEALTH INSURANCE COVERAGE.—The Secretary of Health and Human Services, shall determine the minimum requirements that any health insurance plan offered under this section must meet, including—

(A) the primary, preventative, medical, emergency and surgical care services and benefits to be covered under such plan; and

(B) any other matter determined appropriate by such Secretary.

(4) LOCAL ADMINISTRATION.—The department of education for a State shall administer the requirements of this section through the local educational agencies.

(c) ELIGIBLE STUDENTS.—To be eligible to be covered under a health insurance plan offered by a local educational agency, an individual shall—

(1) not be more than 18 years of age and reside in the school district;

(2) be uninsured for a period of not less than 6 months prior to the date on which coverage under the plan offered by such school would commence;

(3) not be covered or enrolled under title XIX of the Social Security Act or under any other public health insurance program; and

(4) meet any other requirements determined appropriate by the State department of education or the Secretary of Education.

(d) ENFORCEMENT.—If the Secretary determines that a local educational agency is not in compliance with the requirements of this section, the Secretary may withhold, or request a remittance, not to exceed 10 percent of the total amount of Federal educational assistance to be made available, or previously made available, to such local educational agency for the fiscal year during which such noncompliance is occurring.

(f) CONSTRUCTION.—This section shall not be construed as requiring the purchase of policies under this section.

(g) ADMINISTRATIVE SUPPORT.—The Secretary may provide assistance to local edu-

cational agencies to assist such agencies in off-setting the additional administrative costs to such agencies in complying with this section.

(h) REGULATIONS.—Not later than 180 days after the date of enactment of this Act, the Secretary of Education shall promulgate regulations necessary to carry out this section.

SEC. 102. REFUNDABLE TAX CREDIT FOR CHILDREN'S HEALTH INSURANCE EXPENSES.

(a) IN GENERAL.—Subpart C of part IV of subchapter A of chapter 1 of the Internal Revenue Code of 1986 (relating to refundable personal credits) is amended by inserting after section 34 the following new section:

"SEC. 34A. CHILDREN'S HEALTH INSURANCE EXPENSES.

"(a) ALLOWANCE OF CREDIT.—In the case of an individual, there shall be allowed as a credit against the tax imposed by this subtitle for the taxable year an amount equal to the qualified health insurance expenses paid by such individual during the taxable year.

"(b) QUALIFIED HEALTH INSURANCE EXPENSES.—For purposes of this section—

"(1) IN GENERAL.—The term 'qualified health insurance expenses' means amounts paid during the taxable year for medical care (within the meaning of section 213(d)(1)(C)) with respect to insurance policies issued pursuant to any program approved under section 101 of the Children's Health Care Improvement Act. For purposes of the preceding sentence, the rules of section 213(d)(6) shall apply.

"(2) DOLLAR LIMIT ON QUALIFIED HEALTH INSURANCE EXPENSES.—The amount of the qualified health insurance expenses paid during any taxable year which may be taken into account under subsection (a) shall not exceed $1,000 per qualifying child adjusted under regulations promulgated by the Secretary to reflect any increase in the consumer price index.

"(3) PHASEOUT.—In the case of any taxpayer whose adjusted gross income exceeds 100 percent of the income official poverty line (as defined by the Office of Management and Budget, and revised annually in accordance with section 673(2) of the Omnibus Budget Reconciliation Act of 1981) applicable to a family of the size involved, the dollar amount under paragraph (2) shall be reduced (but not below zero) by the percentage by which such income exceeds such poverty line.

"(4) ELECTION NOT TO TAKE CREDIT.—A taxpayer may elect for any taxable year to have amounts described in paragraph (1) not treated as qualified health insurance expenses.

"(5) COORDINATION WITH HEALTH INSURANCE PREMIUM CREDIT.—Paragraph (1) shall not apply to any amount taken into account in computing the amount of the credit allowed under section 32.

"(6) SUBSIDIZED EXPENSES.—No expense shall be treated as a qualified health insurance expense if—

"(A) such expense is paid, reimbursed, or subsidized (whether by being disregarded for purposes of another program or otherwise) by the Federal Government, a State or local government, or any agency or instrumentality thereof under title XIX of the Social Security Act, and

"(B) the payment, reimbursement, or subsidy of such expense is not includible in the gross income of the recipient.

"(c) QUALIFYING CHILD.—For purposes of this section, the term 'qualifying child' has the meaning given to such term by section 32(c)(3) (determined without regard to subparagraph (A)(iii)).

"(d) COORDINATION WITH ADVANCE PAYMENTS OF CREDIT.—

"(1) RECAPTURE OF EXCESS ADVANCE PAYMENTS.—If any payment in excess of the amount of the credit allowable under this section is made to the individual under 7524 during any calendar year, then the tax imposed by this chapter for the individual's last taxable year beginning in such calendar year shall be increased by the aggregate amount of such payments.

"(2) RECONCILIATION OF PAYMENTS ADVANCED AND CREDIT ALLOWED.—Any increase in tax under paragraph (1) shall not be treated as tax imposed by this chapter for purposes of determining the amount of any credit (other than the credit allowed by subsection (a)) allowable under this subpart.

"(f) REDUCTION OF CREDIT TO TAXPAYERS SUBJECT TO ALTERNATIVE MINIMUM TAX.—The credit allowed under this section for the taxable year shall be reduced by the amount of tax imposed by section 55 (relating to alternative minimum tax) with respect to such taxpayer for such taxable year.

"(d) REGULATIONS.—The Secretary shall prescribe such regulations as may be necessary to carry out the purposes of this section."

(b) ADVANCE PAYMENT OF CREDIT.—

(1) IN GENERAL.—Chapter 77 of the Internal Revenue Code of 1986 (relating to miscellaneous provisions) is amended by inserting after section 7523 the following new section:

"SEC. 7524. ADVANCE PAYMENT OF CREDIT FOR CHILDREN'S HEALTH INSURANCE EXPENSES.

"(a) GENERAL RULE.—The Secretary of the Treasury shall make advance payments of refunds to which eligible taxpayers are entitled by reason of section 34A.

"(b) ELIGIBLE TAXPAYER.—For purposes of this section, the term 'eligible taxpayer' means, with respect to any taxable year, any taxpayer if the taxpayer furnishes, at such time and in such manner as the Secretary may prescribe, to the Secretary such information as the Secretary may require in order to—

"(1) determine if the individual will be eligible to receive the credit provided by section 34A for the taxable year, and

"(2) estimate the amount of qualified health insurance expenses (as defined in section 34A(b)) for the calendar year.

"(c) PAYMENTS.—The Secretary shall make payment of the amount determined under subsection (b)(2) upon receipt of the information described in subsection (b).

"(d) REGULATIONS.—The Secretary shall prescribe such regulations as may be necessary to carry out the purposes of this section."

(c) CONFORMING AMENDMENT.—Section 213 of the Internal Revenue Code of 1986 (relating to deduction for medical, dental, etc., expenses) is amended by adding the following new subsection:

"(g) COORDINATION WITH HEALTH INSURANCE EXPENSES CREDIT UNDER SECTION 34A.—The amount otherwise taken into account under subsection (a) as expenses paid for medical care shall be reduced by the amount (if any) of the children's health insurance expenses credit allowable to the taxpayer for the taxable year under section 34A."

(d) TECHNICAL AMENDMENT.—Paragraph (2) of section 1324(b) of title 31, United States Code, is amended by inserting before the period "or from section 34A of such Code".

(e) CLERICAL AMENDMENTS.—

(1) The table of sections for subpart A of part IV of subchapter A of chapter 1 of the Internal Revenue Code of 1986 is amended by inserting after the item relating to section 34 the following new item:

"Sec. 34A. Children's health insurance expenses."

(2) The table sections for chapter 77 of such Code is amended by inserting after the item relating to section 7523 the following new item:

"Sec. 7524. Advance payment of credit for children's health insurance expenses."

(f) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 1992.

TITLE II—WIC PROGRAM, MATERNAL AND CHILD HEALTH SERVICES BLOCK GRANT PROGRAM, AND MEDICAID

SEC. 201. DEVELOPMENT OF UNIFORM APPLICATION FORM AND PROCESS.

(a) UNIFORM MODEL APPLICATION FORM AND PROCESS.—The Secretary of Health and Human Services (hereafter referred to in this title as the "Secretary"), working in consultation with the Secretary of Agriculture, shall develop a single model uniform application form and process to be utilized in applying for and obtaining benefits under the Special Supplemental Food Program under section 17 of the Child Nutrition Act of 1966 (42 U.S.C. 1786), the Maternal and Child Health Services Block Grant Program under title V of the Social Security Act (42 U.S.C. 701 et seq.), and the medicaid program under title XIX of the Social Security Act (42 U.S.C. 1396 et. seq.). The Secretary of Health and Human Services shall provide any waivers necessary to carry out this section.

(b) AVAILABILITY OF FORM AND PROCESS.—The single model uniform application form and process shall be made available to States electing to adopt such form and process for use in applying for and obtaining benefits under such programs.

(c) OUTREACH PROGRAM.—The Secretary, working in consultation with the Secretary of Agriculture, shall provide an outreach program for States electing to adopt the single model uniform application form and process. The outreach program shall be designed to inform recipients and potential recipients of benefits under the Special Supplemental Food Program under section 17 of the Child Nutrition Act of 1966 (42 U.S.C. 1786), the Maternal and Child Health Services Block Grant Program under title V of the Social Security Act (42 U.S.C. 701 et seq.), and the medicaid program under title XIX of the Social Security Act (42 U.S.C. 1396 et. seq.) of the option to apply for benefits under those programs using the single model uniform application form and process.

SEC. 202. DEMONSTRATION PROGRAM.

(a) IN GENERAL.—The Secretary shall make grants to not more than five States to enable such States to conduct demonstration projects for the purpose of encouraging women to obtain prenatal and well-baby care under the Special Supplemental Food Program under section 17 the Child Nutrition Act of 1966 (42 U.S.C. 1786), the Maternal and Child Health Services Block Grant Program under title V of the Social Security Act (42 U.S.C. 701 et seq.), and the medicaid program under title XIX of the Social Security Act (42 U.S.C. 1396 et seq.).

(b) APPLICATION.—

(1) SUBMISSION OF APPLICATION.—To be eligible to receive a grant under this section a State shall prepare and submit to the Secretary an application at such time, in such form, and containing such information as the Secretary may require.

(2) REVIEW AND APPROVAL OF APPLICATION.—The Secretary shall review and approve each application submitted pursuant to paragraph (1) in accordance with such criteria as the Secretary finds appropriate.

(c) AMOUNT OF GRANT.—The amount of a grant to a State under this section shall be an amount that the Secretary finds reasonable and necessary for the development and implementation of the State's demonstration program.

SEC. 203. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated such sums as may be necessary to carry out the purposes of this title.

TITLE III—EXPANSION OF MIGRANT AND COMMUNITY HEALTH CENTER PROGRAM

SEC. 301. EXPANSION OF MIGRANT AND COMMUNITY HEALTH CENTER PROGRAM.

(a) IN GENERAL.—There are authorized to be appropriated, $250,000,000 to enable the Secretary of Health and Human Services to award grants for the planning and development of additional migrant and community health centers under sections 329 and 330 of the Public Health Service Act (42 U.S.C. 254b and 254c) in medically underserved areas or areas in which there is a high concentration of medically underserved populations.

(b) FUNDING FOR OPERATIONS.—There are authorized to be appropriated, $290,000,000 in each fiscal year to enable the Secretary of Health and Human Services to provide operational assistance to migrant and community health centers developed under subsection (a).

TITLE IV—REVISION OF NATIONAL HEALTH SERVICE CORPS PRIORITIES

SEC. 401. MISSION OF THE CORPS.

Section 331(a) of the Public Health Service Act (42 U.S.C. 254d(a)) is amended by adding at the end thereof the following new paragraph:

"(4) It shall be a principal mission of the National Health Service Corps to increase the access to primary health care services of urban and inner-city poverty stricken target populations (particularly infants and children), rural residents, high-risk pregnant women, migrant workers and their families, substance abusers, and homeless individuals.".

SEC. 402. PRIMARY CARE PHYSICIAN STRATEGY.

(a) IN GENERAL.—Subpart II of part D of title III of the Public Health Service Act (42 U.S.C. 254d et seq.) is amended by inserting after section 335, the following new section:

"SEC. 335A. PRIMARY CARE PHYSICIAN STRATEGY.

"(a) ESTABLISHMENT OF STRATEGY.—The Secretary shall develop and implement, using amounts appropriated under section 338(c), a strategy to provide incentives to encourage primary care physicians to serve—

"(1) in migrant or community health centers or in related health programs; or

"(2) in medically underserved inner-city and rural areas.

"(b) REQUIREMENTS.—The Secretary shall ensure that the strategy developed under subsection (a) requires the implementation of at least one of the programs described in paragraph (1) or (2) through the National Health Service Corps program.

"(1) RECRUITMENT PROGRAM.—Under the strategy developed under subsection (a), the Secretary shall establish a program under the National Health Service Corps to recruit individuals from medically underserved areas to serve as Corps members in the areas from which such individuals were recruited.

"(2) CONTINUED SERVICE PROGRAM.—Under the strategy developed under subsection (a), the Secretary shall establish a program under the National Health Service Corps to encourage Corps members to continue to serve in medically underserved areas after such individuals have discharged their service obligations to the Corps. In determining the method by which to encourage such individuals to continue such service, the Secretary shall evaluate the desirability of providing incentives for such individuals to start a private medical practice or join medical groups, hospitals, and health care systems operating in, or within a reasonable distance from, such medically underserved areas.".

(b) AUTHORIZATION OF APPROPRIATIONS.—Section 338 of such Act (42 U.S.C. 254K) is amended by adding at the end thereof the following new subsection:

"(c) There are authorized to be appropriated to carry out section 335A, $100,000,000 for each fiscal year.".

TITLE V—CHILDHOOD IMMUNIZATIONS

SEC. 501. INCREASE IN AUTHORIZATION FOR CHILDHOOD IMMUNIZATIONS.

Section 317(j)(1)(B) of the Public Health Service Act (42 U.S.C. 247b(j)(1)(b)) is amended by striking out "such sums as may be necessary" and inserting in lieu thereof "$238,865,000 for fiscal year 1992, and $240,000,000 for each of the fiscal years 1993 through 1996".

TITLE VI—CHILDREN AT RISK

SEC. 601. ESTABLISHMENT OF HEALTHY START DEMONSTRATION PROGRAM.

(a) IN GENERAL.—The Secretary of Health and Human Services shall establish a demonstration program to award grants to five States to enable such States to implement healthy start programs that would track mothers and children at high-risk of abuse and neglect, and at risk of not receiving necessary services and care and enable such services to be obtained.

(b) ELIGIBILITY.—To be eligible to receive a grant under this section a State shall prepare and submit to the Secretary of Health and Human Services an application at such time, in such manner, and containing such information as the Secretary may require, including a description of the program to be implemented in the State with amounts received under the grant.

(c) PROGRAM REQUIREMENTS.—

(1) DISTRIBUTION OF FUNDS.—In implementing a healthy start program with amounts received under this section, a State shall distribute funds through the State department of health to community health centers or other community social service programs that agree to perform identification and monitoring activities with respect to at risk children.

(2) IDENTIFICATION AND TRACKING SERVICES.—In implementing a healthy start program with amounts received under this section, the department of health of a State shall develop and implement, either directly or through agreements with entities of the type described in paragraph (1), procedures to identify and track infants born in target areas designated by such department as areas in which children are more likely to be subject to abuse or neglect.

(3) INFORMATION.—In implementing a healthy start program with amounts received under this section, a State shall require that caseworkers providing services under such program to mothers provide such mothers with information concerning services or assistance available under the Special Supplemental Food Program under section 17 of the Child Nutrition Act of 1966, the Food Stamp Act of 1977, titles V and XIX of the Social Security Act and section 8 of the United States Housing Act of 1937.

(d) MODEL SCREENING PROGRAM.—The Secretary of Health and Human Services shall develop and implement, in States that receive assistance under this section, a screening program to identify children determined to be at risk of being subject to abuse or neglect.

(e) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated such sums as may be necessary to carry out this section.

By Mr. MACK:

S. 2348. A bill to reduce the growing costs imposed on State and local governments by unfunded Federal mandates; to the Committee on Governmental Affairs.

S. 2349. A bill to amend the Congressional Budget Act of 1974 to minimize the impact on State and local governments of unexpected provisions of legislation proposing the imposition of large unfunded costs on such governments; to the Committee on Rules and Administration.

FEDERAL MANDATE RELIEF ACT OF 1992 AMENDMENT TO THE CONGRESSIONAL BUDGET ACT OF 1974

• Mr. MACK. Mr. President, since the 1970's, the cities and the States have been paying billions of dollars to comply with unfunded Federal mandates. The problem of unfunded Federal mandates has substantially stripped the ability of cities and States to establish their own spending priorities.

The Florida League of Cities estimates that cities and States throughout the country will spend up to 24 percent of their budgets complying with unfunded Federal mandates.

Today I will introduce two bills addressing the issue of unfunded Federal mandates:

First, a point-of-order bill which would create a speed bump in the process of passing unfunded Federal mandates. It would allow a Senator to raise a procedural point-of-order and stop any legislation on unfunded mandates from coming to the floor for a vote.

Second, a reimbursement bill which would place a disincentive on Congressional mandates by requiring the Federal Government to pay for the cost of mandates.

Coupled with the recession, unfunded Federal mandates have placed a profound burden on the budget of State and local governments.

According to the National Conference of State Legislatures [NCSL]:

There were 20 new mandates passed in the 101st Congress that will cost the States over $15 billion over 5 years. The bulk of the $15 billion cost comes from three expensive mandated changes: First, expanding the Social Security system to State and local employees not participating in a public retirement system, second, increasing the Medicare wage cap from $54,000 to $125,000, and third, changing the eligi-

bility requirements for various Medicare and Medicaid Programs.

Seven major bills alone either just passed or currently moving through Congress would cost States more than $1.6 billion during fiscal year 1992, the projected cost for Florida, according to NCSL, is $87.5 million. These were: Child Welfare and Preventive Services Act (S. 4), Medicaid Expansion (S. 902), Resource Conservation and Recovery Act (S. 976), Homeless Mentally Ill Outreach Act of 1991 (S. 62), National Voter Registration Act (S. 250), Surface Transportation Efficiency Act (S. 1204), and National Literacy Act.

Over 115 Federal mandate bills were introduced in the first 4 months of the 102d Congress. Some examples: National Literacy Act, Family and Medical Leave, National Voter Registration Act, Clean Water Act, and Resource Conservation and Recovery Act.

The 1991 Budget Reconciliation Act alone will cost the States approximately $13.3 billion in unfunded mandates over the next 5 years.

In a State like Florida, the issue of unfunded Federal mandates is even more serious since we are already shortchanged on our fair share of Federal funds.

In addition, the depression in commercial real estate values will have a major effect on local revenue bases. Falling real estate values mean falling property tax revenues. Although we have yet to see the full effect of falling property tax revenues, but they will be felt soon. Falling revenues plus unfunded mandates amount to a double whammy on local budgets.

A recent study by DRI/McGraw-Hill indicates that significant tax increases would be required to maintain existing revenue levels in cities all over the country. In Florida, the study estimates that a Miami family of four could face a tax increase of $236 per year just to offset declining property tax values. The same family in Jacksonville would be hit with an extra $208; St. Petersburg, $88; and Tampa, $72.

Congress must break its bad habit of enacting laws and implementing regulations that unfairly saddle the cities and the States with excessive costs. What has happened is the Federal Government doesn't have the budget to cover these costs and it has found a clever way to force spending by requiring mandates on other jurisdictions.

In essence, Congress is mandating that State and local governments must raise taxes. It's a back door tax increase and it's wrong.●

By Mr. GRAHAM (for himself and Mr. MACK):

S. 2350. A bill to direct the Secretary of the Navy to develop a second homeport on the East Coast of the United States for nuclear-powered aircraft carriers; to the Committee on Armed Services.

DEVELOPMENT OF A SECOND HOMEPORT FOR NUCLEAR-POWERED AIRCRAFT CARRIERS

Mr. GRAHAM. Mr. President, I am introducing today, along with my colleague Senator MACK, legislation that directs the Secretary of the Navy to develop a second homeport on the East Coast of the United States for nuclear aircraft carriers. We are pleased to join in this effort, led by Congressman BENNETT who has already introduced identical legislation in the House.

Mr. President, while the Navy is continuing to implement a strategic homeporting strategy, the Secretary of the Navy is not implementing the strategic homeporting concept for the carrier fleet. Of our 14 carrier groups, 6 are nuclear powered. Two of six are on the east coast, both single-sited.

Single-siting our nuclear carriers on the east coast is a national security risk. In the wake of the breakup of the Soviet Union and the Eastern bloc, we obviously face a decreased security threat.

Nevertheless, simple military doctrine dictates that you minimize risk by dispersing your assets, not bottling them up at one site. This uncertain world does not lend itself to easy prediction.

The world has undergone tremendous change in a short time. But we cannot rule out the possibility of future threats. We also cannot forget that, threat or no threat, common sense tells us not to put our east coast nuclear carriers all in one port.

That is why our legislation directs the Secretary of Navy to develop a second homeport on the east coast. In doing so, the Secretary will obviously have to focus on key issues such as sea accessibility, port security and availability of training flight facilities.

Once a site is selected, the Department of Defense will have to determine the necessity for dredging of the berthing areas, channel, and turning basin, and whether pier upgrades, power upgrades, and new shore maintenance facilities are necessary.

I urge the Senate Armed Services Committee to give prompt consideration to this proposal. I look forward to working with my colleagues on this issue in the months ahead.

Mr. MACK. Mr. President, I rise today to offer legislation which is vital to the long-run national security interests of the United States.

Today, America has two aircraft carrier ports on the east coast—Mayport, FL and Norfolk, VA. However, right now only Norfolk is capable of handling nuclear carriers. Our Nation's carrier fleet is downsizing, from 15 to 12, with conventional carriers being phased out in favor of the newer nuclear-powered ships. As this occurs, our naval air stations, including Mayport, will need to be modernized to handle this evolving requirement. If we don't act in timely fashion, we will lose Mayport as an aircraft carrier base, and left with only Norfolk on the entire Atlantic coast.

Last week, my esteemed colleague in the House, Representative CHARLES E. BENNETT, offered similar legislation in recognition of this important gap. I am delighted to support his effort, and Senator GRAHAM and I urge our colleagues to adopt this measure swiftly, that we may begin corrective action as soon as possible.

By Mr. ADAMS (for himself and Mr. BINGAMAN):

S. 2351. A bill to provide for research to test the efficacy and cost-effectiveness of nutrition screening and intervention activities in populations of older individuals and to determine the extent of malnutrition in such populations; to the Committee on Labor and Human Resources.

NUTRITION SCREENING RESEARCH ACT

Mr. ADAMS. Mr. President, today I am introducing the Nutrition Screening Research Act. Malnutrition among the Nation's elderly is a serious problem. But in order to fight malnutrition in the elderly, we must first identify the individuals who are at risk so that action can be taken to prevent malnutrition. A promising approach to do this is through nutrition screening.

This bill provides for research to give us a clear picture of the extent of the problem of malnutrition in the elderly. It also provides for research of the efficacy and cost-effectiveness of nutrition screening and if reimbursement for nutrition screening should be made available.

The number of malnourished older individuals is shocking. A recent study by Peter D. Hart research associates estimated that 40 percent of elderly patients in acute care or long-term care facilities are malnourished. This legislation provides for a larger scale study to determine the extent of malnutrition in older people in hospitals and nursing homes, as well as in their own homes.

Nutrition screening is a low-technology, low-cost approach to preventing malnutrition. Through nutrition screening, individuals who are at risk of malnutrition can be identified and steps can be taken to prevent malnutrition and its complications. Nutrition screening is especially important for the elderly, who are at particular risk of malnutrition.

At a hearing I conducted last month on "Finding and Fighting Malnutrition in the Elderly," I heard tragic stories of malnourished seniors. Malnourished individuals have prolonged hospital stays, a higher incidence of complications from illness and accidents, and a higher mortality rate than do individuals who are adequately nourished. All this can translate into a lower quality of life for older people and massive health care costs.

The saddest part is that all this can be prevented. In a year in which we are giving so much attention to the health care of Americans, it is time we focus on the prevention of health care problems. Many preventable health problems are nutrition related.

I am honored to be joined by Senator BINGAMAN in introducing this bill. My distinguished colleague from New Mexico has a well-established record in the area of nutrition. His leadership in establishing the National Nutrition Monitoring System is particularly noteworthy.

I urge my other colleagues to join us in cosponsoring this important piece of legislation that can lead to a better quality of life for older individuals and lower health care costs. I ask unanimous consent that the bill be printed in the RECORD.

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

S. 2351

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 "Nutrition Screening Research Act".

SEC. 2. FINDINGS AND PURPOSES.

(a) FINDINGS.—Congress finds that—

(1) many persons in the United States do not have adequate nutrition;

(2) a large segment of the United States population is elderly and the population of older individuals is at particular risk for malnutrition;

(3) by the year 2030, the number of persons in the United States age 65 or older will increase to more than 66,000,000 individuals;

(4) more than one in five individuals who are age 65 or older will be hospitalized in the coming year;

(5) preliminary data suggest that approximately 40 percent of elderly patients in acute-care or long-term care facilities are malnourished;

(6) malnourished patients have prolonged hospital stays, a higher incidence of complications, and a higher mortality rate;

(7) each reduction of 1 month in the average period of dependence of older individuals brings about a savings of up to $4,000,000,000 in health care costs;

(8) the nutritional problems of older individuals include overnutrition and toxicities;

(9) 85 percent of the population of older individuals has one or more chronic diseases that have been documented to benefit from nutrition intervention;

(10) persons age 65 or older represent over one-third of the $660,000,000,000 health care expenditures made annually by the United States;

(11) malnutrition is not only a health issue, but also a social one, with social services at the local, state and national levels being important in reducing malnutrition and improving health conditions; and

(12) a national study that would evaluate the efficacy and cost-effectiveness of nutrition screening and intervention activities for older individuals in the United States could provide the basis for the institutionalization of nutrition screening and intervention activities in the federally supported continuum of health care and social services systems, potentially saving billions of dollars annually and improving the quality of life for millions of older individuals.

(b) PURPOSE.—The purpose of this Act is to provide for a determination of—

(1) the efficacy and cost-effectiveness of nutrition screening and intervention activities for older individuals;

(2) a program to institutionalize the activities; and

(3) the extent of malnutrition in older individuals in the United States.

SEC. 3. RESEARCH.

(a) STUDY.—

(1) IN GENERAL.—The Secretary of Health and Human Services (referred to in this Act as the "Secretary"), acting through the National Institute on Aging, coordinating with the Agency for Health Care Policy and Research and, to the degree possible, working in cooperation with the head of the National Nutrition Monitoring System, established under section 1428 of the Food and Agriculture Act of 1977 (7 U.S.C. 3178), shall conduct a 3-year nutrition screening and intervention activities study.

(2) EFFICACY AND COST-EFFECTIVENESS OF NUTRITION SCREENING AND INTERVENTION ACTIVITIES.—In conducting the study, the Secretary shall determine the efficacy and cost-effectiveness of nutrition screening and intervention activities conducted in the elderly health and long-term care continuum, and of a program that would institutionalize nutrition screening and intervention activities. In evaluating such a program, the Secretary shall determine—

(A) if health or quality of life is measurably improved for older individuals who receive routine nutritional screening and treatment;

(B) if federally subsidized home or institutional care is reduced because of increased independence of older individuals resulting from improved nutritional status;

(C) if a multidisciplinary approach to nutritional care is effective in addressing the nutritional needs of older individuals; and

(D) if reimbursement for nutrition screening and intervention activities is a cost-effective approach to improving the health status of older individuals.

(3) POPULATIONS.—The populations of older individuals in which the study will be conducted shall include populations of older individuals who are—

(A) living independently, including—

(i) individuals who receive home and community-based services or family support; and

(ii) individuals who do not receive additional services and support;

(B) hospitalized, including individuals admitted from home and from institutions; and

(C) institutionalized in residential facilities such as nursing homes and adult homes.

(b) MALNUTRITION STUDY.—The Secretary, acting through the National Institute on Aging, shall conduct a 3-year study to determine the extent of malnutrition in older individuals in hospitals and long-term care facilities and in older individuals who are living independently.

(c) REPORT.—The Secretary shall submit a report to the Committee on Labor and Human Resources of the Senate and the Committee on Energy and Commerce of the House of Representatives containing the findings resulting from the studies described in subsections (a) and (b), including a determination regarding whether a program that would institutionalize nutrition screening and intervention activities should be adopted, and the rationale for the determination.

(d) ADVISORY PANEL.—

(1) ESTABLISHMENT.—The Secretary, acting through the Director of the National Institute on Aging, shall establish an advisory panel that shall oversee the design, implementation, and evaluation of the studies described in subsections (a) and (b).

(2) COMPOSITION.—The advisory panel shall include representatives appointed for the life of the panel by the Secretary from organizations that include the Health Care Financing Administration, the Social Security Administration, the National Center for Health Statistics, the Administration on Aging, the National Council on the Aging, the American Dietetic Association, and the American Academy of Family Physicians.

(3) COMPENSATION AND EXPENSES.—

(A) COMPENSATION.—Each member of the advisory panel who is not an employee of the Federal Government shall receive compensation at the daily equivalent of the rate specified for level V of the Executive Schedule under section 5316 of title 5, United States Code, for each day the member is engaged in the performance of duties for the advisory panel, including attendance at meetings and conferences of the panel, and travel to conduct the duties of the panel.

(B) TRAVEL EXPENSES.—Each member of the advisory panel shall receive travel expenses, including per diem in lieu of subsistence, at rates authorized for employees of agencies under subchapter I of chapter 57 of title 5, United States Code, for each day the member is engaged in the performance of duties away from the home or regular place of business of the member.

(4) DETAIL OF FEDERAL EMPLOYEES.—On the request of the advisory panel, the head of any Federal agency shall detail, without reimbursement, any of the personnel of the agency to the advisory panel to assist the advisory panel in carrying out its duties. Any detail shall not interrupt or otherwise affect the civil service status or privileges of Federal employee.

(5) TECHNICAL ASSISTANCE.—On the request of the advisory panel, the head of a Federal agency shall provide such technical assistance to the advisory panel as the advisory panel determines to be necessary to carry out its duties.

(6) TERMINATION.—Nothwithstanding section 15 of the Federal Advisory Committee Act (5 U.S.C. App.), the advisory panel shall terminate 3 years after the date of enactment of this Act.

SEC. 4 AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated such sums as may be necessary to carry out this Act, and not less than $3,000,000, for each of fiscal years 1993 through 1995.

ADDITIONAL COSPONSORS

S. 15

At the request of Mr. BIDEN, the name of the Senator from California [Mr. SEYMOUR] was added as a cosponsor of S. 15, a bill to combat violence and crimes against women on the streets and in homes.

S. 240

At the request of Mrs. KASSEBAUM, the name of the Senator from Massachusetts [Mr. KENNEDY] was added as a cosponsor of S. 240, a bill to amend the Federal Aviation Act of 1958 relating to bankruptcy transportation plans.

At the request of Mr. D'AMATO, his name was added as a cosponsor of S. 240, supra.

59-059 O—96 Vol. 138 (Pt. 4) 29

S. 703

At the request of Mr. ROCKEFELLER, the name of the Senator from Ohio [Mr. GLENN] was added as a cosponsor of S. 703, a bill to amend the Harmonized Tariff Schedule of the United States to correct the tariff rate inversion on certain iron and steel pipe and tube products.

S. 843

At the request of Mr. GRASSLEY, his name was added as a cosponsor of S. 843, a bill to amend title 46, United States Code, to repeal the requirement that the Secretary of Transportation collect a fee or charge for recreational vessels.

S. 1100

At the request of Mr. KERRY, the name of the Senator from Tennessee [Mr. SASSER] was added as a cosponsor of S. 1100, a bill to authorize the Secretary of Housing and Urban Development to provide grants to urban and rural communities for training economically disadvantaged youth in education and employment skills and to expand the supply of housing for homeless and economically disadvantaged individuals and families.

S. 1261

At the request of Mr. LAUTENBERG, his name was added as a cosponsor of S. 1261, a bill to amend the Internal Revenue Code of 1986 to repeal the luxury excise tax.

S. 1398

At the request of Mr. REID, the name of the Senator from New Hampshire [Mr. SMITH] was added as a cosponsor of S. 1398, a bill to amend section 118 of the Internal Revenue Code of 1986 to provide for certain exceptions from certain rules for determining contributions in aid of construction.

S. 1574

At the request of Mr. RIEGLE, the name of the Senator from South Carolina [Mr. HOLLINGS] was added as a cosponsor of S. 1574, a bill to ensure proper and full implementation by the Department of Health and Human Services of medicaid coverage for certain low-income medicare beneficiaries.

S. 1675

At the request of Mr. EXON, the name of the Senator from Missouri [Mr. BOND] was added as a cosponsor of S. 1675, a bill to amend title 49, United States Code, regarding the collection of certain payments for shipments via motor common carriers of property and household goods freight forwarders, and other purposes.

S. 1788

At the request of Mr. WIRTH, the name of the Senator from Texas [Mr. BENTSEN] was added as a cosponsor of S. 1788, a bill to establish the National Air and Space Museum Expansion Site Advisory Panel for the purpose of developing a national competition for the evaluation of possible expansion sites for the National Air and Space Museum, and to authorize the Board of Regents of the Smithsonian Institution to select, plan, and design such site.

S. 1989

At the request of Mr. ROCKEFELLER, the name of the Senator from Washington [Mr. ADAMS] was added as a cosponsor of S. 1989, a bill to amend certain provisions of the Internal Revenue Code of 1986 to improve the provision of health care to retirees in the coal industry, to revise the manner in which such care is funded and maintained, and for other purposes.

S. 2009

At the request of Mr. PACKWOOD, the name of the Senator from Mississippi [Mr. LOTT] was added as a cosponsor of S. 2009, a bill to amend the Internal Revenue Code of 1986 to modify certain provisions relating to the treatment of forestry activities.

S. 2106

At the request of Mr. CRANSTON, the name of the Senator from South Carolina [Mr. HOLLINGS] was added as a cosponsor of S. 2106, a bill to grant a Federal charter to the Fleet Reserve Association.

S. 2244

At the request of Mr. THURMOND, the names of the Senator from South Carolina [Mr. HOLLINGS], the Senator from Utah [Mr. HATCH], the Senator from Georgia [Mr. NUNN], the Senator from Arkansas [Mr. BUMPERS], and the Senator from Michigan [Mr. RIEGLE] were added as cosponsors of S. 2244, a bill to require the construction of a memorial on Federal land in the District of Columbia or its environs to honor members of the Armed Forces who served in World War II and to commemorate U.S. participation in that conflict.

S. 2246

At the request of Mr. KENNEDY, the names of the Senator from Illinois [Mr. DIXON], the Senator from Pennsylvania [Mr. WOFFORD], and the Senator from California [Mr. CRANSTON] were added as cosponsors of S. 2246, a bill to suspend the forcible repatriation of Haitian nationals fleeing after the coup d'etat in Haiti until certain conditions are met.

S. 2290

At the request of Mr. WIRTH, the name of the Senator from Hawaii [Mr. AKAKA] was added as a cosponsor of S. 2290, a bill to require public disclosure of examination reports of certain failed depository institutions.

S. 2334

At the request of Mr. WIRTH, the name of the Senator from Arkansas [Mr. PRYOR] was added as a cosponsor of S. 2334, a bill to extend the statute of limitations applicable to civil actions brought by the Federal conservator or receiver of a failed depository institution.

S. 2335

At the request of Mr. HATFIELD, the name of the Senator from Ohio [Mr. METZENBAUM] was added as a cosponsor of S. 2335, a bill to amend the Solid Waste Disposal Act to require a refund value for certain beverage containers, and to provide resources for State pollution prevention and recycling programs, and for other purposes.

SENATE JOINT RESOLUTION 166

At the request of Mr. DOLE, the names of the Senator from Arkansas [Mr. BUMPERS] and the Senator from Idaho [Mr. SYMMS] were added as cosponsors of Senate Joint Resolution 166, a joint resolution designating the week of October 6 through 12, 1992, as "National Customer Service Week."

SENATE JOINT RESOLUTION 248

At the request of Mr. CONRAD, the names of the Senator from California [Mr. CRANSTON], the Senator from Pennsylvania [Mr. WOFFORD], the Senator from Tennessee [Mr. SASSER], the Senator from Minnesota [Mr. DURENBERGER], the Senator from Wyoming [Mr. WALLOP], and the Senator from North Carolina [Mr. HELMS] were added as cosponsors of Senate Joint Resolution 248, a joint resolution designating August 7, 1992, as "Battle of Guadalcanal Remembrance Day."

SENATE JOINT RESOLUTION 261

At the request of Mr. CRANSTON, the name of the Senator from Arkansas [Mr. BUMPERS] was added as a cosponsor of Senate Joint Resolution 261, a joint resolution to designate April 9, 1992, as a "Day of Filipino World War II Veterans."

SENATE JOINT RESOLUTION 262

At the request of Mr. KASTEN, the name of the Senator from Idaho [Mr. CRAIG] was added as a cosponsor of Senate Joint Resolution 262, a joint resolution designating July 4, 1992, as "Buy American Day."

SENATE JOINT RESOLUTION 263

At the request of Mr. SARBANES, the names of the Senator from Alabama [Mr. HEFLIN], the Senator from Arizona [Mr. DECONCINI], and the Senator from Ohio [Mr. GLENN] were added as cosponsors of Senate Joint Resolution 263, a joint resolution to designate May 4, 1992, through May 10, 1992, as "Public Service Recognition Week."

SENATE CONCURRENT RESOLUTION 17

At the request of Mr. HATCH, the names of the Senator from Montana [Mr. BURNS] and the Senator from Virginia [Mr. WARNER] were added as cosponsors of Senate Concurrent Resolution 17, a concurrent resolution expressing the sense of Congress with respect to certain regulations of the Occupational Safety and Health Administration.

SENATE CONCURRENT RESOLUTION 70

At the request of Mr. SANFORD, the names of the Senator from Nevada [Mr. REID] and the Senator from Indiana [Mr. COATS] were added as cosponsors of Senate Concurrent Resolution 70, a concurrent resolution to express the sense of the Congress with respect to

the support of the United States for the protection of the African elephant.

SENATE CONCURRENT RESOLUTION 80

At the request of Mr. SIMON, the name of the Senator from Hawaii [Mr. INOUYE] was added as a cosponsor of Senate Concurrent Resolution 80, a concurrent resolution concerning democratic changes in Zaire.

SENATE RESOLUTION 246

At the request of Mr. DOLE, the names of the Senator from Texas [Mr. BENTSEN], the Senator from Missouri [Mr. BOND], and the Senator from Hawaii [Mr. AKAKA] were added as cosponsors of Senate Resolution 246, a resolution on the recognition of Croatia and Slovenia.

SENATE RESOLUTION 258

At the request of Mr. SIMON, the name of the Senator from New Jersey [Mr. BRADLEY] was added as a cosponsor of Senate Resolution 258, a resolution expressing the sense of the Senate regarding needed action to address the continuing state of war and chaos and the emergency humanitarian situation in Somalia.

SENATE RESOLUTION 264

At the request of Mr. SIMON, the names of the Senator from Mississippi [Mr. COCHRAN], the Senator from Louisiana (Mr. [JOHNSTON], and the Senator from Connecticut [Mr. DODD] were added as cosponsors of Senate Resolution 264, a resolution to express the sense of the Senate that people in the United States should plant more trees in their communities.

SENATE RESOLUTION 265

At the request of Mr. SIMON, the names of the Senator from Mississippi [Mr. COCHRAN], the Senator from Louisiana (Mr. JOHNSTON], and the Senator from Connecticut [Mr. DODD] were added as cosponsors of Senate Resolution 265, a resolution to express the sense of the Senate that the United Nations should designate 1993 as the "Year of the Tree" in order to encourage the citizens of the world to plant trees.

AMENDMENTS SUBMITTED

TAX FAIRNESS AND ECONOMIC GROWTH ACT

LEVIN (AND OTHERS) AMENDMENT NO. 1712

Mr. LEVIN (for himself, Mr. GRAHAM, Mr. DECONCINI, Mr. ROBB, and Mr. SIMON) proposed an amendment to the bill (H.R. 4210) to amend the Internal Revenue Code of 1986 to provide incentives for increased economic growth and to provide tax relief for families, as follows:

Strike line 1 on page 958 through line 17 on page 976, and insert in lieu thereof the following:

TITLE III—PAYMENT OF FAIR SHARE BY HIGH-INCOME TAXPAYERS

SUBTITLE A—TREATMENT OF WEALTHY INDIVIDUALS

SEC. 3001. INCREASE IN TOP MARGINAL RATE UNDER SECTION 1.

(a) GENERAL RULE.—Section 1 (relating to tax imposed) is amended by striking subsections (a) through (e) and inserting the following:

"(a) MARRIED INDIVIDUALS FILING JOINT RETURNS AND SURVIVING SPOUSES.—There is hereby imposed on the taxable income of—

"(1) every married individual (as defined in section 7703) who makes a single return jointly with his spouse under section 6013, and

"(2) every surviving spouse (as defined in section 2(a)),

a tax determined in accordance with the following table:

"If taxable income is:	The tax is:
Not over $35,800	15% of taxable income.
Over $35,800 but not over $86,500.	$5,370, plus 28% of the excess over $35,800.
Over $86,500 but not over $175,000.	$19,566, plus 31% of the excess over $86,500.
Over $175,000	$47,001, plus 36% of the excess over $174,000.

"(b) HEADS OF HOUSEHOLDS.—There is hereby imposed on the taxable income of every head of a household (as defined in section 2(b)) a tax determined in accordance with the following table:

"If taxable income is:	The tax is:
Not over $28,750	15% of taxable income.
Over $28,750 but not over $74,150.	$4,312.50, plus 28% of the excess over $28,750.
Over $71,150 but not over $162,500.	$17,024.50, plus 31% of the excess over $74,150.
Over $162,500	$44,413, plus 36% of the excess over $161,500.

"(c) UNMARRIED INDIVIDUALS (OTHER THAN SURVIVING SPOUSES AND HEADS OF HOUSEHOLDS).—There is hereby imposed on the taxable income of every individual (other than a surviving spouse as defined in section 2(a) or the head of a household as defined in section 2(b)) who is not a married individual (as defined in section 7703) a tax determined in accordance with the following table:

"If taxable income is:	The tax is:
Not over $21,450	15% of taxable income.
Over $21,450 but not over $51,900.	$3,217.50, plus 28% of the excess over $21,450.
Over $51,900 but not over $150,000.	$11,743.50, plus 31% of the excess over $51,900.
Over $150,000	$42,154.50, plus 36% of the excess over $150,000.

"(d) MARRIED INDIVIDUALS FILING SEPARATE RETURNS.—There is hereby imposed on the taxable income of every married individual (as defined in section 7703) who does not make a single return jointly with his spouse under section 6013, a tax determined in accordance with the following table:

"If taxable income is:	The tax is:
Not over $17,900	15% of taxable income.
Over $17,900 but not over $43,250.	$2,685, plus 28% of the excess over $17,900.
Over $43,250 but not over $87,500.	$9,783, plus 31% of the excess over $43,250.
Over $87,500	$23,500.50, plus 36% of the excess over $87,500.

"(e) ESTATES AND TRUSTS.—There is hereby imposed on the taxable income of—

"(1) every estate, and

"(2) every trust,

taxable under this subsection a tax determined in accordance with the following table:

"If taxable income is:	The tax is:
Not over $3,500	15% of taxable income.
Over $3,500	$525, plus 36% of the excess over $3,500."

(b) CONFORMING AMENDMENTS.—

(1) Section 541 is amended by striking "28 percent" and inserting "36 percent".

(2)(A) Subsection (f) of section 1 is amended—

(i) by striking "1990" in paragraph (1) and inserting "1992", and

(ii) by striking "1989" in paragraph (3)(B) and inserting "1991".

(B) Subparagraph (B) of section 32(i)(1) is amended by striking "1989" and inserting "1991".

(C) Subparagraph (C) of section 41(e)(5) is amended by striking "1989" each place it appears and inserting "1991".

(D) Subparagraph (B) of section 63(c)(4) is amended by striking "1989" and inserting "1991".

(E) Subparagraph (B) of section 68(b)(2) is amended by striking "1989" and inserting "1991".

(F) Subparagraphs (A)(ii) and (B)(ii) of section 151(d)(4) are each amended by striking "1989" and inserting "1991".

(G) Clause (ii) of section 513(h)(2)(C) is amended by striking "1989" and inserting "1991".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 1991.

SEC. 3002. SURTAX ON INDIVIDUALS WITH INCOMES OVER $1,000,000.

(a) GENERAL RULE.—Subchapter A of chapter 1 (relating to determination of tax liability) is amended by adding at the end thereof the following new part:

"PART VIII—SURTAX ON INDIVIDUALS WITH INCOMES OVER $1,000,000

"Sec. 59B. Surtax on section 1 tax.
"Sec. 59C. Surtax on minimum tax.
"Sec. 59D. Special rules.

"SEC. 59B. SURTAX ON SECTION 1 TAX.

"In the case of an individual who has taxable income for the taxable year in excess of $1,000,000, the amount of the tax imposed under section 1 for such taxable year shall be increased by 10 percent of the amount which bears the same ratio to the tax imposed under section 1 (determined without regard to this section) as—

"(1) the amount by which the taxable income of such individual for such taxable year exceeds $1,000,000, bears to

"(2) the total amount of such individual's taxable income for such taxable year.

"SEC. 59C. SURTAX ON MINIMUM TAX.

"In the case of an individual who has alternative minimum taxable income for the taxable year in excess of $1,000,000, the amount of tentative minimum tax determined under section 55 for such taxable year shall be increased by 2.4 percent of the amount by which the alternative minimum taxable income of such taxpayer for the taxable year exceeds $1,000,000.

"SEC. 59D. SPECIAL RULES.

"(a) TREATMENT OF MARRIED INDIVIDUALS FILING SEPARATE RETURNS.—In the case of a married individual (within the meaning of section 7703) filing a separate return for the taxable year, sections 59B and 59C shall be applied by substituting '$500,000' for '$1,000,000'.

"(b) COORDINATION WITH OTHER PROVISIONS.—The provisions of this part—

"(1) shall be applied after the application of subsections (h) and (i) of section 1, but

"(2) before the application of any other provision of this title which refers to the amount of tax imposed by section 1 or 55, as the case may be."

(b) CLERICAL AMENDMENT.—The table for parts for subchapter A of chapter 1 is amend-

ed by adding at the end the following new item:

"Part VIII. Surtax on individuals with incomes over $1,000,000."

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 1991.

SEC. 3003. EXTENSION OF OVERALL LIMITATION ON ITEMIZED DEDUCTIONS FOR HIGH-INCOME TAXPAYERS.

Section 68 (relating to overall limitation on itemized deductions) is amended by striking subsection (f).

SEC. 3004. EXTENSION OF PHASEOUT OF PERSONAL EXEMPTION OF HIGH-INCOME TAXPAYERS.

Section 151(d)(3) (relating to phaseout of personal exemption) is amended by striking subparagraph (E).

SEC. 3005. MARK TO MARKET INVENTORY METHODS FOR SECURITIES DEALERS.

(a) GENERAL RULE.—Subpart D of part II of subchapter E of chapter 1 (relating to inventories) is amended by adding at the end thereof the following new section:

"SEC. 475. MARK TO MARKET INVENTORY METHOD FOR DEALERS IN SECURITIES.

"(a) GENERAL RULE.—Notwithstanding any other provision of this subpart, the following rules shall apply to securities held by a dealer in securities:

"(1) Any security which is inventory in the hands of the dealer shall be included in inventory at market value.

"(2) In the case of any security which is not inventory in the hands of the dealer and which is held at the close of any taxable year—

"(A) the dealer shall recognize gain or loss as if such security were sold on the last business day of such taxable year, and

"(B) any gain or loss shall be taken into account for such taxable year.

Proper adjustment shall be made in the amount of any gain or loss subsequently realized for gain or loss taken into account under the preceding sentence. The Secretary may provide by regulations for the application of this paragraph at times other than the times provided in this paragraph.

"(b) EXCEPTIONS.—

"(1) IN GENERAL.—Subsection (a) shall not apply to—

"(A) any security held for investment,

"(B) any security described in subsection (c)(2)(C) which is originated or acquired by the taxpayer in the ordinary course of a trade or business of the taxpayer and which is not held for sale, and

"(C) any hedge with respect to—

'(i) a security to which subsection (a) does not apply, or

"(ii) a position or a liability which is not a security in the hands of the taxpayer.

"(2) IDENTIFICTION REQUIRED.—Any security shall not be treated as described in subparagraph (A), (B), or (C) of paragraph (1), as the case may be, unless such security is clearly identified in the dealer's records as being described in such subparagraph before the close of the day on which it was acquired, originated, or entered into (or such other time as the Secretary may by regulations prescribe).

"(3) SECURITIES SUBSEQUENTLY HELD FOR SALE.—if, at any time after the close of the day on which any security described in paragraph (1) was acquired, originated, or entered into (or such other time as the Secretary may by regulations prescribe)—

"(A) such security is held for sale to customers in the ordinary course of a taxpayer's trade or business, or

"(B) such security is held as a hedge of a security to which subsection (a) applies,

such security shall not be treated as described in such paragraph as of such time.

"(4) SPECIAL RULE FOR PROPERTY HELD FOR INVESTMENT.—To the extent provided in regulations, subparagraph (A) of paragraph (1) shall not apply to any security described in subparagraph (D) or (E) of subsection (c)(2) which is held by a dealer in such securities.

"(c) DEFINITIONS.—For purposes of this section—

"(1) DEALER IN SECURITIES DEFINED.—The term 'dealer in securities' means a taxpayer who—

"(A) regularly purchases securities from or sells securities to customers in the ordinary course of a trade or business; or

"(B) regularly offers to enter into, assume, offset, assign or otherwise terminate positions in securities with customers in the ordinary course of a trade or business.

"(2) SECURITY DEFINED.—The term 'security' means any—

"(A) share of stock in a corporation;

"(B) partnership or beneficial ownership interest in a widely held or publicly traded partnership or trust;

"(C) note, bond, debenture, or other evidence of indebtedness;

"(D) notional principal contract, including any interest rate or currency swap, but not including any other commodity-linked notional principal contract;

"(E) evidence of an interest in, or a derivative financial instrument in, any security described in subparagraph (A), (B), (C), or (D), including any option, forward contract, short position, and any similar financial instrument in such a security (but not including any contract to which section 1256(a) applies); and

"(F) position which—

"(i) is not a security described in sub-paragraph (A), (B), (C), (D), or (E),

"(ii) is a hedge with respect to such a security, and

"(iii) is clearly identified in the dealer's record as being described in this sub-paragraph before the close of the day on which it was acquired or entered into (or such other time as the Secretary may by regulations prescribe).

"(3) HEDGE.—The term 'hedge' includes any position which reduces the dealer's risk from interest rate or price changes, or currency fluctuations.

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

"(1) CERTAIN RULES NOT TO APPLY.—The rules of sections 263(g) and 263A shall not apply to securities to which subsection (a) applies.

"(2) IMPROPER IDENTIFICATION.—If, under subsection (b)(2) or (c)(2)(F)(iii), a taxpayer at any time—

"(A) identifies any security or position as being described in such subsection and such security or position is not so described as of such time, or

"(B) a taxpayer fails to identify a security or position which is so described at the time such identification is required,

the provisions of subsection (a) shall apply to such security, except that only gain shall be taken into account for any taxable year.

"(e) REGULATORY AUTHORITY.—The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of this section, including rules to prevent the use of year-end transfers, related parties, or other arrangements to avoid the provisions of this section."

(b) CLERICAL AMENDMENT.—The table of sections for subpart D of part II of subchapter E of chapter 1 is amended by adding at the end thereof the following new item:

"Sec. 475 Mark to market inventory method for dealers in securities.".

(c) EFFECTIVE DATE.—

(1) IN GENERAL.—The amendments made by this section shall apply to all taxable years ending on or after December 31, 1993.

(2) CHANGE IN METHOD OF ACCOUNTING.—In the case of any taxpayer required by this section to change its method of accounting for any taxable year—

(A) such change shall be treated an initiated by the taxpayer,

(B) such change shall be treated as made with the consent of the Secretary, and

(C) the net amount of the adjustments required to be taken into account by the taxpayer under section 481 of the Internal Revenue Code of 1986 shall be taken into account ratably over the 10-taxable year period beginning with the first taxable year ending on or after December 31, 1993.

SEC. 3006. DISALLOWANCE OF DEDUCTION FOR CERTAIN EMPLOYEE REMUNERATION IN EXCESS OF $1,000,000.

(a) GENERAL RULE.—Section 162 (relating to trade or business expenses) is amended by redesignating subsection (m) as subsection (n) and by inserting after subsection (l) the following new subsection:

"(m) CERTAIN EXCESSIVE EMPLOYEE REMUNERATION.—

"(1) IN GENERAL.—No deduction shall be allowed under this chapter for employee remuneration with respect to any covered employee to the extent that the amount of such remuneration for the taxable year with respect to such employee exceeds $1,000,000.

"(2) COVERED EMPLOYEE.—For purposes of this subsection—

"(A) IN GENERAL.—Except as otherwise provided in this paragraph, the term 'covered employee' means any employee of the taxpayer who is an officer of the taxpayer.

"(B) EXCEPTION FOR EMPLOYEE-OWNERS OF PERSONAL SERVICE CORPORATIONS.—The term 'covered employee' shall not include any employee-owner (as defined in section 269A(b)) of a personal service corporation (as defined in section 269A(b)).

"(C) FORMER EMPLOYEES.—The term 'covered employee' includes any former employee who had been a covered employee at any time while performing services for the taxpayer.

"(3) EMPLOYEE REMUNERATION.—For purposes of this subsection—

"(A) IN GENERAL.—The term 'employee remuneration' means, with respect to any covered employee for any taxable year, the aggregate amount allowable as a deduction under this chapter for such taxable year (determined without regard to this subsection) for remuneration for services performed by such employee (whether or not during the taxable year).

"(B) REMUNERATION.—For purposes of subparagraph (A), the term 'remuneration' includes any remuneration (including benefits) in any medium other than cash, but shall not include—

"(i) any payment referred to in so much of section 3121(a)(5) as precedes subparagraph (E) thereof,

"(ii) amounts referred to in section 3121(a)(19), and

"(iii) any benefit provided to or on behalf of an employee if at the time such benefit is provided it is reasonable to believe that the employee will be able to exclude such benefit from gross income under section 132.

"(4) TREATMENT OF CERTAIN EMPLOYERS.—

"(A) IN GENERAL.—All employers treated as a single employer under subsection (a) or (b) of section 52 or subsection (m) or (n) of sec-

tion 414 shall be treated as a single employer for purposes of this subsection.

"(B) CLARIFICATION OF OFFICER DEFINITION.—Any officer of any of the employers treated as a single employer under subparagraph (A) shall be treated as an officer of such single employer."

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to taxable years beginning after December 31, 1991.

"SEC. . DEFICIT REDUCTION TRUST FUND.

"(a) IN GENERAL.—Subchapter I of chapter 31 of title 31, United States Code, is amended by adding at the end thereof the following new section:

"Sec. 3114. Certain proceeds from increase in certain income taxes to reduce public debt.

"(a) There is established in the Treasury of the United States a trust fund to be known as the "Deficit Reduction Trust Fund".

"(b) The Secretary of the Treasury shall use the money in the Deficit Reduction Trust Fund solely to—

"(1) pay at maturity, or redeem or buy before maturity, an obligation of the Government included in public debt, and

"(2) pay for administrative costs in operating the Deficit Reduction Trust Fund.

"(c) Any obligation of the Government which is paid, redeemed, or bought with money from the Deficit Reduction Trust Fund shall be canceled and retired and may not be reissued.

"(b) CONFORMING AMENDMENT.—The table of sections for subchapter I of chapter 31 of title 31, United States Code, is amended by adding at the end thereof the following new item:

"Sec. 3114. Proceeds from increase in certain income taxes to reduce public debt".

"SEC. . SENSE OF THE SENATE ON REVENUE CREDITED TO THE DEFICIT REDUCTION TRUST FUND.

"(a) The Senate finds that:

"(1) Since the Federal budget deficit is projected still to be in the $200 billion range by 1997,

"(2) Since such deficits will hamper economic growth by reducing national saving, capital formation and well-paying job opportunities,

"(b) Be it resolved that it is the sense of the Senate that:

"(1) 25 percent of the revenue raised through title III (Payment of Fair Share by High-Income Taxpayers) that would otherwise offset revenue expended in title I, Section 1001 (Tax Credit for Children) should be credited to the Deficit Reduction Trust Fund both in fiscal year 1992 and in fiscal year 1993.

"(2) 100 percent of the revenue raised through title III (Payment of Fair Share by High-Income Taxpayers) that would otherwise offset revenue expended in title I, section 1001 (Tax Credit for Children) should be credited to the Deficit Reduction Trust Fund in fiscal year 1994 through fiscal year 1996."

"SEC. . SENSE OF THE SENATE ON SPENDING FOR JOB TRAINING AND TRANSPORTATION INFRASTRUCTURE.

"(a) The Senate finds that:

"(1) Since job training programs are key to improving the skills of the American work force;

"(2) Since job training programs are particularly important and timely in light of the transition in the manufacturing base as a result of the ending of the cold war;

"(3) Since the recession has resulted in large scale layoffs on workers who have been employed for many years in jobs requiring skills that may be different from the skills required in areas of likely new employment opportunities; and

"(4) Since additional spending on transportation infrastructure can provide economic stimulus in the current recession and assist in improving our national productivity.

"(b) Be it resolved that it is the sense of the Senate that:

"(1) 75 percent of the revenue raised through title III (Payment of Fair Share by High-Income Taxpayers) that would otherwise offset revenue expended in Title I, Section 1001 (Tax Credit for Children) should be used for job training programs in fiscal year 1992.

"(2) 75 percent of the revenue raised through title III (Payment of Share by High-Income Taxpayers) that would otherwise offset revenue expended in title I, section 1001 (Tax Credit for Children) should be used for job training programs and transportation infrastructure improvements in fiscal year 1993, with $500 million of that amount being directed toward job training."

Notwithstanding any other provision of this Act section 1001 regarding Tax Credit for Children is null and void.

GRAHAM (AND OTHERS) AMENDMENT NO. 1713

Mr. GRAHAM (for himself, Mr. LEVIN, Mr. DECONCINI, Mr. ROBB, and Mr. SIMON) proposed an amendment to amendment No. 1712 proposed by Mr. LEVIN (and others) to the bill H.R. 4210; supra, as follows:

In the amendment strike all after the first word and insert the following:

III—PAYMENT OF FAIR SHARE BY HIGH-INCOME TAXPAYERS

SUBTITLE A—TREATMENT OF WEALTHY INDIVIDUALS

SEC. 3001. INCREASE IN TOP MARGINAL RATE UNDER SECTION 1.

(a) GENERAL RULE.—Section 1 (relating to tax imposed) is amended by striking subsections (a) through (e) and inserting the following:

"(a) MARRIED INDIVIDUALS FILING JOINT RETURNS AND SURVIVING SPOUSES.—There is hereby imposed on the taxable income of—

"(1) every married individual (as defined in section 7703) who makes a single return jointly with his spouse under section 6013, and

"(2) every surviving spouse (as defined in section 2(a)),

a tax determined in accordance with the following table:

"If taxable income is:	The tax is:
Not over $35,800	15% of taxable income.
Over $35,800 but not over $86,500.	$5,370, plus 28% of the excess over $35,800.
Over $86,500 but not over $175,000.	$19,566, plus 31% of the excess over $86,500.
Over $175,000	$47,001, plus 36% of the excess over $173,000.

"(b) HEADS OF HOUSEHOLDS.—There is hereby imposed on the taxable income of every head of a household (as defined in section 2(b)) a tax determined in accordance with the following table:

"If taxable income is:	The tax is:
Not over $28,750	15% of taxable income.
Over $28,750 but not over $74,150.	$4,312.50, plus 28% of the excess over $28,750.
Over $74,150 but not over $162,500.	$17,024.50, plus 31% of the excess over $74,150.
Over $162,500	$44,413, plus 36% of the excess over $161,500.

"(c) UNMARRIED INDIVIDUALS (OTHER THAN SURVIVING SPOUSES AND HEADS OF HOUSEHOLDS).—There is hereby imposed on the taxable income of every individual (other than a surviving spouse as defined in section 2(a) or the head of a household as defined in section 2(b)) who is not a married individual (as defined in section 7703) a tax determined in accordance with the following table:

"If taxable income is:	The tax is:
Not over $21,450	15% of taxable income.
Over $21,450 but not over $51,900.	$3,217.50, plus 28% of the excess over $21,450.
Over $51,900 but not over $150,000.	$11,743.50, plus 31% of the excess over $51,900.
Over $150,000	$42,154.50, plus 36% of the excess over $150,000.

"(d) MARRIED INDIVIDUALS FILING SEPARATE RETURNS.—There is hereby imposed on the taxable income of every married individual (as defined in section 7703) who does not make a single return jointly with his spouse under section 6013, a tax determined in accordance with the following table:

"If taxable income is:	The tax is:
Not over $17,900	15% of taxable income.
Over $17,900 but not over $43,250.	$2,685, plus 28% of the excess over $17,900.
Over $43,250 but not over $87,500.	$9,783, plus 31% of the excess over $43,250.
Over $87,500	$23,500.50, plus 36% of the excess over $87,500.

"(e) ESTATES AND TRUSTS.—There is hereby imposed on the taxable income of—

"(1) every estate, and

"(2) every trust,

taxable under this subsection a tax determined in accordance with the following table:

"If taxable income is:	The tax is:
Not over $3,500	15% of taxable income.
Over $3,500	$525, plus 36% of the excess over $3,500."

(b) CONFORMING AMENDMENTS.—

(1) Section 541 is amended by striking "28 percent" and inserting "36 percent".

(2)(A) Subsection (f) of section 1 is amended—

(i) by striking "1990" in paragraph (1) and inserting "1992", and

(ii) by striking "1989" in paragraph (3)(B) and inserting "1991".

(B) Subparagraph (B) of section 32(i)(1) is amended by striking "1989" and inserting "1991".

(C) Subparagraph (C) of section 41(e)(5) is amended by striking "1989" each place it appears and inserting "1991".

(D) Subparagraph (B) of section 63(c)(4) is amended by striking "1989" and inserting "1991".

(E) Subparagraph (B) of section 68(b)(2) is amended by striking "1989" and inserting "1991".

(F) Subparagraphs (A)(ii) and (B)(ii) of section 151(d)(4) are each amended by striking "1989" and inserting "1991".

(G) Clause (ii) of section 513(h)(2)(C) is amended by striking "1989" and inserting "1991".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 1991.

SEC. 3002. SURTAX ON INDIVIDUALS WITH INCOMES OVER $1,000,000.

(A) GENERAL RULE.—Subchapter A of chapter 1 (relating to determination of tax liability) is amended by adding at the end thereof the following new part:

"PART VIII—SURTAX ON INDIVIDUALS WITH INCOMES OVER $1,000,000

"Sec. 59B. Surtax on section 1 tax.
"Sec. 59C. Surtax on minimum tax.
"Sec. 59D. Special rules.

"SEC. 59B. SURTAX ON SECTION 1 TAX.

"In the case of an individual who has taxable income for the taxable year in excess of $1,000,000, the amount of the tax imposed under section 1 for such taxable year shall be increased by 10 percent of the amount which bears the same ratio to the tax imposed under section 1 (determined without regard to this section) as—

"(1) the amount by which the taxable income of such individual for such taxable year exceeds $1,000,000, bears to

"(2) the total amount of such individual's taxable income for such taxable year.

"SEC. 59C. SURTAX ON MINIMUM TAX.

"In the case of an individual who has alternative minimum taxable income for the taxable year in excess of $1,000,000, the amount of the tentative minimum tax determined under section 55 for such taxable year shall be increased by 2.4 percent of the amount by which the alternative minimum taxable income of such taxpayer for the taxable years exceeds $1,000,000.

"SEC. 59D. SPECIAL RULES.

"(a) TREATMENT OF MARRIED INDIVIDUALS FILING SEPARATE RETURNS.—In the case of a married individual (within the meaning of section 7703) filing a separate return for the taxable year, sections 59B and 59C shall be applied by substituting '$500,000' for '$1,000,000'.

"(b) COORDINATION WITH OTHER PROVISIONS.—The provisions of this part—

"(1) shall be applied after the application of subsections (h) and (i) of section 1, but

"(2) before the application of any other provision of this title which refers to the amount of tax imposed by section 1 or 55, as the case may be."

(b) CLERICAL AMENDMENT.—The table of parts for subchapter A of chapter 1 is amended by adding at the end the following new item:

"Part VIII. Surtax on individuals with incomes over $1,000,000."

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 1991.

SEC. 3003. EXTENSION OF OVERALL LIMITATION ON ITEMIZED DEDUCTIONS FOR HIGH-INCOME TAXPAYERS.

Section 68 (relating to overall limitation on itemized deductions) is amended by striking subsection (f).

SEC. 3004. EXTENSION OF PHASEOUT OF PERSONAL EXEMPTION OF HIGH-INCOME TAXPAYERS.

Section 151(d)(3) (relating to phaseout of personal exemption) is amended by striking subparagraph (E).

SEC. 3005. MARK TO MARKET INVENTORY METHOD FOR SECURITIES DEALERS.

(A) GENERAL RULE.—Subpart D of part II of subchapter E of chapter 1 (relating to inventories) is amended by adding at the end thereof the following new section:

"SEC. 475. MARK TO MARKET INVENTORY METHOD FOR DEALERS IN SECURITIES.

"(a) GENERAL RULE.—Notwithstanding any other provision of this subpart, the following rules shall apply to securities held by a dealer in securities:

"(1) Any security which is inventory in the hands of the dealer shall be included in inventory at market value.

"(2) In the case of any security which is not inventory in the hands of the dealer and which is held at the close of any taxable year—

"(A) the dealer shall recognize gain or loss as if such security were sold on the last business day of such taxable year, and

"(B) any gain or loss shall be taken into account for such taxable year.

Proper adjustment shall be in the amount of any gain or loss subsequently realized for gain or loss taken into account under the preceding sentence. The Secretary may provide by regulations for the application of this paragraph at times other than the times provided in this paragraph.

"(a) EXCEPTIONS.—

"(1) IN GENERAL.—Subsection (a) shall not apply to—

"(A) any security held for investment,

"(B) any security described in subsection (c)(2)(C) which is originated or acquired by the taxpayer in the ordinary course of a trade or business of the taxpayer and which is not held for sale, and

"(C) any hedge with respect to—

"(i) a security to which subsection (a) does not apply, or

"(ii) a position or a liability which is not a security in the hands of the taxpayer.

"(2) IDENTIFICATION REQUIRED.—Any security shall not be treated as described in subparagraph (A), (B), and (C) of paragraph (1), as the case may be, unless such security is clearly identified in the dealer's records as being described in such subparagraph before the close of the day on which it was acquired, originated, or entered into (or such other time as the Secretary may by regulations prescribe).

"(3) SECURITIES SUBSEQUENTLY HELD FOR SALE.—If, at any time after the close of the day on which any security described in paragraph (1) was acquired, originated, or entered into (or such other time as the Secretary may by regulations prescribe)—

"(A) such security is held for sale to customers in the ordinary course of a taxpayer's trade or business, or

"(B) such security is held as a hedge of a security to which subsection (a) applies,

such security shall not be treated as described in such paragraph as of such time.

"(4) SPECIAL RULE FOR PROPERTY HELD FOR INVESTMENT.—To the extent provided in regulations, subparagraph (A) of paragraph (1) shall not apply to any security described in subparagraph (D) or (E) of subsection (c)(2) which is held by a dealer in such securities.

"(c) DEFINITIONS.—For purposes of this section—

"(1) DEALER IN SECURITIES DEFINED.—The term 'dealer in securities' means a taxpayer who—

"(A) regularly purchases securities from or sells securities to customers in the ordinary course of a trade or business; or

"(B) regularly offers to enter into, assume, offset, assign or otherwise terminate positions in securities with customers in the ordinary course of a trade or business.

"(2) SECURITY DEFINED.—The term 'security' means any—

"(A) share of stock in a corporation;

"(B) partnership or beneficial ownership interest in a widely held or publicly traded partnership or trust;

"(C) note, bond, debenture, or other evidence of indebtedness;

"(D) notional principal contract, including any interest rate or currency swap, but not including any other commodity-linked notional principal contract;

"(E) evidence of an interest in, or a derivative financial instrument in, any security described in subparagraph (A), (B), (C), or (D), including any option, forward contract, short position, and any similar financial instrument in such a security (but not including any contract to which section 1256(a) applies); and

"(F) position which—

"(i) is not a security described in subparagraph (A), (B), (C), (D), or (E).

"(ii) is a hedge with respect to such a security, and

"(iii) is clearly identified in the dealer's record as being described in this subparagraph before the close of the day on which it was acquired or entered into (or such other time as the Secretary may by regulations prescribe).

"(3) HEDGE.—The term 'hedge' includes any position which reduces the dealer's risk from interest rate or price changes, or currency fluctuations.

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

"(1) CERTAIN RULES NOT TO APPLY.—The rules of sections 263(g) and 263A shall not apply to securities to which subsection (a) applies.

"(2) IMPROPER IDENTIFICATION.—If, under subsection (b)(2) or (c)(2)(F)(iii), a taxpayer at any time—

"(A) identifies any security or position as being described in such subsection and such security or position is not so described as of such time, or

"(B) a taxpayer fails to identify a security or position which is so described at the time such identification is required,

the provisions of subsection (a) shall apply to such security, except that only gain shall be taken into account for any taxable year.

"(e) REGULATORY AUTHORITY.—The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of this section, including rules to prevent the use of year-end transfers, related parties, or other arrangements to avoid the provisions of this section."

(b) CLERICAL AMENDMENT.—The table of sections for subpart D of part II of subchapter E of chapter 1 is amended by adding at the end thereof the following new item:

"Sec. 475. Mark to market inventory method for dealers in securities.".

(c) EFFECTIVE DATE.—

(1) IN GENERAL.—The amendments made by this section shall apply to all taxable years ending on or after December 31, 1993.

(2) CHANGE IN METHOD OF ACCOUNTING.—In the case of any taxpayer required by this section to change its method of accounting for any taxable year—

(A) such change shall be treated as initiated by the taxpayer,

(B) such change shall be treated as made with the consent of the Secretary, and

(C) the net amount of the adjustments required to be taken into account by the taxpayer under section 481 of the Internal Revenue Code of 1986 shall be taken into account ratably over the 10-taxable year period beginning with the first taxable year ending on or after December 31, 1993.

SEC. 3006. DISALLOWANCE OF DEDUCTION FOR CERTAIN EMPLOYEE REMUNERATION IN EXCESS OF $1,000,000.

(a) GENERAL RULE.—Section 162 (relating to trade or business expenses) is amended by redesignating subsection (m) as subsection (n) and by inserting after subsection (l) the following new subsection:

"(m) CERTAIN EXCESSIVE EMPLOYEE REMUNERATION.—

"(1) IN GENERAL.—No deduction shall be allowed under this chapter for employee remuneration with respect to any covered employee to the extent that the amount of such remuneration for the taxable year with respect to such employee exceeds $1,000,000.

"(2) COVERED EMPLOYEE.—For purposes of this subsection—

"(A) IN GENERAL.—Except as otherwise provided in this paragraph, the term 'covered employee' means any employee of the taxpayer who is an officer of the taxpayer.

"(B) EXCEPTION FOR EMPLOYEE-OWNERS OF PERSONAL SERVICE CORPORATIONS.—The term 'covered employee' shall not include any employee-owner (as defined in section 269A(b)) of a personal service corporation (as defined in section 269A(b)).

"(C) FORMER EMPLOYEES.—The term 'covered employee' includes any former employee who had been a covered employee at any time while performing services for the taxpayer.

"(3) EMPLOYEE REMUNERATION.—For purposes of this subsection—

"(A) IN GENERAL.—The term 'employee remuneration' means, with respect to any covered employee for any taxable year, the aggregate amount allowable as a deduction under this chapter for such taxable year (determined without regard to this subsection) for remuneration for services performed by such employee (whether or not during the taxable year).

"(B) REMUNERATION.—For purposes of subparagraph (A), the term 'remuneration' includes any remuneration (including benefits) in any medium other than cash, but shall not include—

"(i) any payment referred to in so much of section 3121(a)(5) as precedes subparagraph (E) thereof,

"(ii) amounts referred to in section 3121(a)(19), and

"(iii) any benefit provided to or on behalf of an employee if at the time such benefit is provided it is reasonable to believe that the employee will be able to exclude such benefit from gross income under section 132.

"(4) TREATMENT OF CERTAIN EMPLOYERS.—

"(A) IN GENERAL.—All employers treated as a single employer under subsection (a) or (b) of section 52 or subsection (m) or (n) of section 414 shall be treated as a single employer for purposes of this subsection.

"(B) CLARIFICATION OF OFFICER DEFINITION.—Any officer of any of the employers treated as a single employer under subparagraph (A) shall be treated as an officer of such single employer."

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to taxable years beginning after December 31, 1991.

"SEC. . DEFICIT REDUCTION TRUST FUND.

"(a) IN GENERAL.—Subchapter I of chapter 31 of title 31, United States Code, is amended by adding at the end thereof the following new section:

"Sec. 3114. Certain proceeds from increase in certain income taxes to reduce public debt.

"(a) There is established in the Treasury of the United States a trust fund to be known as the 'Deficit Reduction Trust Fund'.

"(b) The Secretary of the Treasury shall use the money in the Deficit Reduction Trust Fund solely to—

"(1) pay at maturity, or redeem or buy before maturity, an obligation of the Government included in public debt, and

"(2) pay for any administrative costs in operating the Deficit Reduction Trust Fund.

"(c) Any obligation of the Government which is paid, redeemed, or bought with money from the Deficit Reduction Trust Fund shall be canceled and retired and may not be reissued.

"(b) CONFORMING AMENDMENT.—The table of sections for subchapter I of chapter 31 of title 31, United States Code, is amended by adding at the end thereof the following new item:

"Sec. 3114. Proceeds from increase in certain income taxes to reduce public debt".

"SEC. . SENSE OF THE SENATE ON REVENUE CREDITED TO THE DEFICIT REDUCTION TRUST FUND.

"(a) The Senate finds that:

"(1) Since the Federal budget deficit is projected still to be in the $200 billion range by 1997,

"(2) Since such deficits will hamper economic growth by reducing national saving, capital formation and well-paying job opportunities,

"(b) Be it resolved that it is the sense of the Senate that:

"(1) 25 percent of the revenue raised through title III (Payment of Fair Share by High-Income Taxpayers) that would otherwise offset revenue expended in title I, section 1001 (Tax Credit for Children) should be credited to the Deficit Reduction Trust Fund both in fiscal year 1992 and in fiscal year 1993,

"(2) 100 percent of the revenue raised through title III (Payment of Fair Share by High-Income Taxpayers) that would otherwise offset revenue expended in title I, section 1001 (Tax Credit for Children) should be credited to the Deficit Reduction Trust Fund in fiscal 1994 through fiscal year 1996."

"SEC. . SENSE OF THE SENATE ON SPENDING FOR JOB TRAINING AND TRANSPORTATION INFRASTRUCTURE.

"(a) The Senate finds that:

"(1) Since job training programs are key to improving the skills of the American workforce,

"(2) Since job training programs are particularly important and timely in light of the transition in the manufacturing base as a result of the ending of the Cold War,

"(3) Since the recession has resulted in large scale layoffs on workers who have been employed for many years in jobs requiring skills that may be different from the skills required in areas of likely new employment opportunities, and

"(4) Since additional spending on transportation infrastructure can provide economic stimulus in the current recession and assist in improving our national productivity.

"(b) Be it resolved that it is the sense of the Senate that:

"(1) 75 percent of the revenue raised through title III (Payment of Fair Share by High-Income Taxpayers) that would otherwise offset revenue expended in title I, section 1001 (Tax Credit for Children) should be used for job training programs in fiscal year 1992.

"(2) 75 percent of the revenue raised through title III (Payment of Fair Share by High-Income Taxpayers) that would otherwise offset revenue expended in title I, section 1001 (Tax Credit for Children) should be used for job training programs and transportation infrastructure improvements in fiscal year 1993, with $600 million of that amount being directed toward job training."

Notwithstanding any other provision of this Act section 1001 regarding Tax Credit for Children is null and void.

HELMS AMENDMENT NO. 1714

Mr. HELMS (for himself, Mr. DOLE, Mr. SEYMOUR, Mr. NICKLES, and Mr. GRASSLEY) proposed an amendment to the bill (H.R. 4210); supra, as follows:

At the appropriate place in the amendment add the following:

The Senate finds that not only the House of Representatives, but the Congress as a whole is being held to account by the American public for the improper personal banking practices of its Members;

The Senate finds that only the House of Representatives provided for a system to collect the salaries of, and to honor checks written by, the Members of the House of Representatives;

The Senate finds that, while proposals to establish a similar system within the United States Senate have been suggested, they have never been agreed to by the Senate;

The Senate finds that no similar system has ever been in operation in the United States Senate;

The Senate finds that no Senate bank with characteristics similar to those of the former House bank will ever be established;

The Senate finds that the American public has not been made clearly aware of the differences in practices between the United States House of Representatives and the United States Senate, and that therefore,

It is the sense of the Senate that there should be full disclosure of all Members and former Members of the House of Representatives whose account balances at the House bank were insufficient to cover the amount of any check presented for payment.

DOLE AMENDMENT NO. 1715

Mr. DOLE proposed an amendment to amendment No. 1714 proposed by Mr. HELMS to the bill (H.R. 4210); supra, as follows:

Strike all after the first word and insert the following:

Senate finds that not only the House of Representatives, but the Congress as a whole is being held to account by the American public for the improper personal banking practices of its Members;

The senate finds that only the House of Representatives provided for a system to collect the salaries of, and to honor checks written by, the Members of the House of Representatives;

The Senate finds that, while proposals to establish a similar system within the United States Senate have been suggested, they have never been agreed to by the Senate;

The Senate finds that no similar system has ever been in operation in the United States Senate;

The Senate finds that no Senate bank with characteristics similar to those of the former House bank will ever be established;

The Senate finds that the American public has not been made clearly aware of the differences in practices between the United States House of Representatives and the United States Senate, and that therefore,

It is the sense of the Senate that no later than March 30, 1992, there should be full disclosure of all Members and former Members of the House of Representatives whose account balances at the House bank were insufficient to cover the amount of any check presented for payment.

METZENBAUM (AND OTHERS) AMENDMENT NO. 1716

Mr. METZENBAUM (for himself and Mr. ROTH) proposed an amendment to the bill (H.R. 4210); supra, as follows:

(a) GENERAL RULE.—For purposes of chapter 1 of the Internal Revenue Code of 1986—

(1) any FSLIC assistance with respect to any loss of principal, capital, or similar amount upon the disposition of any asset shall be taken into account as compensation

for such loss for purposes of section 165 of such Code, and

(2) any FSLIC assistance with respect to any debt shall be taken into account for purposes of section 166, 585, or 593 of such Code in determining whether such debt is worthless (or the extent to which such debt is worthless) and in determining the amount of any addition to a reserve for bad debts arising from the worthlessness or partial worthlessness of such debts.

(b) FSLIC ASSISTANCE.—For purposes of this section, the term "FSLIC assistance" means any assistance (or right to assistance) with respect to a domestic building and loan association (as defined in section 7701(a)(19) of such Code without regard to subparagraph (C) thereof) under section 406(f) of the National Housing Act or section 21A of the Federal Home Loan Bank Act (or under any similar provision of law).

(c) EFFECTIVE DATE.—

(1) IN GENERAL.—Except as otherwise provided in the subsection—

(A) The provisions of this section shall apply to taxable years ending after March 4, 1991 but only with respect to FSLIC assistance not credited before March 4, 1991.

(B) If any FSLIC assistance not credited before March 4, 1991 is with respect to a loss sustained or charge-off in a taxable year ending before March 4, 1991, for purposes of determining the amount of any net operating loss carryover to a taxable year ending after on or after March 4, 1991, the provisions of this section shall apply to such assistance for purposes of determining the amount of the new operating loss for the taxable year in which such loss was sustained or debt written off. Except as provided in the preceding sentence, this section shall not apply to any FSLIC assistance with respect to a loss sustained or charge-off in a taxable year ending before March 4, 1991.

(2) EXCEPTIONS.—The provisions of this section shall not apply to any assistance to which the amendments made by section 1401(a)(3) of the Financial Institution Reform, Recovery, and Enforcement Act of 1989 apply.

BENTSEN (AND OTHERS) AMENDMENT NO. 1717

Mr. BENTSEN (for himself, Mr. SEYMOUR, Mr. GRASSLEY, Mr. BOND, Mr. DURENBERGER, Mr. HATCH, and Mr. PRESSLER) proposed an amendment to the bill (H.R. 4210); supra, as follows:

On page 711, line 17, strike "25 percent" thru the period at the end of line 21 and insert the following: "74 percent for taxable years beginning during 1992)."

(b) CREDIT MADE PERMANENT.—Section 162(1) is amended by striking paragraph (6).

REID AMENDMENT NO. 1718

Mr. REID proposed an amendment to amendment No. 1717 proposed by Mr. BENTSEN to the bill (H.R. 4210); supra, as follows:

In lieu of the matter proposed to be inserted insert the following: "75 percent for taxable years beginning during 1992."

(b) CREDIT MADE PERMANENT.—Section 162(1) is amended by striking paragraph (6).

REID (AND OTHERS) AMENDMENT NO. 1719

Mr. REID (for himself, Mr. MURKOWSKI, Mr. STEVENS, Mr. DECONCINI, Mr. MCCAIN, Mr. BUMPERS, Mr. SEYMOUR, Mr. WIRTH, Mr. DODD, Mr. ROTH, Mr. GRAHAM, Mr. MACK, Mr. AKAKA, Mr. INOUYE, Mr. CRAIG, Mr. SYMMS, Mr. GRASSLEY, Mr. LOTT, Mr. BURNS, Mr. BRYAN, Mr. RUDMAN, Mr. SMITH, Mr. BINGAMAN, Mr. DOMENICI, Mr. D'AMATO, Mr. BURDICK, Mr. HATCH, Mr. BRADLEY, Mr. ADAMS, Mr. GORTON, Mr. KASTEN, and Mr. SIMPSON) proposed an amendment to the bill (H.R. 4210); supra, as follows:

On page 1084, between lines 8 and 9, insert the following:

SEC. . LIMITATION ON STATE TAXATION OF PENSION OR RETIREMENT INCOME.

(a) IN GENERAL.—Chapter 4 of title 4, United States Code, is amended by adding at the end the following new section:

"§ 114. Limitation on State income taxation of pension or retirement income

"(a) No State or possession of the United States, or any political subdivision of either, may impose an income tax (as defined in section 110(c)) on the pension or retirement income of any individual who is not a resident or domiciliary of such State, possession, or political subdivision.

"(b) For purposes of subsection (a), the term 'State' includes the District of Columbia.".

(b) CLERICAL AMENDMENT.—The table of sections for such chapter 4 is amended by adding at the end thereof the following new item:

"114. Limitation on State income taxation of pension or retirement income.".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 1991.

McCAIN (AND OTHERS) AMENDMENT NO. 1720

Mr. McCAIN (for himself, Mr. INOUYE, Mr. DOMENICI, Mr. BOREN, Mr. SIMON, Mr. MURKOWSKI, Mr. WELLSTONE, Mr. NICKLES and Mr. KASTEN) proposed an amendment to the bill H.R. 4210, supra, as follows:

At the end of the bill, insert the following new title:

TITLE VI—TAX INCENTIVES FOR ECONOMIC GROWTH ON INDIAN RESERVATIONS

SEC. 6001. SHORT TITLE.

This title may be cited as the "Indian Employment and Investment Act of 1992".

SEC. 6002. INVESTMENT TAX CREDIT FOR PROPERTY ON INDIAN RESERVATIONS.

(a) ALLOWANCE OF INDIAN RESERVATION CREDIT.—Section 46 (relating to investment credits) is amended by striking "and" at the end of paragraph (2), by striking the period at the end of paragraph (3) and inserting "and", and by adding after paragraph (3) the following new paragraph:

"(4) the Indian Reservation Credit."

(b) AMOUNT OF INDIAN RESERVATION CREDIT.—

(1) IN GENERAL.—Section 48 (defining the Energy Credit and the Reforestation Credit) is amended by adding after subsection (b) the following new subsection:

"(c) INDIAN RESERVATION CREDIT.—

"(1) IN GENERAL.—For purposes of section 46, the Indian Reservation Credit for any taxable year is the Indian reservation percentage of the qualified investment in qualified Indian reservation property placed in service during such taxable year, determined in accordance with the following table:

"In the case of qualified Indian reservation property which is:	Indian reservation percentage is:
Reservation personal property	25
New reservation construction property	33⅓
Reservation infrastructure investment	33⅓

"(2) QUALIFIED INVESTMENT IN QUALIFIED INDIAN RESERVATION PROPERTY DEFINED.—

"(A) IN GENERAL.—The term 'qualified Indian reservation property' means property—

"(i) which is—

"(I) reservation personal property,

"(II) new reservation construction property, or

"(III) reservation infrastructure investment, and

"(ii) not acquired (directly or indirectly) by the taxpayer from a person who is related to the taxpayer (within the meaning of section 465(b)(3)(C)).

"(B) QUALIFIED INVESTMENT IN QUALIFIED INDIAN RESERVATION PROPERTY.—The term 'qualified investment in qualified Indian reservation property' means—

"(i) in the case of reservation infrastructure investment, the amount expended by the taxpayer for the acquisition or construction of the reservation infrastructure investment; and

"(ii) in the case of all other qualified Indian reservation property, the taxpayer's basis for such property—

"(C) RESERVATION PERSONAL PROPERTY.—The term 'reservation personal property' means qualified personal property which is used by the taxpayer predominantly in the active conduct of a trade or business within an Indian reservation. Property shall not be treated as 'reservation personal property' if it is used or located outside the Indian reservation on any regular basis.

"(D) QUALIFIED PERSONAL PROPERTY.—The term 'qualified personal property' means property—

"(i) for which depreciation is allowable under section 168,

"(ii) which is not—

"(I) nonresidential real property,

"(II) residential rental real property, or

"(III) real property which is not described in (I) or (II) and which has a class life of more than 12.5 years.

"(E) NEW RESERVATION CONSTRUCTION PROPERTY.—The term 'new reservation construction property' means qualified real property—

"(i) which is located in an Indian reservation,

"(ii) which is used by the taxpayer within an Indian reservation predominantly in the active conduct of a trade or business, and

"(iii) which is originally placed in service by the taxpayer.

"(F) QUALIFIED REAL PROPERTY.—The term 'qualified real property' means property described in clause (I), (II), or (III) of paragraph (2)(D)(ii).

"(G) RESERVATION INFRASTRUCTURE INVESTMENT DEFINED.—

"(i) IN GENERAL.—The term 'reservation infrastructure investment' means qualified personal property or qualified real property which—

"(I) benefits the tribal infrastructure,

"(II) is available to the general public, and

"(III) is placed in service in connection with the taxpayer's active conduct of a trade or business within an Indian reservation.

"(ii) PROPERTY MAY BE LOCATED OUTSIDE THE RESERVATION.—Qualified personal prop-

erty and qualified real property outside an Indian reservation shall be reservation infrastructure investment only if its purpose is to connect to existing tribal infrastructure in the reservation. Examples of property which may be described in this paragraph include roads, power lines, water systems, railroad spurs, and communications facilities.

"(3) REAL ESTATE RENTALS.—For the purposes of this section, ownership (or leaseholding) of residential, commercial, or industrial real property within an Indian reservation for rental shall be treated as the active conduct of a trade or business in an Indian reservation.

"(4) DEFINITIONS.—For purposes of this subsection, the term 'Indian reservation' means a reservation, as defined in—

"(A) section 3(d) of the Indian Financing Act of 1974 (25 U.S.C. 1452(d)), or

"(B) section 4(10) of the Indian Child Welfare Act of 1978 (25 U.S.C. 1903(10)).

"(5) LIMITATION BASED ON UNEMPLOYMENT.—The Indian reservation credit allowed under section 46 for any taxable year shall apply only in the event that the Indian unemployment rate on the applicable Indian reservation for which the credit is sought exceeds 300 percent of the national average unemployment rate at any time during such taxable year or in the immediately preceding taxable year. The requisite Indian unemployment rate shall be based upon those reservation Indians unemployed and able to work, and shall be certified by the Secretary of the Interior."

(2) LODGING TO QUALIFY.—Paragraph (2) of section 50(b) (relating to property used for lodging) is amended—

(A) by striking "and" at the end of subparagraph (C),

(B) by striking the period at the end of subparagraph (D) and inserting ", and," and

(C) by adding at the end thereof the following subparagraph:

"(E) new reservation construction property."

(c) RECAPTURE.—Subsection (a) of section 50 (relating to certain dispositions, etc., of investment credit property), is amended by adding at the end thereof the following new paragraph.

"(6) SPECIAL RULES FOR INDIAN RESERVATION PROPERTY.—

"(A) IN GENERAL.—If, during any taxable year, property with respect to which the taxpayer claimed an Indian reservation credit—

"(i) is disposed of, or

"(ii) in the case of reservation personal property—

"(I) otherwise ceases to be investment credit property with respect to the taxpayer, or

"(II) is removed from the Indian reservation, converted or otherwise ceases to be Indian reservation property, the tax under this chapter for such taxable year shall be increased by the amount described in subparagraph (B).

"(B) AMOUNT OF INCREASE.—The increase in tax under subparagraph (A) shall equal the aggregate decease in the credits allowed under section 38 by reason of section 48(c) for all prior taxable years which would have resulted had the expenditures taken into account with respect to the property been limited to an amount which bears the same ratio that the property was held by the taxpayer bears to the applicable recovery period under section 168(g)."

(d) BASIS ADJUSTMENT TO REFLECT INVESTMENT CREDIT.—Paragraph (3) of section 50(c) (relating to basis adjustment to investment credit property) is amended to read as follows:

"(3) SPECIAL RULE.—In the case of any energy credit, reforestation credit or Indian reservation credit other than with respect to or expenditure for new reservation construction property—

"(A) only 50 percent of such credit shall be taken into account under paragraph (1), and

"(B) only 50 percent of any recapture amount attributable to such credit shall be taken into account under paragraph (2)."

(e) BASIS ADJUSTMENT TO REFLECT INVESTMENT CREDIT.—Paragraph (4) of section 50(b) is amended by redesignating subparagraphs (D) and (E) as subparagraphs (E) and (F) and inserting new subparagraph (D) as follows:

"(D) EXCEPTION FOR RESERVATION INFRASTRUCTURE INVESTMENT.—This paragraph shall not apply for purposes of determining the Indian reservation credit with respect to reservation infrastructure investment."

(f) CLERICAL AMENDMENTS.—

(1) The caption of section 48 is amended by deleting the period at the end thereof and adding "; Indian Reservation Credit."

(2) The table of sections for subpart E of Part IV of subchapter A of Chapter 1 is amended by striking out the item relating to section 48 and inserting in lieu thereof the followings:

"Sec. 48. Energy Credit, reforestation credit; Indian reservation credit."

(g) EFFECTIVE DATE.—The amendments made by this section shall apply to property placed in service after December 31, 1991.

SEC. 6003. INDIAN EMPLOYMENT CREDIT.

(a) ALLOWANCE OF INDIAN EMPLOYMENT CREDIT.—Section 38(b) of the Internal Revenue Code of 1986 (relating to general business credits) is amended by striking "plus" at the end of paragraph (6), by striking the period at the end and of paragraph (7) and inserting ", plus", and by adding after paragraph (7) the following new paragraph:

"(8) the Indian employment credit."

(b) AMOUNT OF INDIAN EMPLOYMENT CREDIT.—Subpart D of part IV of subchapter A of chapter 1 (relating to business related credits) is amended by adding at the end thereof the following new section:

"SEC. 45. INDIAN EMPLOYMENT CREDIT.

"(a) AMOUNT OF CREDIT.—For purposes of section 38, the Indian employment credit determined under this section with respect to any employer for any taxable year is 10 percent (30 percent in the case of an employer with at least 85 percent Indian employees) of the sum of—

"(1) the qualified wages paid or incurred during such taxable year, plus

"(2) qualified employee health insurance costs paid or incurred during such taxable year.

"(b) QUALIFIED WAGES; QUALIFIED EMPLOYEE HEALTH INSURANCE COSTS.—For purposes of this section:

"(1) QUALIFIED WAGES.—The term 'qualified wages' means any wages paid or incurred by an employer for services performed by an employee while such employee is a qualified employee.

"(2) QUALIFIED EMPLOYEE HEALTH INSURANCE COSTS.—

"(A) IN GENERAL.—The term 'qualified employee health insurance costs' means any amount paid or incurred by an employer for health insurance to the extent such amount is attributable to coverage provided to any employee while such employee is a qualified employee.

"(B) EXCEPTION FOR AMOUNTS PAID UNDER SALARY REDUCTION ARRANGEMENTS.—No amount paid or incurred for health insurance pursuant to a salary reduction arrangement shall be taken into account under subparagraph (A).

"(c) QUALIFIED EMPLOYEE.—For purposes of this section:

"(1) IN GENERAL.—Except as otherwise provided in this subsection, the term "qualified employee' means, with respect to any period, any employee of an employer if—

"(A) substantially all of the services performed during such period by such employee for such employer are performed within an Indian reservation, and

"(B) the principal place of abode of such employee while performing such services is on or near the reservation in which the services are performed.

"(2) CREDIT ALLOWED ONLY FOR FIRST 7 YEARS.—An employee shall not be treated as a qualified employee for any period after the date 7 years after the day on which such employee first began work for the employer.

"(3) INDIVIDUALS RECEIVING WAGES IN EXCESS OF $30,000 NOT ELIGIBLE.— An employee shall not be treated as a qualified employee for any taxable year of the employer if the total amount of the wages paid or incurred by such employer to such employee during such taxable year (whether or not for services within an Indian reservation) exceeds the amount determined at an annual rate of $30,000. The Secretary shall adjust the $30,000 amount contained in the preceding sentence for years beginning after 1991 at the same time and in the same manner as under section 415(d).

"(4) EMPLOYMENT MUST BE TRADE OR BUSINESS EMPLOYMENT.—An employee shall be treated as a qualified employee for any taxable year of the employer only if more than 50 percent of the wages paid by the employer to such employee during such taxable year are for services performed in a trade of business of the employer. Any determination as to whether the preceding sentence applied with respect to any employee for any taxable year shall be made without regard to paragraph (4) of subsection (e).

"(5) CERTAIN EMPLOYEES NOT ELIGIBLE.—The term 'qualified employee' shall not include—

"(A) any individual described in subparagraph (A), (B), or (C) of section 51(i)(1),

"(B) any 5-percent owner (as defined in section 416(i)(1)(B)), and

"(C) any person who is neither an enrolled member of an Indian tribe nor the spouse of an enrolled member of an Indian tribe.

"(d) EARLY TERMINATION OF EMPLOYMENT BY EMPLOYER.—

"(1) IN GENERAL.—If the employment of any employee is terminated by the taxpayer before the day 1 year after the day on which such employee began work for the employer—

"(A) no wages (or qualified employee health insurance costs) with respect to such employee shall be taken into account under subsection (a) for the taxable year in which such employment is terminated, and

"(B) the tax under this chapter for the taxable year in which such employment is terminated shall be increased by the aggregate credits (if any) allowed under section 38(a) for prior taxable years by reason of wages (or qualified employee health insurance costs) taken into account with respect to such employee.

"(2) CARRYBACKS AND CARRYOVERS ADJUSTED.—In the case of any termination of employment to which paragraph (1) applies, the carrybacks and carryovers under section 39 shall be properly adjusted.

"(3) SUBSECTION NOT TO APPLY IN CERTAIN CASES.—

"(A) IN GENERAL.—Paragraph (1) shall not apply to—

"(i) a termination of employment of an employee who voluntarily leaves the employment of the taxpayer,

"(ii) a termination of employment of an individual who before the close of the period referred to in paragraph (1) becomes disabled to perform the services of such employment unless such disability is removed before the close of such period and the taxpayer fails to offer reemployment to such individual, or

"(iii) a termination of employment of an individual if it is determined under the applicable State unemployment compensation law that the termination was due to the misconduct of such individual.

"(B) CHANGES IN FORM OF BUSINESS.—For purposes of paragraph (1), the employment relationship between the taxpayer and an employee shall not be treated as terminated—

"(i) by a transaction to which section 381(a) applies if the employee continues to be employed by the acquiring corporation, or

"(ii) by reason of a mere change in the form of conducting the trade or business of the taxpayer if the employee continues to be employed in such trade or business and the taxpayer retains a substantial interest in such trade or business.

"(4) SPECIAL RULE.—Any increase in tax under paragraph (1) shall not be treated as a tax imposed by this chapter for purposes of—

"(A) determining the amount of any credit allowable under this chapter, and

"(B) determining the amount of the tax imposed by section 55.

"(e) OTHER DEFINITIONS AND SPECIAL RULES.—

"(1) INDIAN TRIBE DEFINED.—The term 'Indian tribe' means any Indian tribe, band, nation, pueblo, or other organized group or community, including any Alaska Native village, or regional or village corporation, as defined in, or established pursuant to, the Alaska Native Claims Settlement Act (43 U.S.C. 1601 et seq.) which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

"(2) INDIAN RESERVATION DEFINED.—The term 'Indian reservation' means a reservation, as defined in—

"(A) section 3(d) of the Indian Financing Act of 1974 (25 U.S.C. 1452(d)), or

"(B) section 4(10) of the Indian Child Welfare Act of 1978 (25 U.S.C. 1903 (10)).

"(3) WAGES.—The term 'wages' has the meaning given such term by section 51 except that paragraph (4) of section 51(c) shall not apply.

"(4) CONTROLLED GROUPS.—For purposes of this section—

"(A) all employers treated as a single employer under section (a) or (b) of section 52 shall be treated as a single employer for purposes of this section, and

"(B) the credit (if any) determined under this section with respect to such employer shall be its proportionate share of the wages and qualified employee health insurance costs giving rise to such credit.

"(5) CERTAIN OTHER RULES MADE APPLICABLE.—For purposes of this section, rules similar to the rules of section 51(k) and subsections (c), (d), and (e) of section 52 shall apply."

(c) CLERICAL AMENDMENT.—The table of sections for subpart D of part IV of subchapter A of chapter 1 is amended by adding at the end thereof the following new section:

"Sec. 45. Indian employment credit."

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to expenses paid or incurred in taxable years beginning after December 31, 1992.

KASTEN (AND OTHERS) AMENDMENT NO. 1721

(Ordered to lie on the table.)

Mr. KASTEN (for himself, Mr. BURNS, Mr. SMITH, Mr. LOTT, and Mr. NICKLES) submitted an amendment intended to be proposed by them to the bill H.R. 4210, supra, as follows:

Beginning on page 630, line 1, strike all through page 1421, line 17, and insert the following:

SECTION 1. SHORT TITLE, ETC.

(a) SHORT TITLE.—This Act may be cited as the "Family Tax Fairness, Economic Growth, and Health Care Access Act of 1992".

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

(c) SECTION 15 NOT TO APPLY.—No amendment made by this Act shall be treated as a change in a rate of tax for purposes of section 15 of the Internal Revenue Code of 1986.

(d) UNDERPAYMENT OF ESTIMATED TAX.—No addition to tax shall be made under section 6654 or 6655 of the Internal Revenue Code of 1986 for the 1st required installment beginning in 1992 with respect to any underpayment to the extent such underpayment was created or increased by any amendment made by this Act. Any reduction in an installment by reason of the preceding sentence shall be recaptured by increasing the amount of the 1st succeeding required installment by the amount of such reduction.

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

Sec. 1. Short title, etc.

TITLE I—FAIR TAX TREATMENT OF WORKING FAMILIES

Sec. 1001. Tax credit for children.
Sec. 1002. Simplification and expansion of earned income tax credit.
Sec. 1003. Extension of targeted jobs credit.

TITLE II—PROMOTION OF LONG-TERM ECONOMIC GROWTH

Subtitle A—Increased Savings

PART I—RETIREMENT SAVINGS INCENTIVES

SUBPART A—RESTORATION OF IRA DEDUCTION

Sec. 2001. Restoration of IRA deduction.
Sec. 2002. Inflation adjustment for deductible amount.
Sec. 2003. Coordination of IRA deduction limit with elective deferral limit.

SUBPART B—NONDEDUCTIBLE TAX-FREE IRAS

Sec. 2011. Establishment of nondeductible tax-free individual retirement accounts.

PART II—PENALTY-FREE DISTRIBUTIONS

Sec. 2021. Distributions from certain plans may be used without penalty to purchase first homes or to pay higher education or financially devastating medical expenses.
Sec. 2022. Contributions must be held at least 5 years in certain cases.

Subtitle B—Improved Educational Opportunities

PART II—WORKFORCE TRAINING

SUBPART A—STANDARDS OF EXCELLENCE IN WORKFORCE TRAINING

Sec. 2111. Purpose.
Sec. 2112. Amendment to Wagner-Peyser Act.

SUBPART B—YOUTH SKILLS TRAINING AND EDUCATION PARTNERSHIPS

Sec. 2113. Short title.
Sec. 2114. Tax exemption for contributions to youth skills training and education partnerships.
Sec. 2115. Augmented deduction for youth skills training and education contributions by businesses.

SUBPART C—STUDY

Sec. 2116. Joint Labor Department and Treasury Department study.

PART III—OTHER EDUCATION INCENTIVES

Sec. 2121. Credit for interest on education loans.
Sec. 2122. Income exclusion for education bonds expanded.
Sec. 2123. Employer-provided educational assistance.
Sec. 2124. Disclosures of information for veterans benefits.

Subtitle C—Better Access to Affordable Health Care

PART I—IMPROVEMENTS IN HEALTH INSURANCE AFFORDABILITY FOR SMALL EMPLOYERS

Sec. 2201. Increase in deductible health insurance costs for self-employed individuals.
Sec. 2202. Grants to States for small employer health insurance purchasing programs.
Sec. 2203. Study of use of medicare rates by private health insurance plans.

PART II—IMPROVEMENTS IN HEALTH INSURANCE FOR SMALL EMPLOYERS

SUBPART A—STANDARDS AND REQUIREMENTS OF SMALL EMPLOYER HEALTH INSURANCE REFORM

Sec. 2211. Standards and requirements of small employer health insurance.

SUBPART B—TAX PENALTY ON NONCOMPLYING INSURERS

Sec. 2221. Excise tax on premiums received on health insurance policies which do not meet certain requirements.

SUBPART C—STUDIES AND REPORTS

Sec. 2231. GAO study and report on rating requirements and benefit packages for small group health insurance.

PART III—IMPROVEMENTS IN PORTABILITY OF PRIVATE HEALTH INSURANCE

Sec. 2241. Excise tax imposed on failure to provide for preexisting condition.

PART IV—HEALTH CARE COST CONTAINMENT

Sec. 2251. Establishment of health care cost commission.
Sec. 2252. Federal certification of managed care plans and utilization review programs.
Sec. 2253. Additional funding for outcomes research.

PART V—MEDICARE PREVENTION BENEFITS

Sec. 2261. Coverage of certain immunizations.
Sec. 2262. Coverage of well-child care.
Sec. 2263. Demonstration projects for coverage of other preventive services.
Sec. 2264. OTA study of process for review of medicare coverage of preventive services.
Sec. 2265. Financing of additional benefits.

Subtitle D—Capital Gain Provisions

PART I—PROGRESSIVE CAPITAL GAIN RATES

Sec. 2301. Progressive capital gain rates.

Sec. 2302. Increase in holding period required for long-term capital gain treatment.
Sec. 2303. Recapture under section 1250 of total amount of depreciation.
PART II—SMALL BUSINESS STOCK
Sec. 2311. 50-percent exclusion for gain from certain small business stock.
Subtitle E—Investment in Real Estate
PART I—FIRST-TIME HOMEBUYER CREDIT
Sec. 2401. Credit for purchase of new principal residence by first-time homebuyer.
PART II—MODIFICATION OF PASSIVE LOSS RULES
Sec. 2411. Modification of passive loss rules.
PART III—PROVISIONS RELATING TO REAL ESTATE INVESTMENTS BY PENSION FUNDS
Sec. 2421. Real estate property acquired by a qualified organization.
Sec. 2422. Special rules for investments in partnerships.
Sec. 2423. Title-holding companies permitted to receive small amounts of unrelated business taxable income.
Sec. 2424. Exclusion from unrelated business tax of gains from certain property.
Sec. 2425. Exclusion from unrelated business tax of certain fees and option premiums.
Sec. 2426. Exclusion from unrelated business tax of certain hotel rental income.
PART IV—OTHER PROVISIONS
Sec. 2431. Low-income housing credit.
Sec. 2432. Qualified mortgage bonds.
Subtitle F—Other Incentives
PART I—SPECIAL DEPRECIATION ALLOWANCE
Sec. 2501. Special depreciation allowance for certain equipment acquired in 1992.
PART II—MODIFICATIONS TO MINIMUM TAX
Sec. 2502. Temporary repeal of preference for contributions of appreciated property.
Sec. 2503. Minimum tax treatment of certain energy preferences.
Sec. 2504. Elimination of ACE depreciation adjustment.
PART III—EXTENSION OF OTHER EXPIRING TAX PROVISIONS
Sec. 2505. Extension of research credit.
Sec. 2506. Extension of small issue bonds.
Sec. 2507. Extension of energy investment credit for solar and geothermal property.
Sec. 2508. Excise tax on certain vaccines.
Sec. 2509. Certain transfers to Railroad Retirement Account.
Sec. 2510. Extension of tax credit for orphan drug clinical testing expenses.
PART IV—REPEAL OF CERTAIN LUXURY EXCISE TAXES; TAX ON DIESEL FUEL USED IN NONCOMMERCIAL MOTORBOATS
Sec. 2511. Repeal of luxury excise taxes other than on passenger vehicles.
Sec. 2512. Tax on diesel fuel used in noncommercial motorboats.
PART V—OTHER PROVISIONS
Sec. 2513. Treatment of employer-provided transportation benefits.
TITLE III—DEFENSE AND DOMESTIC DISCRETIONARY SPENDING
Sec. 3001. Reduction in defense, international and domestic discretionary spending.
TITLE IV—SIMPLIFICATION PROVISIONS
Subtitle A—Provisions Relating to Individuals
Sec. 4101. Simplification of rules on rollover of gain on sale of principal residence in case of divorce.
Sec. 4102. Payment of tax by credit card.
Sec. 4103. Modifications to election to include child's income on parent's return.
Sec. 4104. Simplified foreign tax credit limitation for individuals.
Sec. 4105. Treatment of personal transactions by individuals under foreign currency rules.
Sec. 4106. Exclusion of combat pay from withholding limited to amount excludable from gross income.
Sec. 4107. Expanded access to simplified income tax returns.
Sec. 4108. Treatment of certain reimbursed expenses of rural mail carriers.
Sec. 4109. Exemption from luxury excise tax for certain equipment installed on passenger vehicles for use by disabled individuals.
Subtitle B—Pension Simplification
PART I—SIMPLIFIED DISTRIBUTION RULES
Sec. 4201. Taxability of beneficiary of qualified plan.
Sec. 4202. Simplified method for taxing annuity distributions under certain employer plans.
Sec. 4203. Qualified plans must provide for transfers of certain distributions to other plans.
Sec. 4204. Required distributions.
PART II—INCREASED ACCESS TO PENSION PLANS
Sec. 4211. Modifications of simplified employee pensions.
Sec. 4212. Tax exempt organizations eligible under section 401(k).
Sec. 4213. Duties of sponsors of certain prototype plans.
PART III—NONDISCRIMINATION PROVISIONS
Sec. 4221. Definition of highly compensated employees.
Sec. 4222. Election to treat base pay as compensation.
Sec. 4223. Modification of additional participation requirements.
Sec. 4224. Nondiscrimination rules for qualified cash or deferred arrangements and matching contributions.
PART IV—MISCELLANEOUS SIMPLIFICATION
Sec. 4231. Treatment of leased employees.
Sec. 4232. Elimination of half-year requirements.
Sec. 4233. Modifications of cost-of-living adjustments.
Sec. 4234. Plans covering self-employed individuals.
Sec. 4235. Full-funding limitation of multiemployer plans.
Sec. 4236. Alternative full-funding limitation.
Sec. 4237. Distributions under rural cooperative plans.
Sec. 4238. Treatment of governmental plans.
Sec. 4239. Use of excess assets of black lung benefit trusts for health care benefits.
Sec. 4240. Reports of pension and annuity payments.
Sec. 4241. Contributions on behalf of disabled employees.
Sec. 4242. Affiliated employers.
Sec. 4243. Disaggregation of union plans.
Sec. 4244. Uniform retirement age.
Sec. 4245. Special rules for plans covering pilots.
Sec. 4246. National commission on private pension plans.
Sec. 4247. Date for adoption of plan amendments.
Subtitle C—Treatment of Large Partnerships
PART I—GENERAL PROVISIONS
Sec. 4301. Simplified flow-through for large partnerships.
Sec. 4302. Simplified audit procedures for large partnerships.
Sec. 4303. Due date for furnishing information to partners of large partnerships.
Sec. 4304. Returns may be required on magnetic media.
Sec. 4305. Effective date.
PART II—PROVISIONS RELATED TO TEFRA PARTNERSHIP PROCEEDINGS
Sec. 4311. Treatment of partnership items in deficiency proceedings.
Sec. 4312. Partnership return to be determinative of audit procedures to be followed.
Sec. 4313. Provisions relating to statute of limitations.
Sec. 4314. Expansion of small partnership exception.
Sec. 4315. Exclusion of partial settlements from 1 year limitation on assessment.
Sec. 4316. Extension of time for filing a request for administrative adjustment.
Sec. 4317. Availability of innocent spouse relief in context of partnership proceedings.
Sec. 4318. Determination of penalties at partnership level.
Sec. 4319. Provisions relating to court jurisdiction, etc.
Sec. 4320. Treatment of premature petitions filed by notice partners or 5-percent groups.
Sec. 4321. Bonds in case of appeals from TEFRA proceeding.
Sec. 4322. Suspension of interest where delay in computational adjustment resulting from TEFRA settlements.
Subtitle D—Foreign Provisions
PART I—SIMPLIFICATION OF TREATMENT OF PASSIVE FOREIGN CORPORATIONS
Sec. 4401. Repeal of foreign personal holding company rules and foreign investment company rules.
Sec. 4402. Replacement for passive foreign investment company rules.
Sec. 4403. Technical and conforming amendments.
Sec. 4404. Effective date.
PART II—TREATMENT OF CONTROLLED FOREIGN CORPORATIONS
Sec. 4411. Gain on certain stock sales by controlled foreign corporations treated as dividends.
Sec. 4412. Authority to prescribe simplified method for applying section 960(b)(2).
Sec. 4413. Miscellaneous modifications to subpart F.
PART III—OTHER PROVISIONS
Sec. 4421. Exchange rate used in translating foreign taxes.
Sec. 4422. Election to use simplified section 904 limitation for alternative minimum tax.
Sec. 4423. Modification of section 1491.
Sec. 4424. Modification of section 367(b).
Subtitle E—Other Income Tax Provisions
PART I—PROVISIONS RELATING TO SUBCHAPTER S CORPORATIONS
Sec. 4501. Determination of whether corporation has 1 class of stock.

Sec. 4502. Authority to validate certain invalid elections.
Sec. 4503. Treatment of distributions during loss years.
Sec. 4504. Other modifications.
PART II—ACCOUNTING PROVISIONS
Sec. 4511. Modifications to look-back method for long-term contracts.
Sec. 4512. Simplified method for capitalizing certain indirect costs.
PART III—TAX-EXEMPT BOND PROVISIONS
Sec. 4521. Repeal of $100,000 limitation on unspent proceeds under 1-year exception from rebate.
Sec. 4522. Exception from rebate for earnings on bona fide debt service fund under construction bond rules.
Sec. 4523. Automatic extension of initial temporary period for construction issues.
Sec. 4524. Aggregation of issues rules not to apply to tax or revenue anticipation bonds.
Sec. 4525. Allocation of interest expense of financial institutions to tax-exempt interest.
Sec. 4526. Tax treatment of 501(c)(3) bonds similar to governmental bonds.
Sec. 4527. Authority to terminate required inclusion of tax-exempt interest on return.
Sec. 4528. Repeal of expired provisions.
Sec. 4529. Effective date.
PART IV—ELECTION OF ALTERNATIVE TAXABLE YEARS
Sec. 4531. Election of taxable year other than required taxable year.
Sec. 4532. Required payments for entities electing not to have required taxable year.
Sec. 4533. Limitation on certain amounts paid to employee-owners of personal service corporations.
Sec. 4534. Effective date.
PART V—COOPERATIVES
Sec. 4541. Treatment of certain loan requirements.
Sec. 4542. Cooperative service organizations for certain foundations.
Sec. 4543. Treatment of certain amounts received by a cooperative telephone company.
Sec. 4544. Tax treatment of cooperative housing corporations.
Sec. 4545. Treatment of safe harbor leases involving rural electric cooperatives.
PART VI—EMPLOYMENT
Sec. 4551. Credit for portion of employer social security taxes paid with respect to employee cash tips.
Sec. 4552. Elimination of deduction for club membership fees.
Sec. 4553. Clarification of employment tax status of certain fisherman.
PART VII—OTHER PROVISIONS
Sec. 4561. Closing of partnership taxable year with respect to deceased partner.
Sec. 4562. Repeal of special treatment of ownership changes in determining adjusted current earnings.
Sec. 4563. Authorization for bureau of land management use of Reforestation Trust Fund.
Sec. 4564. Repeal of investment restrictions applicable to nuclear decommissioning funds.
Sec. 4565. Modification of credit for producing fuel from a nonconventional source.
Subtitle F—Estate And Gift Tax Provisions
Sec. 4601. Clarification of waiver of certain rights of recovery.
Sec. 4602. Adjustments for gifts within 3 years of decedent's death.
Sec. 4603. Clarification of qualified terminable interest rules.
Sec. 4604. Treatment of portions of property under marital deduction.
Sec. 4605. Transitional rule under section 2056a.
Sec. 4606. Opportunity to correct certain failures under section 2032a.
Sec. 4607. Repeal of certain throwback rules applicable to domestic trusts.
Subtitle G—Excise Tax Simplification
PART I—FUEL TAX PROVISIONS
Sec. 4701. Repeal of certain retail and use taxes.
Sec. 4702. Revision of fuel tax credit and refund procedures.
Sec. 4703. Authority to provide exceptions from information reporting with respect to diesel fuel and aviation fuel.
Sec. 4704. Technical and conforming amendments.
Sec. 4705. Effective date.
PART II—PROVISIONS RELATED TO DISTILLED SPIRITS, WINES, AND BEER
Sec. 4711. Credit or refund for imported bottled distilled spirits returned to distilled spirits plant.
Sec. 4712. Authority to cancel or credit export bonds without submission of records.
Sec. 4713. Repeal of required maintenance of records on premises of distilled spirits plant.
Sec. 4714. Fermented material from any brewery may be received at a distilled spirits plant.
Sec. 4715. Repeal of requirement for wholesale dealers in liquors to post sign.
Sec. 4716. Refund of tax to wine returned to bond not limited to unmerchantable wine.
Sec. 4717. Use of additional ameliorating material in certain wines.
Sec. 4718. Domestically-produced beer may be withdrawn free of tax for use of foreign embassies, legations, etc.
Sec. 4719. Beer may be withdrawn free of tax for destruction.
Sec. 4720. Authority to allow drawback on exported beer without submission of records.
Sec. 4721. Transfer to brewery of beer imported in bulk without payment of tax.
PART III—OTHER EXCISE TAX PROVISIONS
Sec. 4731. Authority to grant exemptions from registration requirements.
Sec. 4732. Small manufacturers exempt from firearms excise tax.
Sec. 4733. Repeal of expired provisions.
Subtitle H—Administrative Provisions
PART I—GENERAL PROVISIONS
Sec. 4801. Simplification of deposit requirements for social security, railroad retirement, and withheld income taxes.
Sec. 4802. Simplification of employment taxes on domestic services.
Sec. 4803. Use of reproductions of returns stored in digital image format.
Sec. 4804. Repeal of authority to disclose whether prospective juror has been audited.
Sec. 4805. Repeal of special audit provisions for subchapter S items.
Sec. 4806. Clarification of statute of limitations.
PART II—TAX COURT PROCEDURES
Sec. 4811. Overpayment determinations of Tax Court.
Sec. 4812. Awarding of administrative costs.
Sec. 4813. Redetermination of interest pursuant to motion.
Sec. 4814. Application of net worth requirement for awards of litigation costs.
PART III—AUTHORITY FOR CERTAIN COOPERATIVE AGREEMENTS
Sec. 4821. Cooperative agreements with State tax authorities.
TITLE V—TAXPAYER BILL OF RIGHTS[2]
Sec. 5000. Short Title.
Subtitle A—Taxpayer Advocate
Sec. 5001. Establishment of position of Taxpayer Advocate within Internal Revenue Service.
Sec. 5002. Expansion of authority to issue taxpayer assistance orders.
Subtitle B—Modifications to Installment Agreement Provisions
Sec. 5101. Notification of reasons for termination or denial of installment agreements.
Sec. 5102. Administrative review of denial of request for, or termination of, installment agreement.
Subtitle C—Interest
Sec. 5201. Expansion of authority to abate interest.
Sec. 5202. Extension of interest-free period for payment of tax after notice and demand.
Subtitle D—Joint Returns
Sec. 5301. Requirement of separate deficiency notices in certain cases.
Sec. 5302. Disclosure of collection activities.
Sec. 5303. Joint return may be made after separate returns without full payment of tax.
Sec. 5304. Representation of absent divorced or separated spouse by other spouse.
Subtitle E—Collection Activities
Sec. 5401. Notice of proposed deficiency.
Sec. 5402. Modifications to lien and levy provisions.
Sec. 5403. Offers-in-compromise.
Sec. 5404. Notification of examination.
Sec. 5405. Modification of certain limits on recovery of civil damages for unauthorized collection actions.
Sec. 5406. Safeguards relating to designated summons.
Subtitle F—Information Returns
Sec. 5501. Phone number of person providing payee statements required to be shown on such statement.
Sec. 5502. Civil damages for fraudulent filing of information returns.
Sec. 5503. Requirement to verify accuracy of information returns.
Subtitle G—Modifications to Penalty for Failure to Collect and Pay Over Tax
Sec. 5601. Trust fund taxes.
Sec. 5602. Disclosure of certain information where more than 1 person subject to penalty.
Sec. 5603. Penalties under section 6672.
Subtitle H—Awarding of Costs and Certain Fees
Sec. 5701. Commencement date of reasonable administrative costs.

Sec. 5702. Interim notice requirement.
Sec. 5703. Increased limit on attorney fees.
Sec. 5704. Failure to agree to extension not taken into account.
Sec. 5705. Effective date.
Subtitle I—Other Provisions
Sec. 5801. Required content of certain notices.
Sec. 5802. Relief from retroactive application of Treasury Department regulations.
Sec. 5803. Required notice of certain payments.
Sec. 5804. Unauthorized enticement of information disclosure.

TITLE I—FAIR TAX TREATMENT OF WORKING FAMILIES

SEC. 1001. TAX CREDIT FOR CHILDREN.

(a) IN GENERAL.—Subpart A of part IV of subchapter A of chapter 1 (relating to personal credits) is amended by inserting after section 25 the following new section:

"SEC. 25A. CREDIT FOR CHILDREN.

"(a) GENERAL RULE.—In the case of an eligible individual, there shall be allowed as a credit against the tax imposed by this chapter for the taxable year an amount equal to $300 multiplied by the number of qualifying children of the taxpayer for the taxable year.

"(b) INFLATION ADJUSTMENT.—In the case of any taxable year beginning in a calendar year after 1992, the dollar amount contained in subsection (a) shall be increased by an amount equal to—

"(1) such dollar amount, multiplied by

"(2) the cost-of-living adjustment determined under section 1(f)(3) for the calendar year in which the taxable year begins by substituting 'calendar year 1991' for 'calendar year 1989' in subparagraph (B) thereof.

If any increase determined under the preceding sentence is not a multiple of $50, such increase shall be rounded to the next lowest multiple of $50.

"(c) PHASE-OUT OF CREDIT FOR TAXPAYERS WITH INCOME OVER $50,000.—

"(1) IN GENERAL.—In the case of an eligible individual with an adjusted gross income in excess of $50,000 for any taxable year, the amount of the credit allowed under subsection (a) shall be reduced (but not below zero) by the amount determined under paragraph (2).

"(2) AMOUNT OF REDUCTION.—

"(A) IN GENERAL.—The amount determined under this paragraph equals the amount which bears the same ratio to the credit (determined without regard to this subsection) as—

"(i) the excess of—

"(I) the taxpayer's adjusted gross income for such taxable, over

"(II) $50,000, bears to

"(ii) $20,000.

"(B) ROUNDING.—Any amount determined under this paragraph which is not a multiple of $10 shall be rounded to the next lowest $10.

"(3) ADJUSTED GROSS INCOME.—Adjusted gross income of any taxpayer shall be determined—

"(A) after application of sections 86 and 469, and

"(B) without regard to sections 135 and 911.

"(d) DEFINITIONS AND SPECIAL RULES.—For purposes of this section—

"(1) ELIGIBLE INDIVIDUAL.—The term 'eligible individual' has the meaning given to such term by section 32(c)(1) (determined without regard to subparagraph (B)).

"(2) QUALIFYING CHILD.—The term 'qualifying child' has the meaning given to such term by section 32(c)(3), determined—

"(A) without regard to subparagraph (C)(ii) thereof, and

"(B) by substituting '16' for '19' in subparagraph (C)(iii) thereof.

"(3) CERTAIN OTHER RULES APPLY.—Subsections (d) and (e) of section 32 shall apply."

(b) CONFORMING AMENDMENT.—The table of sections for such subpart A is amended by inserting after the item relating to section 25 the following new item:

"Sec. 25A. Credit for children."

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 1991.

SEC. 1002. SIMPLIFICATION AND EXPANSION OF EARNED INCOME TAX CREDIT.

(a) EARNED INCOME TAX CREDIT INCREASED.—Subparagraph (C) of section 32(b)(1) (relating to basic earned income credit) is amended to read as follows:

"(C) PERCENTAGES.—For purposes of this paragraph—

"(i) IN GENERAL.—Except as provided in clause (ii), the percentages shall be determined as follows:

"In the case of an eligible individual with:	The credit percentage is:	The phaseout percentage is:
1 qualifying child	23	16.43
2 or more qualifying children	26.75	19.10

"(ii) TRANSITION PERCENTAGES.—

"(I) For taxable years beginning in 1992, the percentages are:

"In the case of an eligible individual with:	The credit percentage is:	The phaseout percentage is:
1 qualifying child	17.6	12.57
2 or more qualifying children	20.15	14.39

"(II) For taxable years beginning in 1993:

"In the case of an eligible individual with:	The credit percentage is:	The phaseout percentage is:
1 qualifying child	18.5	13.21
2 or more qualifying children	21.25	15.17."

(b) REPEAL OF INTERACTION WITH MEDICAL EXPENSE DEDUCTION.—Section 213 (relating to medical, dental, etc., expenses) is amended by striking subsection (f).

(c) REPEAL OF INTERACTION WITH DEDUCTION FOR HEALTH INSURANCE COSTS OF SELF-EMPLOYED.—Paragraph (3) of section 162(l) is amended to read as follows:

"(3) COORDINATION WITH MEDICAL DEDUCTION.—Any amount paid by a taxpayer for insurance to which paragraph (1) applies shall not be taken into account in computing the amount allowable to the taxpayer as a deduction under section 213(a)."

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 1991.

SEC. 1003. EXTENSION OF TARGETED JOBS CREDIT.

(a) IN GENERAL.—Paragraph (4) of section 51(c) (relating to termination) is amended by striking "June 30, 1992" and inserting "December 31, 1993".

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to individuals who begin work for the employer after June 30, 1992.

TITLE II—PROMOTION OF LONG-TERM ECONOMIC GROWTH

Subtitle A—Increased Savings

PART I—RETIREMENT SAVINGS INCENTIVES

Subpart A—Restoration of IRA Deduction

SEC. 2001. RESTORATION OF IRA DEDUCTION.

(a) IN GENERAL.—Section 219 (relating to deduction for retirement savings) is amended by striking subsection (g) and by redesignating subsection (h) as subsection (g).

(b) TECHNICAL AND CONFORMING AMENDMENTS.—

(1) Subsection (f) of section 219 is amended by striking paragraph (7).

(2) Paragraph (5) of section 408(d) is amended by striking the last sentence.

(3) Section 408(o) is amended by adding at the end thereof the following new paragraph:

"(5) TERMINATION.—This subsection shall not apply to any designated nondeductible contribution for any taxable year beginning after December 31, 1992."

(4) Subsection (b) of section 4973 is amended by striking the last sentence.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 1992.

SEC. 2002. INFLATION ADJUSTMENT FOR DEDUCTIBLE AMOUNT.

(a) IN GENERAL.—Section 219, as amended by section 2001, is amended by redesignating subsection (g) as subsection (h) and by inserting after subsection (f) the following new subsection:

"(g) COST-OF-LIVING ADJUSTMENTS.—

"(1) IN GENERAL.—If the cost-of-living amount for any calendar year is equal to or greater than $500, then each applicable dollar amount (as previously adjusted under this subsection) for any taxable year beginning in any subsequent calendar year shall be increased by $500.

"(2) COST-OF-LIVING AMOUNT.—The cost-of-living amount for any calendar year is the excess (if any) of—

"(A) $2,000, increased by the cost-of-living adjustment for such calendar year, over

"(B) the applicable dollar amount in effect under subsection (b)(1)(A) for taxable years beginning in such calendar year.

"(3) COST-OF-LIVING ADJUSTMENT.—For purposes of this subsection—

"(A) IN GENERAL.—The cost-of-living adjustment for any calendar year is the percentage (if any) by which—

"(i) the CPI for such calendar year, exceeds

"(ii) the CPI for 1991.

"(B) CPI FOR ANY CALENDAR YEAR.—The CPI for any calendar year shall be determined in the same manner as under section 1(f)(4).

"(4) APPLICABLE DOLLAR AMOUNT.—For purposes of this subsection, the term 'applicable dollar amount' means the dollar amount in effect under any of the following provisions:

"(A) Subsection (b)(1)(A).

"(B) Subsection (c)(2)(A)(i).

"(C) The last sentence of subsection (c)(2)."

(b) CONFORMING AMENDMENTS.—

(1) Section 408(a)(1) is amended by striking "in excess of $2,000 on behalf of any individual" and inserting "on behalf of any individual in excess of the amount in effect for such taxable year under section 219(b)(1)(A)".

(2) Section 408(b)(2)(B) is amended by striking "$2,000" and inserting "the dollar amount in effect under section 219(b)(1)(A)".

(3) Section 408(j) is amended by striking "$2,000".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 1992.

SEC. 2003. COORDINATION OF IRA DEDUCTION LIMIT WITH ELECTIVE DEFERRAL LIMIT.

(a) IN GENERAL.—Section 219(b) (relating to maximum amount of deduction) is amended by adding at the end thereof the following new paragraph:

"(4) COORDINATION WITH ELECTIVE DEFERRAL LIMIT.—The amount determined under paragraph (1) or subsection (c)(2) with respect to any individual for any taxable year shall not exceed the excess (if any) of—

"(A) the maximum amount of elective deferrals of the individual which are excludable from gross income for the taxable year under section 402(g)(1), over

"(B) the amount so excluded."

(b) CONFORMING AMENDMENT.—Section 219(c) is amended by adding at the end thereof the following new paragraph:

"(3) CROSS REFERENCE.—

"For reduction in paragraph (2) amount, see subsection (b)(4)."

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 1992.

Subpart B—Nondeductible Tax-Free IRAs

SEC. 2011. ESTABLISHMENT OF NONDEDUCTIBLE TAX-FREE INDIVIDUAL RETIREMENT ACCOUNTS.

(a) IN GENERAL.—Subpart A of part I of subchapter D of chapter 1 (relating to pension, profit-sharing, stock bonus plans, etc.) is amended by inserting after section 408 the following new section:

"SEC. 408A. SPECIAL INDIVIDUAL RETIREMENT ACCOUNTS.

"(a) GENERAL RULE.—Except as provided in this section, a special individual retirement account shall be treated for purposes of this title in the same manner as an individual retirement plan.

"(b) SPECIAL INDIVIDUAL RETIREMENT ACCOUNT.—For purposes of this title, the term 'special individual retirement account' means an individual retirement plan which is designated at the time of establishment of the plan as a special individual retirement account.

"(c) TREATMENT OF CONTRIBUTIONS.—

"(1) NO DEDUCTION ALLOWED.—No deduction shall be allowed under section 219 for a contribution to a special individual retirement account.

"(2) CONTRIBUTION LIMIT.—The aggregate amount of contributions for any taxable year to all special individual retirement accounts maintained for the benefit of an individual shall not exceed the excess (if any) of—

"(A) the maximum amount allowable as a deduction under section 219 with respect to such individual for such taxable year, over

"(B) the amount so allowed.

"(3) SPECIAL RULES FOR QUALIFIED TRANSFERS.—

"(A) IN GENERAL.—No rollover contribution may be made to a special individual retirement account unless it is a qualified transfer.

"(B) LIMIT NOT TO APPLY.—The limitation under paragraph (2) shall not apply to a qualified transfer to a special individual retirement account.

"(d) TAX TREATMENT OF DISTRIBUTIONS.—

"(1) IN GENERAL.—Except as provided in this subsection, any amount paid or distributed out of a special individual retirement account shall not be included in the gross income of the distributee.

"(2) EXCEPTION FOR EARNINGS ON CONTRIBUTIONS HELD LESS THAN 5 YEARS.—

"(A) IN GENERAL.—Any amount distributed out of a special individual retirement account which consists of earnings allocable to contributions made to the account during the 5-year period ending on the day before such distribution shall be included in the gross income of the distributee for the taxable year in which the distribution occurs.

"(B) ORDERING RULE.—

"(i) FIRST-IN, FIRST-OUT RULE.—Distributions from a special individual retirement account shall be treated as having been made—

"(I) first from the earliest contribution (and earnings allocable thereto) remaining in the account at the time of the distribution, and

"(II) then from other contributions (and earnings allocable thereto) in the order in which made.

"(ii) ALLOCATIONS BETWEEN CONTRIBUTIONS AND EARNINGS.—Any portion of a distribution allocated to a contribution (and earnings allocable thereto) shall be treated as allocated first to the earnings and then to the contribution.

"(iii) ALLOCATION OF EARNINGS.—Earnings shall be allocated to a contribution in such manner as the Secretary may by regulations prescribe.

"(iv) CONTRIBUTIONS IN SAME YEAR.—Under regulations, all contributions made during the same taxable year may be treated as 1 contribution for purposes of this subparagraph.

"(C) CROSS REFERENCE.—

"For additional tax for early withdrawal, see section 72(t).

"(3) QUALIFIED TRANSFER.—

"(A) IN GENERAL.—Paragraph (2) shall not apply to any distribution which is transferred in a qualified transfer to another special individual retirement account.

"(B) CONTRIBUTION PERIOD.—For purposes of paragraph (2), the special individual retirement account to which any contributions are transferred shall be treated as having held such contributions during any period such contributions were held (or are treated as held under this subparagraph) by the special individual retirement account from which transferred.

"(4) SPECIAL RULES RELATING TO CERTAIN TRANSFERS.—

"(A) IN GENERAL.—Notwithstanding any other provision of law, in the case of a qualified transfer to a special individual retirement account from an individual retirement plan which is not a special individual retirement account—

"(i) there shall be included in gross income any amount which, but for the qualified transfer, would be includible in gross income, but

"(ii) section 72(t) shall not apply to such amount.

"(B) TIME FOR INCLUSION.—In the case of any qualified transfer which occurs before January 1, 1994, any amount includible in gross income under subparagraph (A) with respect to such contribution shall be includible ratably over the 4-taxable year period beginning in the taxable year in which the amount was paid or distributed out of the individual retirement plan.

"(e) QUALIFIED TRANSFER.—For purposes of this section, the term 'qualified transfer' means a transfer to a special individual retirement account from another such account or from an individual retirement plan but only if such transfer meets the requirements of section 408(d)(3)."

(b) EARLY WITHDRAWAL PENALTY.—Section 72(t), as amended by section 2021(c), is amended by adding at the end thereof the following new paragraph:

"(8) RULES RELATING TO SPECIAL INDIVIDUAL RETIREMENT ACCOUNTS.—In the case of a special individual retirement account under section 408A—

"(A) this subsection shall only apply to distributions out of such account which consist of earnings allocable to contributions made to the account during the 5-year period ending on the day before such distribution, and

"(B) paragraph (2)(A)(i) shall not apply to any distribution described in subparagraph (A)."

(c) EXCESS CONTRIBUTIONS.—Section 4973(b) is amended by adding at the end thereof the following new sentence: "For purposes of paragraphs (1)(B) and (2)(C), the amount allowable as a deduction under section 219 shall be computed without regard to section 408A."

(d) CONFORMING AMENDMENT.—The table of sections for subpart A of part I of subchapter D of chapter 1 is amended by inserting after the item relating to section 408 the following new item:

"Sec. 408A. Special individual retirement accounts."

(e) EFFECTIVE DATES.—

(1) IN GENERAL.—The amendments made by this section shall apply to taxable years beginning after December 31, 1992.

(2) QUALIFIED TRANSFERS IN 1992.—The amendments made by this section shall apply to any qualified transfer during any taxable year beginning in 1992.

PART II—PENALTY-FREE DISTRIBUTIONS

SEC. 2021. DISTRIBUTIONS FROM CERTAIN PLANS MAY BE USED WITHOUT PENALTY TO PURCHASE FIRST HOMES OR TO PAY HIGHER EDUCATION OR FINANCIALLY DEVASTATING MEDICAL EXPENSES.

(a) IN GENERAL.—Paragraph (2) of section 72(t) (relating to exceptions to 10-percent additional tax on early distributions from qualified retirement plans) is amended by adding at the end thereof the following new subparagraph:

"(D) DISTRIBUTIONS FROM CERTAIN PLANS FOR FIRST HOME PURCHASES OR EDUCATIONAL EXPENSES.—Distributions to an individual from an individual retirement plan, or from amounts attributable to employer contributions made pursuant to elective deferrals described in subparagraph (A) or (C) of section 402(g)(3) or section 501(c)(18)(D)(iii)—

"(i) which are qualified first-time homebuyer distributions (as defined in paragraph (6)); or

"(ii) to the extent such distributions do not exceed the qualified higher education expenses (as defined in paragraph (7)) of the taxpayer for the taxable year."

(b) FINANCIALLY DEVASTATING MEDICAL EXPENSES.—

(1) IN GENERAL.—Section 72(t)(3)(A) is amended by striking "(B),".

(2) CERTAIN LINEAL DESCENDANTS AND ANCESTORS TREATED AS DEPENDENTS.—Subparagraph (B) of section 72(t)(2) is amended by striking "medical care" and all that follows and inserting "medical care determined—

"(i) without regard to whether the employee itemizes deductions for such taxable year, and

"(ii) by treating such employee's dependents as including—

"(I) all children and grandchildren of the employee or such employee's spouse, and

"(II) all ancestors of the employee or such employee's spouse."

(3) CONFORMING AMENDMENT.—Subparagraph (B) of section 72(t)(2) is amended by striking "or (C)" and inserting ", (C) or (D)".

(c) DEFINITIONS.—Section 72(t) is amended by adding at the end thereof the following new paragraphs:

"(6) QUALIFIED FIRST-TIME HOMEBUYER DISTRIBUTIONS.—For purposes of paragraph (2)(D)(i)—

"(A) IN GENERAL.—The term 'qualified first-time homebuyer distribution' means any payment or distribution received by an individual to the extent such payment or distribution is used by the individual before the close of the 60th day after the day on which such payment or distribution is received to pay qualified acquisition costs with respect to a principal residence of a first-time homebuyer who is such individual or the spouse, child, or grandchild of such individual.

"(B) QUALIFIED ACQUISITION COSTS.—For purposes of this paragraph, the term 'qualified acquisition costs' means the costs of acquiring, constructing, or reconstructing a residence. Such term includes any usual or reasonable settlement, financing, or other closing costs.

"(C) FIRST-TIME HOMEBUYER; OTHER DEFINITIONS.—For purposes of this paragraph—

"(i) FIRST-TIME HOMEBUYER.—The term 'first-time homebuyer' means any individual if—

"(I) such individual (and if married, such individual's spouse) had no present ownership interest in a principal residence during the 2-year period ending on the date of acquisition of the principal residence to which this paragraph applies, and

"(II) subsection (h) or (k) of section 1034 did not suspend the running of any period of time specified in section 1034 with respect to such individual on the day before the date the distribution is applied pursuant to subparagraph (A)(ii).

"(ii) PRINCIPAL RESIDENCE.—The term 'principal residence' has the same meaning as when used in section 1034.

"(iii) DATE OF ACQUISITION.—The term 'date of acquisition' means the date—

"(I) on which a binding contract to acquire the principal residence to which subparagraph (A) applies is entered into, or

"(II) on which construction or reconstruction of such a principal residence is commenced.

"(D) SPECIAL RULE WHERE DELAY IN ACQUISITION.—If any distribution from any individual retirement plan fails to meet the requirements of subparagraph (A) solely by reason of a delay or cancellation of the purchase or construction of the residence, the amount of the distribution may be contributed to an individual retirement plan as provided in section 408(d)(3)(A)(i) (determined by substituting '120 days' for '60 days' in such section), except that—

"(i) section 408(d)(3)(B) shall not be applied to such contribution, and

"(ii) such amount shall not be taken into account—

"(I) in determining whether section 408(d)(3)(A)(i) applies to any other amount, or

"(II) for purposes of subclause (II) of subparagraph (A)(i).

"(7) QUALIFIED HIGHER EDUCATION EXPENSES.—For purposes of paragraph (2)(D)(ii)—

"(A) IN GENERAL.—The term 'qualified higher education expenses' means tuition, fees, books, supplies, and equipment required for the enrollment or attendance of—

"(i) the taxpayer,

"(ii) the taxpayer's spouse, or

"(iii) the taxpayer's child (as defined in section 151(c)(3)) or grandchild,

at an eligible educational institution (as defined in section 135(c)(3)).

"(B) COORDINATION WITH SAVINGS BOND PROVISIONS.—The amount of qualified higher education expenses for any taxable year shall be reduced by any amount excludable from gross income under section 135."

(d) CONFORMING AMENDMENTS.—

(1) Section 401(k)(2)(B)(i) is amended by striking "or" at the end of subclause (III), by striking "and" at the end of subclause (IV) and inserting "or", and by inserting after subclause (IV) the following new subclause:

"(V) the date on which qualified first-time homebuyer distributions (as defined in section 72(t)(6)) or distributions for qualified higher education expenses (as defined in section 72(t)(7)) are made, and".

(2) Section 403(b)(11) is amended by striking "or" at the end of subparagraph (A), by striking the period at the end of subparagraph (B) and inserting ", or", and by inserting after subparagraph (B) the following new subparagraph:

"(C) for qualified first-time homebuyer distributions (as defined in section 72(t)(6)) or for the payment of qualified higher education expenses (as defined in section 72(t)(7))."

(e) EFFECTIVE DATE.—The amendments made by this section shall apply to payments and distributions after December 31, 1991.

SEC. 2022. CONTRIBUTIONS MUST BE HELD AT LEAST 5 YEARS IN CERTAIN CASES.

(a) IN GENERAL.—Section 72(t), as amended by section 2011(b), is amended by adding at the end thereof the following new paragraph:

"(9) CERTAIN CONTRIBUTIONS MUST BE HELD 5 YEARS.—

"(A) IN GENERAL.—Paragraph (2)(A)(i) shall not apply to any amount distributed out of an individual retirement plan (other than a special individual retirement account) which is allocable to contributions made to the plan during the 5-year period ending on the date of such distribution (and earnings on such contributions).

"(B) ORDERING RULE.—For purposes of this paragraph, distributions shall be treated as having been made—

"(i) first from the earliest contribution (and earnings allocable thereto) remaining in the account at the time of the distribution, and

"(ii) then from other contributions (and earnings allocable thereto) in the order in which made.

Earnings shall be allocated to contributions in such manner as the Secretary may prescribe.

"(C) SPECIAL ACCOUNTS.—For rules applicable to special individual retirement accounts under section 408A, see paragraph (8)."

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to contributions (and earnings allocable thereto) which are made after December 31, 1992.

SUBTITLE B—IMPROVED EDUCATIONAL OPPORTUNITIES

PART II—WORKFORCE TRAINING

Subpart A—Standards of Excellence in Workforce Training

SEC. 2111. PURPOSE.

It is the purpose of this subpart to amend the Wagner-Peyser Act to—

(1) stimulate the adoption of a voluntary national system of occupational certification by establishing an independent national board to develop a system of industry-based, occupational proficiency standards and certifications of mastery for occupations within each major industry and occupations that involve more than 1 industry, for which no recognized training standards currently exist; and

(2) encourage the formation of youth skills training and education partnerships by establishing standards for youth skills training and education programs.

SEC. 2112. AMENDMENT TO WAGNER-PEYSER ACT.

The Wagner-Peyser Act (29 U.S.C. 49 et seq.) is amended—

(1) by inserting before section 1, the following:

"TITLE I—FEDERAL EMPLOYMENT SERVICE"

(2) by designating sections 1 through 15 as sections 101 through 115, respectively, and

(3) inserting at the end thereof, the following new title:

"TITLE II—WORKFORCE TRAINING

"Subtitle A—Professional and Technical Standards for Workforce Training

"SEC. 201. ESTABLISHMENT OF NATIONAL BOARD.

"(a) IN GENERAL.—There is established a National Board for Professional and Technical Standards (hereafter referred to in this section as the 'National Board').

"(b) COMPOSITION.—

"(1) IN GENERAL.—The National Board shall be composed of 24 members appointed in accordance with paragraph (2)(A), of which 8 members shall be representatives of business and industry, 8 members shall be representatives of organized labor, and 8 members shall be representatives of educational institutions and technical associations the expertise of which reflects a broad cross section of industries and occupations. Representatives of organized labor shall be selected from among individuals recommended by recognized national labor federations.

"(2) MEMBERSHIP.—

"(A) APPOINTMENTS.—Members of the National Board shall be appointed as follows:

"(i) 6 members (2 from each class of appointees described in paragraph (1)) shall be appointed by the Speaker of the House of Representatives, upon the recommendations of the Majority and Minority Leaders of the House, respectively;

"(ii) 6 members (2 from each class of appointees described in paragraph (1)) shall be appointed by the President pro tempore of the Senate, upon the recommendations of the Majority and Minority Leaders of the Senate, respectively;

"(iii) 6 members (2 from each class of employees described in paragraph (1)) shall be appointed by the Secretary of Labor; and

"(iv) 6 members (2 from each class of appointees described in paragraph (1)) shall be appointed by the Secretary of Education.

"(B) EX OFFICIO MEMBERS.—The Secretary of Labor and the Secretary of Education shall serve as ex officio members of the National Board.

"(3) TERM.—Each member of the National Board shall be appointed under paragraph (2)(A) for a term of 4 years, except that of the initial members of the Board appointed under such paragraph, 12 (3 from each class of appointees described in paragraph (1)) shall be appointed for a term of 2 years in the manner prescribed in clauses (i) through (iv) of paragraph 2(A).

"(c) CHAIRPERSON AND VICE CHAIRPERSON.—The National Board shall elect a Chairperson and 2 Vice Chairpersons (each representing a different 1 of the classes of appointees described in paragraph (1)) from among its members described in subsection (b)(2)(A), each of whom shall serve for a term of 1 year. The position of Chairperson shall rotate among the classes of appointees described in subsection (c)(1).

"(d) COMPENSATION AND EXPENSES—

"(1) COMPENSATION.—Members of the National Board who are not regular full-time employees of the United States Government shall serve without compensation.

"(2) EXPENSES.—While away from their homes or regular places of business on the business of the National Board, members of such Board may be allowed travel expenses, including per diem in lieu of subsistence, as is authorized under section 5703 of title 5, United States Code, for persons employed intermittently in the Government service.

"(e) STAFF.—The National Board shall appoint an Executive Director who shall be compensated at a rate determined by the Board that shall not exceed the maximum rate of basic pay payable for GS-15 of the General Schedule, and who may appoint such staff as is necessary.

"SEC. 202. ADVISORY COMMITTEES.

"(a) ESTABLISHMENT.—The National Board shall establish advisory committees for each major industry and for major occupations that involve more than 1 industry, and shall appoint individuals to serve as members of such committees from among nominations submitted by participants in each such industry or occupation. Each such committee shall include equal numbers of representatives from each of the 3 classes of representatives described in section 201(b)(1). Representatives of organized labor shall be selected from among individuals nominated by recognized national labor organizations representing employees in such industry or occupation.

"(b) DUTIES.—Each advisory committee established under subsection (a) shall, for each major industry or occupation for which such committee is established—

"(1) develop recommendations for proficiency standards for occupations within such industry or for such occupation that are linked to internationally accepted standards, to the extent practicable;

"(2) develop assessments to measure competencies for such occupations;

"(3) develop and recommend 2- to 5-year curricula for achieving such competencies that include structured work experiences and related study programs leading to technical and professional certificates or associate degrees; and

"(4) evaluate the implementation of the proficiency standards, assessments, and curricula developed under this subsection and make recommendations for revision, where appropriate.

"(c) LIMITATION.—No advisory committee established pursuant to this section shall be authorized to develop proficiency standards, assessments, or curricula for any industry or occupation for which recognized apprenticeship standards exist.

"(d) FACA NOT APPLICABLE.—The provisions of the Federal Advisory Committee Act shall not apply to the advisory committees established under this section.

"SEC. 203. DEADLINES.

"(a) IN GENERAL.—Not later than December 31, 1993, the National Board shall identify at least 30 industrial or occupational categories and develop proficiency standards, assessments, and curricula for such industries or occupations.

"(b) COMPLETION OF CATEGORIES.—The National Board shall develop a program to ensure that the proficiency standards, assessments, and curricula for all remaining identified industrial or occupational categories are completed not later than January 1, 1997.

"SEC. 204. ATTAINMENT OF STANDARDS.

"Proficiency standards developed under this title shall be formulated in such a manner that the attainment of such standards is likely to meet the requirements for transferable credit and enable a student to continue such student's education and training, with a special emphasis on transferability among States.

"SEC. 205. AVAILABILITY.

"The proficiency standards, assessments, and curricula developed in accordance with this title for an industry or occupation shall be made available for voluntary use by institutions of postsecondary education offering professional and technical education, labor organizations, trade and technical associations, employers and labor-management organizations providing formalized training, private training providers, and any other organizations likely to benefit from such proficiency standards, assessments, and curricula.

"SEC. 206. AUTHORIZATION OF APPROPRIATIONS.

"(a) IN GENERAL.—There are authorized to be appropriated to carry out this subtitle, $15,000,000 for fiscal year 1993, and such sums as may be necessary for each of the fiscal years 1994 through 1997.

"(b) AVAILABILITY.—Amounts appropriated under subsection (a) shall remain available until expended."

Subtitle B—Youth Skills Training and Education Programs

"SEC. 211. YOUTH SKILLS TRAINING AND EDUCATION PROGRAMS.

"(a) YOUTH SKILLS TRAINING AND EDUCATION PROGRAMS.—A program shall qualify as a youth skills training and education program under this subtitle for purposes of section 501(c)(26) of the Internal Revenue Code of 1986 if such program—

"(1) provides eleventh and twelfth grade students with the opportunity to voluntarily enter into a course of study that integrates academic instruction with supervised on-the-job training and instruction in the workplace in a curriculum designed to lead to a high school diploma and to qualify the student for further education or an advanced technical or professional training program;

"(2) provides each student, upon completing such program, with assistance in seeking post-program employment and further education and training in such student's program field;

"(3) is certified by a State or local educational agency as meeting the educational standards established and approved by such agency; and

"(4) is certified by a State agency responsible for occupational training as meeting the requirements of subsections (b) through (k).

"(b) TRAINING STANDARDS.—The requirements of this subsection are met if—

"(1) the program conforms with the relevant industrial or occupational proficiency standards and assessments established by the National Board for Professional and Technical Standards under subtitle A of this title, or, if such standards and assessments are not available, the program is likely to provide student participants with broad-based competencies and transferable skills suitable for career progression within the industries or trades in which the student is employed; or

"(2) the program provides training through an apprenticeship program registered with the Department of Labor, Bureau of Apprenticeship Training, or with a State apprenticeship agency recognized by such Bureau.

"(c) SCHOOL COORDINATOR.—The requirements of this subsection are met if the program provides that each participating school in such program designates a school official or counselor to coordinate the work and education aspects of each participating student's program and makes regularly scheduled visits to the work sites where participating students are employed.

"(d) WRITTEN TRAINING AGREEMENT.—The requirements of this subsection are met if the program provides that employers employing students in such program enter into written agreements signed by the student, the student's parent or guardian, the school official responsible for coordination of the program, and the employer, setting forth the type of work to be performed, the wages and benefits to be paid by the employer, the hours of work, the ratio of hours at work to hours in school, the type and amount of training to be provided by the employer, the type and amount of on-the-job supervision to be provided by the employer, the competencies and skills the student is expected to acquire, and any other goals and objectives of the training.

"(e) REVIEW AND EVALUATION.—The requirements of this subsection are met if the program provides for systematic review and evaluation of the student's progress in job performance, acquisition of work-related competencies and skills, and related academic instruction, and for the maintenance of appropriate progress records.

"(f) LABOR STANDARDS.—The requirements of this subsection are met if the program provides for the following:

"(1) WAGES.—The wage paid to participating students by the employer in the program is not less than the minimum wage prescribed by the Fair Labor Standards Act, unless a higher wage is required by other applicable Federal law, State law, respective regulations, or by a collective bargaining agreement.

"(2) BENEFITS AND WORKING CONDITIONS.—Students employed by participating employers are provided benefits and working conditions at the same level and to the same extent as other employees working a similar length of time and doing the same type of work.

"(3) WORKPLACE HEALTH AND SAFETY.—Students are provided with adequate and safe equipment and a safe and healthful workplace consistent with all health and safety standards established under applicable State and Federal law, and provides health and safety training for participating students on the job and in related coursework.

"(4) WORKERS' COMPENSATION.—To the extent that a State workers' compensation law is applicable, workers' compensation benefits in accordance with such law are available with respect to work-related injuries suffered by participating students. To the extent that such law is not applicable, insurance coverage of injuries suffered by such participants is secured in accordance with requirements prescribed by the organization administering the program.

"(5) PROHIBITED OCCUPATIONS.—No student participating in the program is assigned to work in any occupation prohibited for minors of the student's age under the Fair Labor Standards Act (29 U.S.C. 210 et seq.) and regulations promulgated thereunder, or any other applicable Federal, State or local law.

"(g) NONDISCRIMINATION.—The requirements of this subsection are met if the program provides that no individual is excluded from participation in, denied the benefits of, subjected to discrimination under, or denied employment in the administration of, or in connection with, the program because of

race, color, religion, sex, national origin, age, handicap, or political affiliation, or belief.

"(h) NONDISPLACEMENT.—The requirements of this subsection are met if the program provides that employment or use of a student participating in such program does not result in the displacement of any other employed worker (including partial displacement such as a reduction in hours of work, wages, or employment benefits), nor does the student perform any services or duties or engage in activities that were previously or would otherwise be assigned to or performed by any—

"(1) employee who is on layoff or is otherwise subject to a reduction in force; or

"(2) employee who is on strike or is involved in a lockout.

"(i) RECORDS AND REPORTS.—The requirements of this subsection are met if—

"(1) the name, address, and bylaws of the organization operating the program, the name and address of each school participating in such program, the name and address of each employer contributing to such program, copies of the certifications required under paragraphs (3) and (4) of subsection (a), and a copy of the registration required under subsection (j), if applicable, is kept at the State or local educational agency office;

"(2) a copy of the written training agreement for each student participating in the program is kept at the State or local educational agency office; and

"(3) the records required under paragraphs (1) and (2) are kept for a period of 3 years and are available for inspection or transcription to representatives of the Internal Revenue Service and to representatives of the Department of Labor, Wage and Hour Division.

"(j) NONDUPLICATION.—The requirements of this subsection are met if the program does not establish, operate, maintain, or assist a training program for any trade, skill, craft, or occupation for which there is an existing apprenticeship or training program duly registered with the United States Department of Labor, Bureau of Apprenticeship Training, for the same or similar trade, skill, craft or occupation, unless such training program conforms with apprenticeship program standards published by the Secretary of Labor and is registered with and approved by the Bureau of Apprenticeship or a State apprenticeship agency recognized by the Bureau.

"(k) QUALIFIED USE OF CONTRIBUTIONS.—The requirements of this subsection are met if the program prohibits the use of contributions to the organization administering the program for employment training expenses or compensation of student participants."

Subpart B—Youth Skills Training and Education Partnerships

SEC. 2113. SHORT TITLE.

This subpart may be cited as the "Youth Skills Training and Education Partnerships Act."

SEC. 2114. TAX EXEMPTION FOR CONTRIBUTIONS TO YOUTH SKILLS TRAINING AND EDUCATION PARTNERSHIPS.

(a) IN GENERAL.—Subsection (c) of section 501 (relating to exemption from tax on corporations, certain trusts, etc.) is amended by adding at the end thereof the following new paragraph:

"(26) Any organization if—

"(A) organized and operated solely for purposes of administering a program which qualifies as a youth skills training and education program under subtitle B of title II of the Wagner-Peyser Act,

"(B) controlled by a board of directors consisting of—

"(i) representatives of employers contributing to such program;

"(ii) for each employer representative, 1 representative of such employer's nonmanagerial, nonsupervisory employees, to be selected by the authorized bargaining representative of such employees (if any);

"(iii) representatives of schools and higher education institutions participating in the program; and

"(iv) representatives of State or local governments, and

"(C) such organization does not pay for, and prohibits the use of any contributions for employment training expenses or compensation for any student participating in such program.

The representatives described in clauses (i) and (ii) of subparagraph (B) shall not constitute more than 50 percent of the members of the board of directors."

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

SEC. 2115. AUGMENTED DEDUCTION FOR YOUTH SKILLS TRAINING AND EDUCATION CONTRIBUTIONS BY BUSINESSES.

(a) IN GENERAL.—Section 170 (relating to charitable, etc., contributions and gifts) is amended by redesignating subsection (m) as subsection (n) and by inserting after subsection (l) the following new subsection:

"(m) TREATMENT OF YOUTH SKILLS TRAINING AND EDUCATION CONTRIBUTIONS.—

"(1) IN GENERAL.—For purposes of this section, in the case of an eligible business, 150 percent of any amount paid in cash to a youth skills training and education partnership shall be treated as a charitable contribution.

"(2) DEFINITIONS.—

"(A) YOUTH SKILLS TRAINING AND EDUCATION PARTNERSHIP.—The term 'youth skills training and education partnership' means an organization described in section 501(c)(26).

"(B) ELIGIBLE BUSINESS.—The term 'eligible business' means any corporation or partnership."

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

Subpart C—Study

SEC. 2116. JOINT LABOR DEPARTMENT AND TREASURY DEPARTMENT STUDY.

Within 3 years of the date of the enactment of this Act, the Secretary of Labor, the Secretary of Education and the Secretary of the Treasury, or their delegates, shall jointly study the effects of the amendments made by this part and shall report the results of such study and any recommendations for further legislative action to improve such effects to the Committee on Labor and Human Resources and the Committee on Finance of the Senate and the Committee on Education and Labor and the Committee on Ways and Means of the House of Representatives.

PART III—OTHER EDUCATION INCENTIVES

SEC. 2121. CREDIT FOR INTEREST ON EDUCATION LOANS.

(a) IN GENERAL.—Subpart A of part IV of subchapter A of chapter 1 (relating to nonrefundable personal credits) is amended by inserting after section 22 the following new section:

"SEC. 23. INTEREST ON EDUCATION LOANS.

"(a) ALLOWANCE OF CREDIT.—In the case of an individual, there shall be allowed as a credit against the tax imposed by this chapter for the taxable year an amount equal to 15 percent of the interest paid by the taxpayer during the taxable year on any qualified education loan.

"(b) MAXIMUM CREDIT.—The credit allowed by subsection (a) for the taxable year shall not exceed $300.

"(c) LIMITATION ON TAXPAYERS ELIGIBLE FOR CREDIT.—No credit shall be allowed by this section to an individual for the taxable year if a deduction under section 151 with respect to such individual is allowed to another taxpayer for the taxable year beginning in the calendar year in which such individual's taxable year begins.

"(d) LIMIT ON PERIOD CREDIT ALLOWED.—

"(1) TAXPAYER AND TAXPAYER'S SPOUSE.—Except as provided in paragraph (2), a credit shall be allowed under this section only with respect to interest paid on any qualified education loan which is allocable to the first 48 months during which interest accrued on such loan. For purposes of this paragraph, any loan and all refinancings of such loan shall be treated as 1 loan.

"(2) DEPENDENT.—If the qualified education loan was used to pay education expenses of an individual other than the taxpayer or the taxpayer's spouse, a credit shall be allowed under this section for any taxable year with respect to such loan only if—

"(A) a deduction under section 151 with respect to such individual is allowed to the taxpayer for such taxable year, and

"(B) such individual is at least a half-time student with respect to such taxable year.

"(e) DEFINITIONS.—For purposes of this section—

"(1) QUALIFIED EDUCATION LOAN.—The term 'qualified education loan' means any indebtedness incurred to pay qualified higher education expenses—

"(A) which are incurred on behalf of the taxpayer, the taxpayer's spouse, or a dependent of the taxpayer,

"(B) which are paid or incurred within a reasonable period of time before or after the indebtedness is incurred, and

"(C) which are attributable to education furnished during a period during which the recipient was at least a half-time student.

Such term includes indebtedness used to refinance indebtedness which qualifies as a qualified education loan. The term 'qualified education loan' shall not include any indebtedness owed to a person who is related (within the meaning of section 267(b) or 707(b)(1)) to the taxpayer.

"(2) QUALIFIED HIGHER EDUCATION EXPENSES.—The term 'qualified higher education expenses' means the cost of attendance (as defined in section 472 of the Higher Education Act of 1965, 10 U.S.C. 1087*ll*, as in effect on the day before the date of the enactment of this Act) of the taxpayer, the taxpayer's spouse, or a dependent of the taxpayer at an eligible educational institution. For purposes of the preceding sentence, the term 'eligible educational institution' has the same meaning given such term by section 135(c)(3), except that such term shall also include an institution conducting an internship or residency program leading to a degree or certificate awarded by an institution of higher education, a hospital, or a health care facility which offers postgraduate training.

"(3) HALF-TIME STUDENT.—The term 'half-time student' means any individual who would be a student as defined in section 151(c)(4) if 'half-time' were substituted for 'full-time' each place it appears in such section.

"(4) DEPENDENT.—The term 'dependent' has the meaning given such term by section 152.

"(f) SPECIAL RULES.—

"(1) DENIAL OF DOUBLE BENEFIT.—No credit shall be allowed under this section for any amount for which a deduction is allowable under any other provision of this chapter.

"(2) SELF-RELIANCE LOANS.—For purposes of the credit allowed under this section and the deduction allowed under section 162(h)(2)(E), interest paid on a self-reliance loan (as defined in section 452(b)(2) of the Higher Education Act) shall be treated as paid in the taxable year beginning in the calendar year following the calendar year in which such interest was paid.

"(3) MARITAL STATUS.—Marital status shall be determined in accordance with section 7703."

(b) OPTIONAL DEDUCTION FOR INTEREST ON EDUCATION LOANS.—Paragraph (2) of section 163(h) (defining personal interest) is amended by striking "and" at the end of subparagraph (D), by redesignating subparagraph (E) as subparagraph (F), and by inserting after subparagraph (D) the following new subparagraph:

"(E) any interest paid on a qualified education loan (as defined in section 23(e)) during the period described in section 23(d), unless a credit or deduction is taken with respect to such interest under any other provisions of this chapter, and".

(c) CLERICAL AMENDMENT.—The table of sections for such subpart A is amended by inserting after the item relating to section 22 the following new item:

"Sec. 23. Interest on education loans."

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to qualified education loans (as defined in section 23(e) of the Internal Revenue Code of 1986) the first payment on which is due in taxable years beginning after December 31, 1991.

SEC. 2122. INCOME EXCLUSION FOR EDUCATION BONDS EXPANDED.

(a) IDENTIFYING INFORMATION REQUIRED.—Section 135(b)(2) is amended to read as follows:

"(2) IDENTIFYING INFORMATION REQUIRED WITH RESPECT TO INDIVIDUAL FOR WHOM EXPENSES PAID.—No amount shall be allowed as an exclusion under subsection (a) unless the taxpayer includes the name, address, and taxpayer identification number of the person for whom qualified higher education expenses were paid on the return on which the exclusion is claimed."

(b) ELIMINATION OF AGE RESTRICTION.—Section 135(c)(1) (defining qualified United States savings bonds) is amended—

(1) by striking subparagraph (B),

(2) by inserting "and" at the end of subparagraph (A), and

(3) by redesignating subparagraph (C) as subparagraph (B).

(c) EXCLUSION EXPANDED TO ALL INDIVIDUALS.—Subparagraph (A) of section 135(c)(2) (defining qualified higher education expenses) is amended to read as follows:

"(A) IN GENERAL.—The term 'qualified higher education expenses' means tuition and fees required for enrollment or attendance of any individual at an eligible educational institution."

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to bonds redeemed after December 31, 1991.

SEC. 2123. EMPLOYER-PROVIDED EDUCATIONAL ASSISTANCE.

(a) IN GENERAL.—Subsection (d) of section 127 (relating to educational assistance programs) is amended by striking "June 30, 1992" and inserting "December 31, 1993".

(b) CONFORMING AMENDMENT.—Paragraph (2) of section 103 of the Tax Extension Act of 1991 is hereby repealed.

(c) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to taxable years ending after June 30, 1992.

SEC. 2124. DISCLOSURES OF INFORMATION FOR VETERANS BENEFITS.

(a) IN GENERAL.—Section 6103(l)(7)(D) (relating to program to which rule applies) is amended by striking "September 30, 1992" in the last sentence and inserting "September 30, 1998".

(b) CONFORMING AMENDMENT.—Section 5317(g) of title 38, United States Code, is amended by striking "September 30, 1992" and inserting "September 30, 1998".

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect on September 30, 1992.

Subtitle C—Better Access to Affordable Health Care

PART I—IMPROVEMENTS IN HEALTH INSURANCE AFFORDABILITY FOR SMALL EMPLOYERS

SEC. 2201. INCREASE IN DEDUCTIBLE HEALTH INSURANCE COSTS FOR SELF-EMPLOYED INDIVIDUALS.

(a) IN GENERAL.—Paragraph (1) of section 162(l) (relating to special rules for health insurance costs of self-employed individuals) is amended by striking "25 percent" and inserting "100 percent (25 percent for taxable years beginning during 1992)".

(b) EXTENSION.—Paragraph (6) of section 162(l) (relating to termination) is amended by striking "June 30, 1992" and inserting "December 31, 1994".

(c) CONFORMING AMENDMENT.—Section 110(a) of the Tax Extension Act of 1991 is amended by striking paragraph (2).

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 1991.

SEC. 2202. GRANTS TO STATES FOR SMALL EMPLOYER HEALTH INSURANCE PURCHASING PROGRAMS.

(a) IN GENERAL.—The Secretary of Health and Human Services (hereafter in this section referred to as the "Secretary") shall make grants to States that submit applications meeting the requirements of this section for the establishment and operation of small employer health insurance purchasing programs.

(b) USE OF FUNDS.—Grant funds awarded under this section to a State may be used to finance administrative costs associated with developing and operating a group purchasing program for small employers, such as the costs associated with—

(1) engaging in marketing and outreach efforts to inform small employers about the group purchasing program, which may include the payment of sales commissions;

(2) negotiating with insurers to provide health insurance through the group purchasing program; or

(3) providing administrative functions, such as eligibility screening, claims administration, and customer service.

(c) APPLICATION REQUIREMENTS.—An application submitted by a State to the Secretary must describe—

(1) whether the program will be operated directly by the State or through one or more State-sponsored private organizations and the details of such operation;

(2) any participation requirements for small employers;

(3) the extent of insurance coverage among the eligible population, projections for change in the extent of such coverage, and the price of insurance currently available to these small employers;

(4) program goals for reducing the price of health insurance for small employers and increasing insurance coverage among employees of small employers and their dependents;

(5) the approaches proposed for enlisting participation by insurers and small employers, including any plans to use State funds to subsidize the cost of insurance for participating employers; and

(6) the methods proposed for evaluating the effectiveness of the program in reducing the number of uninsured in the State and on lowering the price of health insurance to small employers in the State.

(d) GRANT CRITERIA.—In awarding grants, the Secretary shall consider the potential impact of the State's proposal on the cost of health insurance for small employers and on the number of uninsured, and the need for regional variation in the awarding of grants. To the extent the Secretary deems appropriate, grants shall be awarded to fund programs employing a variety of approaches for establishing small employer health insurance group purchasing programs.

(e) PROHIBITION ON GRANTS.—No grant funds shall be paid to States that do not meet the requirements of title XXI of the Social Security Act with respect to small employer health insurance plans, or to States with group purchasing programs involving small employer health insurance plans that do not meet the requirements of such title.

(f) ANNUAL REPORT BY STATES.—States receiving grants under this section must report to the Secretary annually on the numbers and rates of participation by eligible insurers and small employers, on the estimated impact of the program on reducing the number of uninsured, and on the price of insurance available to small employers in the State.

(g) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated for each of fiscal years 1993, 1994, and 1995, such sums as may be necessary for the purposes of awarding grants under this section.

(h) SECRETARIAL REPORT.—The Secretary shall report to Congress by no later than January 1, 1995, on the number and amount of grants awarded under this section, and include with such report an evaluation of the impact of the grant program on the number of uninsured and price of health insurance to small employers in participating States.

SEC. 2203. STUDY OF USE OF MEDICARE RATES BY PRIVATE HEALTH INSURANCE PLANS.

(a) IN GENERAL.—Not later than January 1, 1993, the Secretary of Health and Human Services (hereafter in this section referred to as the "Secretary") shall study and report to the Congress on the feasibility and desirability of the Secretary establishing payment rates, based upon medicare payment rules, for optional use by private health insurers. In developing the study, the Secretary shall take into account the findings and views of the Prospective Payment Assessment Commission and the Physician Payment Review Commission.

(b) PROVISIONS OF STUDY AND REPORT.—The study and report shall evaluate—

(1) the appropriateness of using medicare payment rules to determine payments for services furnished to non-medicare populations (with particular emphasis on services furnished to children);

(2) the potential impact on private health insurance premiums, national health spending, and access to health care services (by medicare beneficiaries and others) of requiring health care providers and practitioners to accept such payment rates as payment in

full if the optional use of such rates is available—

(A) to all private health insurance and employer health benefit plans, or

(B) only to private health insurance sold to small employers or small employer health benefit plans; and

(3) the advantages and disadvantages of alternative mechanisms for enforcing such rates when private insurers opt to use them.

PART II—IMPROVEMENTS IN HEALTH INSURANCE FOR SMALL EMPLOYERS

Subpart A—Standards and Requirements of Small Employer Health Insurance Reform

SEC. 2211. STANDARDS AND REQUIREMENTS OF SMALL EMPLOYER HEALTH INSURANCE.

The Social Security Act is amended by adding at the end the following new title:

"TITLE XXI—STANDARDS FOR SMALL EMPLOYER HEALTH INSURANCE AND CERTIFICATION OF MANAGED CARE PLANS

"PART A—GENERAL STANDARDS; DEFINITIONS

"APPLICATION OF REQUIREMENTS TO SMALL EMPLOYER HEALTH INSURANCE PLANS

"SEC. 2101. (a) PLAN UNDER STATE REGULATORY PROGRAM OR CERTIFIED BY THE SECRETARY.—An insurer offering a health insurance plan to a small employer in a State on or after the effective date applicable to the State under subsection (b) shall be treated as meeting the requirements of this title if—

"(1) the Secretary determines that the State has established a regulatory program that provides for the application and enforcement of standards meeting the requirements under section 2102 to meet the requirements of part B of this title; and

"(2) if the State has not established such a program or if the program has been decertified by the Secretary under section 2102(b), the health insurance plan has been certified by the Secretary (in accordance with such procedures as the Secretary establishes) as meeting the requirements of part B of this title.

"(b) EFFECTIVE DATES.—

"(1) IN GENERAL.—Except as specified in paragraph (2) and provided in paragraph (3), the standards established under section 2102 to meet the requirements of part B of this title shall apply to health insurance plans offered, issued, or renewed to a small employer in a State on or after January 1, 1994.

"(2) EXCEPTION FOR LEGISLATION.—In the case of a State which the Secretary identifies, in consultation with the NAIC, as—

"(A) requiring State legislation (other than legislation appropriating funds) in order for insurers and health insurance plans offered to small employers to meet the standards under the program established under subsection (a), or

"(B) having a legislature which does not meet in 1993 in a legislative session in which such legislation may be considered,

the date specified in this paragraph is the first day of the first calendar quarter beginning after the close of the first regular legislative session of the State legislature that begins on or after January 1, 1994. For purposes of the previous sentence, in the case of a State that has a 2-year legislative session, each year of such session shall be deemed to be a separate regular legislative session of the State legislature.

"(3) REQUIREMENTS APPLIED TO EXISTING POLICIES.—In the case of a health insurance plan in effect before the applicable effective date specified in paragraph (1) or (2), the requirements referred to in subsections (a) and (b) of section 2112 shall not apply to any such plan, or any renewal of such plan, before the date which is 2 years after such effective date.

"(c) REPORTING REQUIREMENTS OF STATES.—Each State shall submit to the Secretary, at intervals established by the Secretary, a report on the implementation and enforcement of the standards under the program established under subsection (a)(1) with respect to health insurance plans offered to small employers.

"(d) MORE STRINGENT STATE STANDARDS PERMITTED.—Except as provided in subsections (b)(8) and (c)(4) of section 2113, a State may implement standards that are more stringent than the standards established to meet the requirements of part B of this title.

"(e) LIMITED WAIVER OF RATING REQUIREMENTS.—The Secretary may waive requirements with respect to subsections (b) and (e) of section 2112 in the case of a State with equally stringent but not identical standards in effect prior to January 1, 1992.

"ESTABLISHMENT OF STANDARDS

"SEC. 2102. (a) ESTABLISHMENT OF STANDARDS.—

"(1) ROLE OF THE NAIC.—The Secretary shall request that the NAIC—

"(A) develop specific standards, in the form of a model Act and model regulations, to implement the requirements of part B of this title; and

"(B) report to the Secretary on such standards,

by not later than September 30, 1992. If the NAIC develops such standards within such period and the Secretary finds that such standards implement the requirements of part B of this title, such standards shall be the standards applied under section 2101.

"(2) ROLE OF THE SECRETARY.—If the NAIC fails to develop and report on the standards described in paragraph (1) by the date specified in such paragraph or the Secretary finds that such standards do not implement the requirements under part B of this title, the Secretary shall develop and publish such standards, by not later than December 31, 1992. Such standards shall then be the standards applied under section 2101.

"(3) STANDARDS ON GUARANTEED AVAILABILITY.—The standards developed under paragraphs (1) and (2) shall provide alternative standards for guaranteeing availability of health insurance plans for all small employers in a State as provided in section 2111(c).

"(4) GUIDELINES FOR DEMOGRAPHIC RATING FACTORS.—The standards developed under paragraphs (1) and (2) shall include guidelines with respect to rating factors used by insurers to adjust premiums to reflect demographic characteristics of a small employer group.

"(b) PERIODIC SECRETARIAL REVIEW OF STATE REGULATORY PROGRAM.—The Secretary periodically shall review State regulatory programs to determine if they continue to meet and enforce the standards referred to in subsection (a). If the Secretary initially determines that a State regulatory program no longer meets and enforces such standards, the Secretary shall provide the State an opportunity to adopt a plan of correction that would bring such program into compliance with such standards. If the Secretary makes a final determination that the State regulatory program fails to meet and enforce such standards and requirements after such an opportunity, the Secretary shall decertify such program and assume responsibility under section 2101(a)(2) with respect to plans in the State.

"(c) GAO AUDITS.—The Comptroller General of the United States shall conduct periodic reviews on a sample of State regulatory programs to determine their compliance with the standards and requirements of this title. The Comptroller General of the United States shall report to the Secretary and Congress on the findings of such reviews.

"DEFINITIONS

"SEC. 2103. (a) HEALTH INSURANCE PLAN.—As used in this title, the term 'health insurance plan' means any hospital or medical service policy or certificate, hospital or medical service plan contract, health maintenance organization group contract, or a multiple employer welfare arrangement, but does not include—

"(1) a self-insured group health plan;

"(2) a self-insured multiemployer group health plan; or

"(3) any of the following offered by an insurer—

"(A) accident only, dental only, vision only, disability only insurance, or long-term care only insurance,

"(B) coverage issued as a supplement to liability insurance,

"(C) medicare supplemental insurance as defined in section 1882(g)(1),

"(D) workmen's compensation or similar insurance, or

"(E) automobile medical-payment insurance.

In the case of a multiple employer welfare arrangement that is fully insured, the requirements of this Act shall only apply to the insurer of the arrangement.

"(b) INSURER.—As used in this title the term 'insurer' means any person that offers a health insurance plan to a small employer.

"(c) GENERAL DEFINITIONS.—As used in this title:

"(1) APPLICABLE REGULATORY AUTHORITY.—The term 'applicable regulatory authority' means—

"(A) in the case of a health insurance plan offered in a State with a program meeting the requirements of part B of this title, the State commissioner or superintendent of insurance or other State authority responsible for regulation of health insurance; or

"(B) in the case of a health insurance plan certified by the Secretary under section 2101(a)(2), the Secretary.

"(2) SMALL EMPLOYER.—The term 'small employer' means, with respect to a calendar year, an employer that normally employs more than 1 but less than 51 eligible employees on a typical business day. For the purposes of this paragraph, the term 'employee' includes a self-employed individual.

"(3) ELIGIBLE EMPLOYEE.—The term 'eligible employee' means, with respect to an employer, an employee who normally performs on a monthly basis at least 30 hours of service per week for that employer.

"(4) NAIC.—The term 'NAIC' means the National Association of Insurance Commissioners.

"(5) STATE.—The term 'State' means each of the several States, the District of Columbia, and the Commonwealth of Puerto Rico.

"PART B—SMALL EMPLOYER HEALTH INSURANCE REFORM

"GENERAL REQUIREMENTS FOR HEALTH INSURANCE PLANS ISSUED TO SMALL EMPLOYERS

"SEC. 2111. (a) REGISTRATION WITH APPLICABLE REGULATORY AUTHORITY.—Each insurer shall register with the applicable regulatory authority for each State in which it issues or offers a health insurance plan to small employers.

"(b) GUARANTEED ELIGIBILITY.—

"(1) IN GENERAL.—No insurer may exclude from coverage any eligible employee, or the

spouse or any dependent child of the eligible employee, to whom coverage is made available by a small employer.

"(2) WAITING PERIODS.—Paragraph (1) shall not apply to any period an eligible employee is excluded from coverage under the health insurance plan solely by reason of a requirement imposed by an employer applicable to all employees that a minimum period of service with the small employer is required before the employee is eligible for such coverage.

"(c) GUARANTEED AVAILABILITY.—

"(1) IN GENERAL.—Subject to the succeeding provisions of this subsection, an insurer that offers a health insurance plan to small employers located in a State must meet the standards adopted by the State described in paragraph (2).

"(2) STANDARDS ON GUARANTEED AVAILABILITY.—

"(A) IN GENERAL.—In order to implement the requirements of this title, the standards developed under paragraphs (1) and (2) of section 2102(a) shall—

"(i) require that a State adopt a mechanism for guaranteeing the availability of health insurance plans for all small employers in the State,

"(ii) specify alternative mechanisms, including at least the alternative mechanisms described in subparagraph (B), that a State may adopt, and

"(iii) prohibit marketing or other practices by an insurer intended to discourage or limit the issuance of a health insurance plan to a small employer on the basis of size, industry, geographic area, expected need for health services, or other risk factors.

"(B) ALTERNATIVE MECHANISMS.—The alternative mechanisms described in this subparagraph are:

"(i) A mechanism under which the State—

"(I) requires that any insurer offering a health insurance plan to a small employer in the State shall offer the same plan to all other small employers in the State or in the portion of the State established as the insurer's geographic service area (as approved by the State), and

"(II) requires the participation of all such insurers in a small employer reinsurance program established by the State.

"(ii) A mechanism under which the State—

"(I) requires that any insurer offering a health insurance plan to a small employer in the State shall offer the same plan to all other small employers in the State or in the portion of the State established as the insurer's geographic service area (as approved by the State), and

"(II) permits any such insurer to participate in a small employer reinsurance program established by the State.

"(iii) A mechanism under which the State requires that any insurer offering a health insurance plan to a small employer in the State shall participate in a program for assigning high-risk groups among all such insurers.

"(iv) A mechanism under which the State requires that any insurer that—

"(I) offers a health insurance plan to a small employer in the State, and

"(II) does not agree to offer the same plan to all other small employers in the State or in the portion of the State established as the insurer's geographic service area (as approved by the State),

shall participate in a program for assigning high-risk groups among all such insurers.

"(C) STATE ADOPTION OF CERTAIN STANDARDS.—A regulatory program adopted by the State under section 2101 must provide—

"(i) for the adoption of one of the mechanisms described in clauses (i) through (iv) of subparagraph (B), or

"(ii) for such other program that guarantees availability of health insurance to all small employers in the State and is approved by the Secretary.

"(D) STANDARDS FOR NONCOMPLYING STATES.—The Secretary, in consultation with the Secretary of the Treasury, shall develop requirements with respect to guaranteed availability to apply with respect to insurers located in a State that has not adopted the standards under section 2102 and who wish to apply for certification under section 2101(a)(2).

"(3) GROUNDS FOR REFUSAL TO RENEW.—

"(A) IN GENERAL.—An insurer may refuse to renew, or (except with respect to clause (iii)) may terminate, a health insurance plan under this part only for—

"(i) nonpayment of premiums,

"(ii) fraud or misrepresentation,

"(iii) failure to maintain minimum participation rates (consistent with subparagraph (B)), or

"(iv) repeated misuse of a provider network provision.

"(B) MINIMUM PARTICIPATION RATES.—An insurer may require, with respect to a health insurance plan issued to a small employer, that a minimum percentage of eligible employees who do not otherwise have health insurance are enrolled in such plan if such percentage is applied uniformly to all plans offered to employers of comparable size.

"(d) GUARANTEED RENEWABILITY.—

"(1) IN GENERAL.—An insurer shall ensure that a health insurance plan issued to a small employer be renewed, at the option of the small employer, unless the plan is terminated for a reason specified in paragraph (2) or in subsection (c)(3)(A).

"(2) TERMINATION OF SMALL EMPLOYER BUSINESS.—An insurer is not required to renew a health insurance plan with respect to a small employer if the insurer—

"(A) elects not to renew all of its health insurance plans issued to small employers in a State; and

"(B) provides notice to the applicable regulatory authority in the State and to each small employer covered under a plan of such termination at least 180 days before the date of expiration of the plan.

In the case of such a termination, the insurer may not provide for issuance of any health insurance plan to a small employer in the State during the 5-year period beginning on the date of termination of the last plan not so renewed.

"(e) NO DISCRIMINATION BASED ON HEALTH STATUS FOR CERTAIN SERVICES.—

"(1) IN GENERAL.—Except as provided under paragraph (2), a health insurance plan offered to a small employer by an insurer may not deny, limit, or condition the coverage under (or benefits of) the plan based on the health status, claims experience, receipt of health care, medical history, or lack of evidence of insurability, of an individual.

"(2) TREATMENT OF PREEXISTING CONDITION EXCLUSIONS FOR ALL SERVICES.—

"(A) IN GENERAL.—Subject to the succeeding provisions of this paragraph, a health insurance plan offered to a small employer by an insurer may exclude coverage with respect to services related to treatment of a preexisting condition, but the period of such exclusion may not exceed 6 months. The exclusion of coverage shall not apply to services furnished to newborns.

"(B) CREDITING OF PREVIOUS COVERAGE.—

"(i) IN GENERAL.—A health insurance plan issued to a small employer by an insurer shall provide that if an individual under such plan is in a period of continuous coverage (as defined in clause (ii)(I)) with respect to particular services as of the date of initial coverage under such plan, any period of exclusion of coverage with respect to a preexisting condition for such services or type of services shall be reduced by 1 month for each month in the period of continuous coverage.

"(ii) DEFINITIONS.—As used in this subparagraph:

"(I) PERIOD OF CONTINUOUS COVERAGE.—The term 'period of continuous coverage' means, with respect to particular services, the period beginning on the date an individual is enrolled under a health insurance plan, title XVIII, title XIX, or other health benefit arrangement including a self-insured plan which provides benefits with respect to such services and ends on the date the individual is not so enrolled for a continuous period of more than 3 months.

"(II) PREEXISTING CONDITION.—The term 'preexisting condition' means, with respect to coverage under a health insurance plan issued to a small employer by an insurer, a condition which has been diagnosed or treated during the 3-month period ending on the day before the first date of such coverage (without regard to any waiting period).

"REQUIREMENTS RELATED TO RESTRICTIONS ON RATING PRACTICES

"SEC. 2112. (a) LIMIT ON VARIATION OF PREMIUMS BETWEEN BLOCKS OF BUSINESS.—

"(1) IN GENERAL.—The base premium rate for any block of business of an insurer (as defined in section 2103(b)(1)) may not exceed the base premium rate for any other block of business by more than 20 percent.

"(2) EXCEPTIONS.—Paragraph (1) shall not apply to a block of business if the applicable regulatory authority determines that—

"(A) the block is one for which the insurer does not reject, and never has rejected, small employers included within the definition of employers eligible for the block of business or otherwise eligible employees and dependents who enroll on a timely basis, based upon their claims experience, health status, industry, or occupation,

"(B) the insurer does not transfer, and never has transferred, a health insurance plan involuntarily into or out of the block of business, and

"(C) health insurance plans offered under the block of business are currently available for purchase by small employers at the time an exception to paragraph (1) is sought by the insurer.

"(b) LIMIT ON VARIATION IN PREMIUM RATES WITHIN A BLOCK OF BUSINESS.—For a block of business of an insurer, the highest premium rates charged during a rating period to small employers with similar demographic characteristics (limited to age, sex, family size, and geography and not relating to claims experience, health status, industry, occupation, or duration of coverage since issue) for the same or similar coverage, or the highest rates which could be charged to such employers under the rating system for that block of business, shall not exceed an amount that is 1.5 times the base premium rate for the block of business for a rating period (or portion thereof) that occurs in the first 3 years in which this section is in effect, and 1.35 times the base premium rate thereafter.

"(c) CONSISTENT APPLICATION OF RATING FACTORS.—In establishing premium rates for health insurance plans offered to small employers—

"(1) an insurer making adjustments with respect to age, sex, family size, or geography

must apply such adjustments consistently across small employers (as provided in guidelines developed under section 2102(a)(4)), and

"(2) no insurer may use a geographic area that is smaller than a county or smaller than an area that includes all areas in which the first three digits of the zip code are identical, whichever is smaller.

"(d) LIMIT ON TRANSFER OF EMPLOYERS AMONG BLOCKS OF BUSINESS.—

"(1) IN GENERAL.—An insurer may not transfer a small employer from one block of business to another without the consent of the employer.

"(2) OFFERS TO TRANSFER.—An insurer may not offer to transfer a small employer from one block of business to another unless—

"(A) the offer is made without regard to age, sex, geography, claims experience, health status, industry, occupation or the date on which the policy was issued, and

"(B) the same offer is made to all other small employers in the same block of business.

"(e) LIMITS ON VARIATION IN PREMIUM INCREASES.—The percentage increase in the premium rate charged to a small employer for a new rating period (determined on an annual basis) may not exceed the sum of the percentage change in the base premium rate plus 5 percentage points.

"(f) DEFINITIONS.—In this section:

"(1) BASE PREMIUM RATE.—The term 'base premium rate' means, for each block of business for each rating period, the lowest premium rate which could have been charged under a rating system for that block of business by the insurer to small employers with similar demographic or other relevant characteristics (limited to age, sex, family size, and geography and not relating to claims experience, health status, industry, occupation or duration of coverage since issue) for health insurance plans with the same or similar coverage.

"(2) BLOCK OF BUSINESS.—

"(A) IN GENERAL.—Except as provided in subparagraph (B), the term 'block of business' means, with respect to an insurer, all of the small employers with a health insurance plan issued by the insurer (as shown on the records of the insurer).

"(B) DISTINCT GROUPS.—

"(i) IN GENERAL.—Subject to clause (ii), a distinct group of small employers with health insurance plans issued by an insurer may be treated as a block of business by such insurer if all of the plans in such group—

"(I) are marketed and sold through individuals and organizations that do not participate in the marketing or sale of other distinct groups by the insurer,

"(II) have been acquired from another insurer as a distinct group, or

"(III) are provided through an association with membership of not less than 25 small employers that has been formed for purposes other than obtaining health insurance.

"(ii) LIMITATION.—An insurer may not establish more than six distinct groups of small employers.

"(f) FULL DISCLOSURE OF RATING PRACTICES.—

"(1) IN GENERAL.—At the time an insurer offers a health insurance plan to a small employer, the insurer shall fully disclose to the employer all of the following:

"(A) Rating practices for small employer health insurance plans, including rating practices for different populations and benefit designs.

"(B) The extent to which premium rates for the small employer are established or adjusted based upon the actual or expected variation in claims costs or health condition of the employees of such small employer and their dependents.

"(C) The provisions concerning the insurer's right to change premium rates, the extent to which premiums can be modified, and the factors which affect changes in premium rates.

"(2) NOTICE ON EXPIRATION.—An insurer providing health insurance plans to small employers shall provide for notice, at least 60 days before the date of expiration of the health insurance plan, of the terms for renewal of the plan. Such notice shall include an explanation of the extent to which any increase in premiums is due to actual or expected claims experience of the individuals covered under the small employer's health insurance plan contract.

"(g) ACTUARIAL CERTIFICATION.—Each insurer shall file annually with the applicable regulatory authority a written statement by a member of the American Academy of Actuaries (or other individual acceptable to such authority) certifying that, based upon an examination by the individual which includes a review of the appropriate records and of the actuarial assumptions of the insurer and methods used by the insurer in establishing premium rates for small employer health insurance plans—

"(1) the insurer is in compliance with the applicable provisions of this section, and

"(2) the rating methods are actuarially sound.

Each insurer shall retain a copy of such statement for examination at its principal place of business.

"REQUIREMENTS FOR SMALL EMPLOYER HEALTH INSURANCE BENEFIT PACKAGE OFFERINGS

"SEC. 2113. (a) BASIC AND STANDARD BENEFIT PACKAGES.—

"(1) IN GENERAL.—If an insurer offers any health insurance plan to small employers in a State, the insurer shall also offer a health insurance plan providing for the standard benefit package defined in subsection (b) and a health insurance plan providing for the basic benefit package defined in subsection (c).

"(2) MANAGED CARE OPTION.—

"(A) IN GENERAL.—Except as provided in subparagraph (B), if an insurer offers any health insurance plan to small employers in a State and also offers a managed care plan in the State or a geographic area within the State to employers that are not small employers, the insurer must offer a similar managed care plan to small employers in the State or geographic area.

"(B) SIZE LIMITS.—An insurer may cease enrolling new small employer groups in all or a portion of the insurer's service area for a managed care plan if it ceases to enroll any new employer groups within the service area or within a portion of a service area of such plan.

"(b) STANDARD BENEFIT PACKAGE.—

"(1) IN GENERAL.—

"(A) PACKAGE DEFINED.—Except as otherwise provided in this section, a health insurance plan providing for a standard benefit package shall be limited to payment for—

"(i) inpatient and outpatient hospital care, except that treatment for a mental disorder, as defined in subparagraph (B)(i), is subject to the special limitations described in clause (v)(I);

"(ii) inpatient and outpatient physician services, as defined in subparagraph (B)(ii), except that psychotherapy or counseling for a mental disorder is subject to the special limitations described in clause (v)(II);

"(iii) diagnostic tests;

"(iv) preventive services limited to—

"(I) prenatal care and well-baby care provided to children who are 1 year of age or younger;

"(II) well-child care;

"(III) Pap smears;

"(IV) mammograms; and

"(V) colorectal screening services; and

"(v)(I) inpatient hospital care for a mental disorder for not less than 45 days per year, except that days of partial hospitalization or residential care may be substituted for days of inpatient care; and

"(II) outpatient psychotherapy and counseling for a mental disorder for not less than 20 visits per year provided by a provider who is acting within the scope of State law and who—

"(aa) is a physician; or

"(bb) is a duly licensed or certified clinical psychologist or a duly licensed or certified clinical social worker, a duly licensed or certified equivalent mental health professional, or a clinic or center providing duly licensed or certified mental health services.

"(B) DEFINITIONS.—For purposes of this paragraph:

"(i) MENTAL DISORDER.—The term 'mental disorder' has the same meaning given such term in the International Classification of Diseases, 9th Revision, Clinical Modification.

"(ii) PHYSICIAN SERVICES.—The term 'physician services' means professional medical services lawfully provided by a physician under State medical practice acts, and includes professional services provided by a dentist, licensed advanced-practice nurse, physician assistant, optometrist, podiatrist, or chiropractor acting within the scope of their practices (as determined under State law) if such services would be treated as physician services if furnished by a physician.

"(2) AMOUNT, SCOPE, AND DURATION OF CERTAIN BENEFITS.—

"(A) IN GENERAL.—Except as provided in subparagraph (B) and in paragraph (3), a health insurance plan providing for a standard benefit package shall place no limits on the amount, scope, or duration of benefits described in subparagraphs (A) through (C) of paragraph (1).

"(B) PREVENTIVE SERVICES.—A health insurance plan providing for a standard benefit package may limit the amount, scope, and duration of preventive services described in subparagraph (D) of paragraph (1) provided that the amount, scope, and duration of such services are reasonably consistent with recommendations and periodicity schedules developed by appropriate medical experts.

"(3) EXCEPTIONS.—Paragraph (1) shall not be construed as requiring a plan to include payment for—

"(A) items and services that are not medically necessary;

"(B) routine physical examinations or preventive care (other than care and services described in subparagraph (D) of paragraph (1)); or

"(C) experimental services and procedures.

"(4) LIMITATION ON PREMIUMS.—

"(A) IN GENERAL.—Except as provided in subparagraph (B), an insurer issuing a health insurance plan providing for a standard benefit package shall not require an employee to pay a monthly premium which exceeds 20 percent of the total monthly premium.

"(B) PART-TIME EMPLOYEE EXCEPTED.—In the case of a part-time employee, an insurer issuing a health insurance plan providing for a standard benefit package may require that such an employee pay a monthly premium that does not exceed 50 percent of the total monthly premium.

"(5) LIMITATION ON DEDUCTIBLES.—

"(A) IN GENERAL.—Except as permitted under subparagraph (B), a health insurance plan providing for a standard benefit package shall not provide a deductible amount for benefits provided in any plan year that exceeds—

"(i) with respect to benefits payable for items and services furnished to any employee with no family member enrolled under the plan, for a plan year beginning in—

"(I) a calendar year prior to 1993, $400; or

"(II) for a subsequent calendar year, the limitation specified in this clause for the previous calendar year increased by the percentage increase in the consumer price index for all urban consumers (United States city average, as published by the Bureau of Labor Statistics) for the 12-month period ending on September 30 of the preceding calendar year; and

"(ii) with respect to benefits payable for items and services furnished to any employee with a family member enrolled under the standard benefit package plan, for a plan year beginning in—

"(I) a calendar year prior to 1993, $400 per family member and $700 per family; or

"(II) for a subsequent calendar year, the limitation specified in this clause for the previous calendar year increased by the percentage increase in the consumer price index for all urban consumers (United States city average, as published by the Bureau of Labor Statistics) for the 12-month period ending on September 30 of the preceding calendar year.

If the limitation computed under clause (i)(II) or (ii)(II) is not a multiple of $10, it shall be rounded to the next highest multiple of $10.

"(B) WAGE-RELATED DEDUCTIBLE.—A health insurance plan may provide for any other deductible amount instead of the limitations under—

"(i) subparagraph (A)(i), if such amount does not exceed (on an annualized basis) 1 percent of the total wages paid to the employee in the plan year; or

"(ii) subparagraph (A)(ii), if such amount does not exceed (on an annualized basis) 1 percent per family member or 2 percent per family of the total wages paid to the employee in the plan year.

"(6) LIMITATION ON COPAYMENTS AND COINSURANCE.—

"(A) IN GENERAL.—Subject to subparagraphs (B) through (D), a health insurance plan providing for a standard health benefit package may not require the payment of any copayment or coinsurance for an item or service for which coverage is required under this section—

"(i) in an amount that exceeds 20 percent of the amount payable for the item or service under the plan; or

"(ii) after an employee and family covered under the plan have incurred out-of-pocket expenses under the plan that are equal to the out-of-pocket limit (as defined in subparagraph (E)(ii)) for a plan year.

"(B) EXCEPTION FOR MANAGED CARE PLANS.—A health insurance plan that is a managed care plan may require payments in excess of the amount permitted under subparagraph (A) in the case of items and services furnished by nonparticipating providers.

"(C) EXCEPTION FOR IMPROPER UTILIZATION.—A health insurance plan may provide for copayment or coinsurance in excess of the amount permitted under subparagraph (A) for any item or service that an individual obtains without complying with procedures established by a managed care plan or under a utilization program to ensure the efficient and appropriate utilization of covered services.

"(D) EXCEPTIONS FOR MENTAL HEALTH CARE.—In the case of care described in paragraph (1)(E)(ii), a health insurance plan shall not require payment of any copayment or coinsurance for an item or service for which coverage is required by this part in an amount that exceeds 50 percent of the amount payable for the item or service.

"(7) LIMIT ON OUT-OF-POCKET EXPENSES.—

"(A) OUT-OF-POCKET EXPENSES DEFINED.—As used in this section, the term 'out-of-pocket expenses' means, with respect to an employee in a plan year, amounts payable under the plan as deductibles and coinsurance with respect to items and services provided under the plan and furnished in the plan year on behalf of the employee and family covered under the plan.

"(B) OUT-OF-POCKET LIMIT DEFINED.—As used in this section and except as provided in subparagraph (C), the term 'out-of-pocket limit' means for a plan year beginning in—

"(i) a calendar year prior to 1993, $3,000; or

"(ii) for a subsequent calendar year, the limit specified in this subparagraph for the previous calendar year increased by the percentage increase in the consumer price index for all urban consumers (United States city average, as published by the Bureau of Labor Statistics) for the 12-month period ending on September 30 of the preceding calendar year.

If the limit computed under clause (ii) is not a multiple of $10, it shall be rounded to the next highest multiple of $10.

"(C) ALTERNATIVE OUT-OF-POCKET LIMIT.—A health insurance plan may provide for an out-of-pocket limit other than that defined in subparagraph (B) if, for a plan year with respect to an employee and the family of the employee, the limit does not exceed (on an annualized basis) 10 percent of the total wages paid to the employee in the plan year.

"(8) LIMITED PREEMPTION OF STATE MANDATED BENEFITS.—No State law or regulation in effect in a State that requires health insurance plans offered to small employers in the State to include specified items and services other than those specified by this subsection shall apply with respect to a health insurance plan providing for a standard benefit package offered by an insurer to a small employer. A State law or regulation requiring the coverage of newborns, adopted children or other specified categories of dependents shall continue to apply.

"(c) BASIC BENEFITS PACKAGE.—

"(1) IN GENERAL.—A health insurance plan providing for a basic benefit package shall be limited to payment for—

"(A) inpatient and outpatient hospital care, including emergency services;

"(B) inpatient and outpatient physicians' services;

"(C) diagnostic tests; and

"(D) preventive services (which may include one or more of the following services)—

"(i) prenatal care and well-baby care provided to children who are 1 year of age or younger;

"(ii) well-child care;

"(iii) Pap smears;

"(iv) mammograms; and

"(v) colorectal screening services.

Nothing in this paragraph shall prohibit a basic health benefit package from including coverage for treatment of a mental disorder.

"(2) COST-SHARING.—Each health insurance plan providing for the basic benefit package issued to a small employer by an insurer may impose premiums, deductibles, copayments, or other cost-sharing on enrollees of such plan.

"(3) OUT-OF-POCKET LIMIT.—Each health insurance plan providing for a basic benefit package shall provide for a limit on out-of-pocket expenses.

"(4) LIMITED PREEMPTION OF STATE MANDATED BENEFITS.—No State law or regulation in effect in a State that requires health insurance plans offered to small employers in the State to include specified items and services other than those described in this subsection shall apply with respect to a health insurance plan providing for a basic benefit package offered by an insurer to a small employer. A State law or regulation requiring the coverage of newborns, adopted children or other specified categories of dependents shall continue to apply.".

Subpart B—Tax Penalty on Noncomplying Insurers

SEC. 2221. EXCISE TAX ON PREMIUMS RECEIVED ON HEALTH INSURANCE POLICIES WHICH DO NOT MEET CERTAIN REQUIREMENTS.

(a) IN GENERAL.—Chapter 47 (relating to taxes on group health plans) is amended by adding at the end thereof the following new section:

"SEC. 5000A. FAILURE TO SATISFY CERTAIN STANDARDS FOR HEALTH INSURANCE.

"(a) GENERAL RULE.—In the case of any person issuing a health insurance plan to a small employer, there is hereby imposed a tax on the failure of such person to meet at any time during any taxable year the applicable requirements of title XXI of the Social Security Act. The Secretary of Health and Human Services shall determine whether any person meets the requirements of such title.

"(b) AMOUNT OF TAX.—

"(1) IN GENERAL.—The amount of tax imposed by subsection (a) by reason of 1 or more failures during a taxable year shall be equal to 25 percent of the gross premiums received during such taxable year with respect to all health insurance plans issued to a small employer by the person on whom such tax is imposed.

"(2) GROSS PREMIUMS.—For purposes of paragraph (1), gross premiums shall include any consideration received with respect to any accident and health insurance contract.

"(3) CONTROLLED GROUPS.—For purposes of paragraph (1)—

"(A) CONTROLLED GROUP OF CORPORATIONS.—All corporations which are members of the same controlled group of corporations shall be treated as 1 person. For purposes of the preceding sentence, the term 'controlled group of corporations' has the meaning given to such term by section 1563(a), except that—

"(i) 'more than 50 percent' shall be substituted for 'at least 80 percent' each place it appears in section 1563(a)(1), and

"(ii) the determination shall be made without regard to subsections (a)(4) and (e)(3)(C) of section 1563.

"(B) PARTNERSHIPS, PROPRIETORSHIPS, ETC., WHICH ARE UNDER COMMON CONTROL.—Under regulations prescribed by the Secretary, all trades or business (whether or not incorporated) which are under common control shall be treated as 1 person. The regulations prescribed under this subparagraph shall be based on principles similar to the principles which apply in the case of subparagraph (A).

"(c) LIMITATION ON TAX.—

"(1) TAX NOT TO APPLY WHERE FAILURE NOT DISCOVERED EXERCISING REASONABLE DILIGENCE.—No tax shall be imposed by subsection (a) with respect to any failure for

which it is established to the satisfaction of the Secretary that the person on whom the tax is imposed did not know, and exercising reasonable diligence would not have known, that such failure existed.

"(2) TAX NOT TO APPLY WHERE FAILURES CORRECTED WITHIN 30 DAYS.—No tax shall be imposed by subsection (a) with respect to any failure if—

"(A) such failure was due to reasonable cause and not to willful neglect, and

"(B) such failure is corrected during the 30-day period beginning on the 1st date any of the persons on whom the tax is imposed knew, or exercising reasonable diligence would have known, that such failure existed.

"(3) WAIVER BY SECRETARY.—In the case of a failure which is due to reasonable cause and not to willful neglect, the Secretary may waive part or all of the tax imposed by subsection (a) to the extent that the payment of such tax would be excessive relative to the failure involved.

"(d) DEFINITIONS.—For purposes of this section:

"(1) HEALTH INSURANCE PLAN.—The term 'health insurance plan' means any hospital or medical service policy or certificate, hospital or medical service plan contract, health maintenance organization group contract, or a multiple employer welfare arrangement, but does not include—

"(A) a self-insured group health plan;

"(B) a self-insured multiemployer group health plan; or

"(C) any of the following:

"(i) accident only, dental only, vision only, disability only, or long-term care only insurance,

"(ii) coverage issued as a supplement to liability insurance,

"(iii) medicare supplemental insurance as defined in section 1882(g)(1),

"(iv) workmen's compensation or similar insurance, or

"(v) automobile medical-payment insurance.

In the case of a multiple employer welfare arrangement that is fully insured, this Act shall only apply to the insurer of the arrangement.

"(2) SMALL EMPLOYER.—The term 'small employer' means, with respect to a calendar year, an employer that normally employs more than 1 but less than 51 eligible employees on a typical business day. For the purposes of this paragraph, the term 'employee' includes a self-employed individual.

"(3) ELIGIBLE EMPLOYEE.—The term 'eligible employee' means, with respect to an employer, an employee who normally performs on a monthly basis at least 30 hours of service per week for that employer.

"(4) PERSON.—The term 'person' means any person that offers a health insurance plan to a small employer, including a licensed insurance company, a prepaid hospital or medical service plan, a health maintenance organization, or in States which have distinct insurance licensure requirements, a multiple employer welfare arrangement.".

(b) NONDEDUCTIBILITY OF TAX.—Paragraph (6) of section 275(a) (relating to nondeductibility of certain taxes) is amended by inserting "47," after "46,".

(c) CLERICAL AMENDMENTS.—The table of sections for such chapter 47 is amended by adding at the end thereof the following new item:

"Sec. 5000A. Failure to satisfy certain standards for health insurance.".

(d) EFFECTIVE DATES.—

(1) IN GENERAL.—The amendments made by subsections (a) and (c) shall take effect on the date of the enactment of this Act.

(2) NONDEDUCTIBILITY OF TAX.—The amendment made by subsection (b) shall apply to taxable years beginning after December 31, 1991.

Subpart C—Studies and Reports

SEC. 2231. GAO STUDY AND REPORT ON RATING REQUIREMENTS AND BENEFIT PACKAGES FOR SMALL GROUP HEALTH INSURANCE.

(a) IN GENERAL.—The Comptroller General of the United States shall study and report to the Congress by no later than January 1, 1995, on—

(1) the impact of the standards for rating practices for small group health insurance established under section 2112 of the Social Security Act and the requirements for benefit packages established under section 2113 of such Act on the availability and price of insurance offered to small employers, differences in available benefit packages, the number of small employers choosing standard or basic packages, and the impact of the standards on the number of small employers offering health insurance to employees through a self-funded employer welfare benefit plan; and

(2) differences in State laws and regulations affecting the availability and price of health insurance plans sold to individuals and the impact of such laws and regulations, including the extension of requirements for health insurance plans sold to small employers in the State to individual health insurance and the establishment of State risk pools for individual health insurance.

(b) RECOMMENDATIONS.—The Comptroller General shall include in the report to Congress under this section recommendations with respect to adjusting rating standards under section 2112 of the Social Security Act—

(1) to eliminate variation in premiums charged to small employers resulting from adjustments for such factors as claims experience and health status, and

(2) to eliminate variation in premiums associated with age, sex, and other demographic factors.

PART III—IMPROVEMENTS IN PORTABILITY OF PRIVATE HEALTH INSURANCE

SEC. 2241. EXCISE TAX IMPOSED ON FAILURE TO PROVIDE FOR PREEXISTING CONDITION.

(a) IN GENERAL.—Chapter 47 (relating to taxes on group health plans), as amended by section 2221, is amended by adding at the end thereof the following new section:

"SEC. 5000B. FAILURE TO SATISFY PREEXISTING CONDITION REQUIREMENTS OF GROUP HEALTH PLANS.

"(a) GENERAL RULE.—There is hereby imposed a tax on the failure of—

"(1) a group health plan to meet the requirements of subsection (e), or

"(2) any person to meet the requirements of subsection (f),

with respect to any covered individual.

"(b) AMOUNT OF TAX.—

"(1) IN GENERAL.—The amount of the tax imposed by subsection (a) on any failure with respect to a covered individual shall be $100 for each day in the noncompliance period with respect to such failure.

"(2) NONCOMPLIANCE PERIOD.—For purposes of this section, the term 'noncompliance period' means, with respect to any failure, the period—

"(A) beginning on the date such failure first occurs, and

"(B) ending on the date such failure is corrected.

"(3) CORRECTION.—A failure of a group health plan to meet the requirements of subsection (e) with respect to any covered individual shall be treated as corrected if—

"(A) such failure is retroactively undone to the extent possible, and

"(B) the covered individual is placed in a financial position which is as good as such individual would have been in had such failure not occurred.

For purposes of applying subparagraph (B), the covered individual shall be treated as if the individual had elected the most favorable coverage in light of the expenses incurred since the failure first occurred.

"(c) LIMITATIONS ON AMOUNT OF TAX.—

"(1) TAX NOT TO APPLY WHERE FAILURE NOT DISCOVERED EXERCISING REASONABLE DILIGENCE.—No tax shall be imposed by subsection (a) on any failure during any period for which it is established to the satisfaction of the Secretary that none of the persons referred to in subsection (d) knew, or exercising reasonable diligence would have known, that such failure existed.

"(2) TAX NOT TO APPLY TO FAILURES CORRECTED WITHIN 30 DAYS.—No tax shall be imposed by subsection (a) on any failure if—

"(A) such failure was due to reasonable cause and not to willful neglect, and

"(B) such failure is corrected during the 30-day period beginning on the first date any of the persons referred to in subsection (d) knew, or exercising reasonable diligence would have known, that such failure existed.

"(3) WAIVER BY SECRETARY.—In the case of a failure which is due to reasonable cause and not to willful neglect, the Secretary may waive part or all of the tax imposed by subsection (a) to the extent that the payment of such tax would be excessive relative to the failure involved.

"(d) LIABILITY FOR TAX.—

"(1) IN GENERAL.—Except as otherwise provided in this subsection, the following shall be liable for the tax imposed by subsection (a) on a failure:

"(A) In the case of a group health plan other than a self-insured group health plan, the issuer.

"(B)(i) In the case of a self-insured group health plan other than a multiemployer group health plan, the employer.

"(ii) In the case of a self-insured multiemployer group health plan, the plan.

"(C) Each person who is responsible (other than in a capacity as an employee) for administering or providing benefits under the group health plan, health insurance plan, or other health benefit arrangement (including a self-insured plan) and whose act or failure to act caused (in whole or in part) the failure.

"(2) SPECIAL RULES FOR PERSONS DESCRIBED IN PARAGRAPH (1)(C).—A person described in subparagraph (C) (and not in subparagraphs (A) and (B)) of paragraph (1) shall be liable for the tax imposed by subsection (a) on any failure only if such person assumed (under a legally enforceable written agreement) responsibility for the performance of the act to which the failure relates.

"(e) NO DISCRIMINATION BASED ON HEALTH STATUS FOR CERTAIN SERVICES.—

"(1) IN GENERAL.—Except as provided under paragraph (2), group health plans may not deny, limit, or condition the coverage under (or benefits of) the plan based on the health status, claims experience, receipt of health care, medical history, or lack of evidence of insurability, of an individual.

"(2) TREATMENT OF PREEXISTING CONDITION EXCLUSIONS FOR ALL SERVICES.—

"(A) IN GENERAL.—Subject to the succeeding provisions of this paragraph, group health plans may exclude coverage with respect to services related to treatment of a preexisting condition, but the period of such exclusion may not exceed 6 months. The exclusion of coverage shall not apply to services furnished to newborns.

"(B) CREDITING OF PREVIOUS COVERAGE.—

"(i) IN GENERAL.—A group health plan shall provide that if an individual under such plan is in a period of continuous coverage (as defined in clause (ii)(I)) with respect to particular services as of the date of initial coverage under such plan (determined without regard to any waiting period under such plan), any period of exclusion of coverage with respect to a preexisting condition for such services or type of services shall be reduced by 1 month for each month in the period of continuous coverage without regard to any waiting period.

"(ii) DEFINITIONS.—As used in this subparagraph:

"(I) PERIOD OF CONTINUOUS COVERAGE.—The term 'period of continuous coverage' means, with respect to particular services, the period beginning on the date an individual is enrolled under a health insurance plan, title XVIII or XIX of the Social Security Act, or other health benefit arrangement (including a self-insured plan) which provides benefits with respect to such services and ends on the date the individual is not so enrolled for a continuous period of more than 3 months.

"(II) PREEXISTING CONDITION.—The term 'preexisting condition' means, with respect to coverage under a group health plan, a condition which has been diagnosed or treated during the 3-month period ending on the day before the first date of such coverage without regard to any waiting period.

"(f) DISCLOSURE OF COVERAGE, ETC.—Any person who has provided coverage (other than under title XVIII or XIX of the Social Security Act) during a period of continuous coverage (as defined in subsection (e)(2)(B)(ii)(I)) with respect to a covered individual shall disclose, upon the request of a group health plan subject to the requirements of subsection (e), the coverage provided the covered individual, the period of such coverage, and the benefits provided under such coverage.

"(g) DEFINITIONS.—For purposes of this section—

"(1) COVERED INDIVIDUAL.—The term 'covered individual' means—

"(A) an individual who is (or will be) provided coverage under a group health plan by virtue of the performance of services by the individual for 1 or more persons maintaining the plan (including as an employee defined in section 401(c)(1)), and

"(B) the spouse or any dependent child of such individual.

"(2) GROUP HEALTH PLAN.—The term 'group health plan' has the meaning given such term by section 5000(b)(1).".

(b) CLERICAL AMENDMENT.—The table of sections for such chapter 47 is amended by adding at the end thereof the following new item:

"Sec. 5000B. Failure to satisfy preexisting condition requirements of group health plans.".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to plan years beginning after December 31, 1992.

PART IV—HEALTH CARE COST CONTAINMENT

SEC. 2251. ESTABLISHMENT OF HEALTH CARE COST COMMISSION.

(a) IN GENERAL.—There is hereby established a Health Care Cost Commission (in this subtitle referred to as the "Commission"). The Commission shall be composed of 11 members, appointed by the President by and with the advice and consent of the Senate. The membership of the Commission shall include individuals with nationally recognized expertise in health insurance, health economics, health care provider reimbursement, and related fields. The President shall provide for appointment of individuals to the Commission within 6 months of the date of enactment of this Act and in appointing such individuals to the Commission, the President shall assure representation of consumers of health services, large and small employers, State and local governments, labor organizations, health care providers, health care insurers, and experts on the development of medical technology.

(b) TERMS.—

(1) CHAIRMAN.—The term of the Chairman shall be coincident with the term of the President.

(2) OTHER MEMBERS OF THE COMMISSION.—Except as provided in paragraph (1), members of the Commission shall be appointed to serve for terms of 3 years, except that the terms of the members first appointed shall be staggered so that the terms of no more than 4 members expire in any year.

(3) VACANCIES.—Individuals appointed to fill a vacancy created in the Commission shall be appointed only for the unexpired portion of the term for which the individual's predecessor was appointed.

(c) DUTIES.—

(1) ANNUAL REPORT.—

(A) IN GENERAL.—The Commission shall report annually to the President and the Congress on national health care costs. Such report shall be made by March 30 of each year and shall include information on—

(i) levels and trends in public and private health care spending by type of health care service, geographic region of the country, and public and private sources of payment;

(ii) levels and trends in the cost of private health insurance coverage for individuals and groups;

(iii) sources of high and rising health care costs, including inflation in input prices, demographic changes and the utilization, supply and distribution of health care services; and

(iv) comparative trends in other countries and reasons for any differences from trends in the United States.

(B) ASSESSMENT AND RECOMMENDATIONS.—The report shall also analyze and assess the impact of public and private efforts to reduce growth in health care spending, and shall include recommendations for cost containment efforts.

(2) NATIONAL UNIFORM CLAIMS FORMS AND REPORTING STANDARDS.—

(A) IN GENERAL.—As part of its first annual report, the Commission shall, taking into account recommendations by the Secretary of Health and Human Services, recommend—

(i) a national uniform claims form for use by health care providers and individuals in submitting claims to private health insurers and the Medicare and Medicaid programs;

(ii) national standards for reporting of insurance information including coverage benefits, copayments, and deductibles;

(iii) national standards for uniform reporting by health care providers of information including clinical diagnoses, services provided, and costs of services; and

(iv) a strategy and schedule for implementing national use of such claims forms and reporting standards by January 1, 1996.

(B) RELEVANT FACTORS.—In developing its recommendations, the Commission shall consider—

(i) the potential use of electronic cards or other technology that allows expedited access to medical records, insurance, and billing information;

(ii) the need for patient confidentiality; and

(iii) special implementation issues including those concerning providers in rural and inner-city areas.

(C) REPORT.—The Commission shall report annually and make recommendations with respect to—

(i) the progress made toward national implementation of uniform claims forms and reporting standards; and

(ii) other approaches to minimize the impact of administrative costs on national health spending.

(3) STANDARDS FOR MANAGED CARE.—The Commission shall make recommendations to the Secretary of Health and Human Services for the development and ongoing review of standards for managed care plans and utilization review programs (as defined under section 2114 of title XXI of the Social Security Act).

(d) MISCELLANEOUS.—

(1) AUTHORITY.—The Commission may—

(A) employ and fix compensation of an Executive Director and such other personnel (not to exceed 25) as may be necessary to carry out its duties (without regard to the provisions of title 5, United States Code, governing appointments in the competitive service);

(B) seek such assistance and support as may be required in the performance of its duties from appropriate Federal departments and agencies;

(C) enter into contracts or make other arrangements, as may be necessary for the conduct of the work of the Commission (without regard to section 3709 of the Revised Statutes (41 U.S.C. 5)); and

(D) make advance, progress, and other payments which relate to the work of the Commission.

(2) COMPENSATION.—While serving on the business of the Commission (including traveltime), a member of the Commission shall be entitled to compensation at the per diem equivalent of the rate provided for level IV of the Executive Schedule under section 5315 of title 5, United States Code; and while so serving away from the member's home and regular place of business, a member may be allowed travel expenses, as authorized by the Chairman of the Commission. Physicians serving as personnel of the Commission may be provided a physician comparability allowance by the Commission in the same manner as Government physicians may be provided such an allowance by an agency under section 5948 of title 5, United States Code, and for such purpose subsection (i) of such section shall apply to the Commission in the same manner as it applies to the Tennessee Valley Authority.

(3) ACCESS TO INFORMATION, ETC.—The Commission shall have access to such relevant information and data as may be available from appropriate Federal agencies and shall assure that its activities, especially the conduct of original research and medical studies, are coordinated with the activities of Federal agencies. The Commission shall be

subject to periodic audit by the General Accounting Office.

(4) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated such sums as may be necessary to carry out this section.

SEC. 2252. FEDERAL CERTIFICATION OF MANAGED CARE PLANS AND UTILIZATION REVIEW PROGRAMS.

Title XXI of the Social Security Act, as added by title II of this Act, is amended by adding at the end the following part:

"PART C—FEDERAL CERTIFICATION OF MANAGED CARE PLANS

"FEDERAL CERTIFICATION OF MANAGED CARE PLANS AND UTILIZATION REVIEW PROGRAMS

"SEC. 2114. (a) VOLUNTARY CERTIFICATION PROCESS.—

"(1) CERTIFICATION.—The Secretary shall establish a process for certification of managed care plans meeting the requirements of subsection (b)(1) and of utilization review programs meeting the requirements of subsection (b)(2).

"(2) QUALIFIED MANAGED CARE PLAN.—For purposes of this title, the term 'qualified managed care plan' means a managed care plan that the Secretary certifies, upon application by the program, as meeting the requirements of this section.

"(3) QUALIFIED UTILIZATION REVIEW PROGRAM.—For purposes of this title, the term 'qualified utilization review program' means a utilization review program that the Secretary certifies, upon application by the program, as meeting the requirements of this section.

"(4) UTILIZATION REVIEW PROGRAM.—For purposes of this title, the term 'utilization review program' means a system of reviewing the medical necessity, appropriateness, or quality of health care services and supplies covered under a health insurance plan or a managed care plan using specified guidelines. Such a system may include preadmission certification, the application of practice guidelines, continued stay review, discharge planning, preauthorization of ambulatory procedures, and retrospective review.

"(5) MANAGED CARE PLAN.—

"(A) IN GENERAL.—For purposes of this title the term 'managed care plan' means a plan operated by a managed care entity as described in subparagraph (B), that arranges for the financing and delivery of health care services to persons covered under such plan through—

"(i) arrangements with participating providers to furnish health care services;

"(ii) explicit standards for the selection of participating providers;

"(iii) organizational arrangements for ongoing quality assurance and utilization review programs; and

"(iv) financial incentives for persons covered under the plan to use the participating providers and procedures provided for by the plan.

"(B) MANAGED CARE ENTITY DEFINED.—For purposes of this title, a managed care entity includes a licensed insurance company, hospital or medical service plan, health maintenance organization, an employer, or employee organization, or a managed care contractor as described in subparagraph (C), that operates a managed care plan.

"(C) MANAGED CARE CONTRACTOR DEFINED.—For purposes of this title, a managed care contractor means a person that—

"(i) establishes, operates or maintains a network of participating providers;

"(ii) conducts or arranges for utilization review activities; and

"(iii) contracts with an insurance company, a hospital or medical service plan, an employer, an employee organization, or any other entity providing coverage for health care services to operate a managed care plan.

"(6) PARTICIPATING PROVIDER.—The term 'participating provider' means a physician, hospital, pharmacy, laboratory, or other appropriately licensed provider of health care services or supplies, that has entered into an agreement with a managed care entity to provide such services or supplies to a patient covered under a managed care plan.

"(7) REVIEW AND RECERTIFICATION.—The Secretary shall establish procedures for the periodic review and recertification of qualified managed care plans and qualified utilization review programs.

"(8) TERMINATION OF CERTIFICATION.—The Secretary shall terminate the certification of a qualified managed care plan or a qualified utilization review program if the Secretary determines that such plan or program no longer meets the applicable requirements for certification. Before effecting a termination, the Secretary shall provide the plan notice and opportunity for a hearing on the proposed termination.

"(9) CERTIFICATION THROUGH ALTERNATIVE REQUIREMENTS.—

"(A) CERTAIN ORGANIZATIONS RECOGNIZED.—An eligible organization as defined in section 1876(b), shall be deemed to meet the requirements of subsection (b) for certification as a qualified managed care plan.

"(B) RECOGNITION OF ACCREDITATION.—If the Secretary finds that a State licensure program or a national accreditation body establishes a requirement or requirements for accreditation of a managed care plan or utilization review program that are at least equivalent to a requirement or requirements established under subsection (b), the Secretary may, to the extent he finds it appropriate, treat a managed care plan or a utilization review program thus accredited as meeting the requirement or requirements of subsection (b) with respect to which he made such finding.

"(b) REQUIREMENTS FOR CERTIFICATION.—

"(1) MANAGED CARE PLANS.—The Secretary, in consultation with the Health Care Cost Commission, shall establish Federal standards for the certification of qualified managed care plans, including standards related to—

"(A) the qualification and selection of participating providers;

"(B) the number, type, and distribution of participating providers necessary to assure that all covered items and services are available and accessible to persons covered under a managed care plan in each service area;

"(C) the establishment and operation of an ongoing quality assurance program, which includes procedures for—

"(i) evaluating the quality and appropriateness of care;

"(ii) using the results of quality evaluations to promote and improve quality of care; and

"(iii) resolving complaints from enrollees regarding quality and appropriateness of care;

"(D) the provision of benefits for covered items and services not furnished by participating providers if the items and services are medically necessary and immediately required because of an unforeseen illness, injury, or condition;

"(E) the qualifications of individuals performing utilization review activities;

"(F) procedures and criteria for evaluating the necessity and appropriateness of health care services;

"(G) the timeliness with which utilization review determinations are to be made;

"(H) procedures for the operation of an appeals process which provides a fair opportunity for individuals adversely affected by a managed care review determination to have such determination reviewed;

"(I) procedures for ensuring that all applicable Federal and State laws designed to protect the confidentiality of individual medical records are followed; and

"(J) payment of providers for the expenses associated with responding to requests for information needed to conduct a utilization review.

"(2) QUALIFIED UTILIZATION REVIEW PROGRAMS.—The Secretary, in consultation with the Health Care Cost Commission, shall establish Federal standards for the certification of qualified utilization review programs, including standards related to—

"(A) the qualifications of individuals performing utilization review activities;

"(B) procedures and criteria for evaluating the necessity and appropriateness of health care services;

"(C) the timeliness with which utilization review determinations are to be made;

"(D) procedures for the operation of an appeals process which provides a fair opportunity for individuals adversely affected by a utilization review determination to have such determination reviewed;

"(E) procedures for ensuring that all applicable Federal and State laws designed to protect the confidentiality of individual medical records are followed; and

"(F) payment of providers for the expenses associated with responding to requests for information needed to conduct a utilization review.

"(3) APPLICATION OF STANDARDS.—

"(A) IN GENERAL.—Standards shall first be established under this subsection by not later than 24 months after the date of the enactment of this section. In developing standards under this subsection, the Secretary shall—

"(i) review standards in use by national private accreditation organizations and State licensure programs;

"(ii) recognize, to the extent appropriate, differences in the organizational structure and operation of managed care plans; and

"(iii) establish procedures for the timely consideration of applications for certification by managed care plans and utilization review programs.

"(B) REVISION OF STANDARDS.—The Secretary shall periodically review the standards established under this subsection, taking into account recommendations by the Health Care Cost Commission, and may revise the standards from time to time to assure that such standards continue to reflect appropriate policies and practices for the cost-effective and medically appropriate use of services within managed care plans and utilization review programs.

"(c) LIMITATION ON STATE RESTRICTIONS ON QUALIFIED MANAGED CARE PLANS AND UTILIZATION REVIEW PROGRAMS.—

"(1) IN GENERAL.—No requirement of any State law or regulation shall—

"(A) prohibit or limit a qualified managed care plan from including financial incentives for covered persons to use the services of participating providers;

"(B) prohibit or limit a qualified managed care plan from restricting coverage of services to those—

"(i) provided by a participating provider; or

"(ii) authorized by a designated participating provider;

"(C) subject to paragraph (2)—

"(i) restrict the amount of payment made by a qualified managed care plan to participating providers for items and services provided to covered persons; or

"(ii) restrict the ability of a qualified managed care plan to pay participating providers for items and services provided to covered persons on a per capita basis;

"(D) prohibit or limit a qualified managed care plan from restricting the location, number, type, or professional qualifications of participating providers;

"(E) prohibit or limit a qualified managed care plan from requiring that items and services be authorized by a primary care physician selected by the covered person from a list of available participating providers;

"(F) prohibit or limit the use of utilization review procedures or criteria by a qualified utilization review program or a qualified managed care plan;

"(G) require a qualified utilization review program or a qualified managed care plan to make public utilization review procedures or criteria;

"(H) prohibit or limit a qualified utilization review program or a qualified managed care plan from determining the location or hours of operation of a utilization review, provided that emergency services furnished during the hours in which the utilization review program is not open are not subject to utilization review;

"(I) require a qualified utilization review program or a qualified managed care plan to pay providers for the expenses associated with responding to requests for information needed to conduct utilization review, other than as provided in standards for qualified managed care plans and qualified utilization review programs;

"(J) restrict the amount of payment made to a qualified utilization review program or a qualified managed care plan for the conduct of utilization review;

"(K) restrict access by a qualified utilization review program or a qualified managed care plan to medical information or personnel required to conduct utilization review;

"(L) define utilization review as the practice of medicine or another health care profession; or

"(M) require that utilization review be conducted (i) by a resident of the State in which the treatment is to be offered or by an individual licensed in such State, or (ii) by a physician in any particular specialty or with any board certified specialty of the same medical specialty as the provider whose services are being rendered.

"(2) EXCEPTIONS TO CERTAIN REQUIREMENTS.—

"(A) SUBPARAGRAPH (C).—Subparagraph (C) shall not apply where the amount of payments with respect to a block of services or providers is established under a statewide system applicable to all non-Federal payors with respect to such services or providers.

"(B) SUBPARAGRAPHS (L) AND (M).—Nothing in subparagraphs (L) or (M) shall be construed as prohibiting a State from (i) requiring that utilization review be conducted by a licensed health care professional or (ii) requiring that any appeal from such a review be made by a licensed physician or by a licensed physician in any particular specialty or with any board certified specialty of the same medical specialty as the provider whose services are being rendered.

"(3) RELATIONSHIP TO MEDICAID PROGRAM.—Nothing in paragraph (1) shall be construed as prohibiting a State from imposing requirements on managed care plans or utilization review programs that are necessary to conform with the requirements of title XIX of the Social Security Act with respect to services provided to, or with respect to, individuals receiving medical assistance under such title.".

SEC. 2253. ADDITIONAL FUNDING FOR OUTCOMES RESEARCH.

Section 1142(i) of the Social Security Act is amended—

(1) in paragraph (1), to read as follows:

"(1) IN GENERAL.—There are authorized to be appropriated to carry out this section—

"(A) $175,000,000 for fiscal year 1992;

"(B) $225,000,000 for fiscal year 1993;

"(C) $275,000,000 for fiscal year 1994; and

"(D) $300,000,000 for fiscal year 1995."; and

(2) in paragraph (2), by striking out "70 percent" and inserting in lieu thereof "50 percent".

PART V—MEDICARE PREVENTION BENEFITS

SEC. 2261. COVERAGE OF CERTAIN IMMUNIZATIONS.

(a) IN GENERAL.—Section 1861(s)(10) of the Social Security Act (42 U.S.C. 1395x(s)(10)) is amended—

(1) in subparagraph (A), by striking "and, subject to section 4071 of the Omnibus Budget Reconciliation Act of 1987, influenza vaccine and its administration; and" and inserting a comma; and

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

"(C) influenza vaccine and its administration, and

"(D) tetanus-diphtheria booster and its administration;".

(b) LIMITATION ON FREQUENCY.—Section 1862(a)(1) of such Act (42 U.S.C. 1395y(a)(1)) is amended—

(1) in subparagraph (E), by striking "and" at the end;

(2) in subparagraph (F), by striking the semicolon at the end and inserting ", and"; and

(3) by adding at the end the following new subparagraph:

"(G) in the case of an influenza vaccine, which is administered within the 11 months after a previous influenza vaccine, and, in the case of a tetanus-diphtheria booster, which is administered within the 119 months after a previous tetanus-diphtheria booster;".

(c) CONFORMING AMENDMENT.—Section 1862(a)(7) of such Act (42 U.S.C. 1395y(a)(7)) is amended by striking "and paragraph (1)(B) or under paragraph (1)(F)" and inserting "or under subparagraph (B), (F), or (G) of paragraph (1)".

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to influenza vaccines administered on or after October 1, 1992, and tetanus-diphtheria boosters administered on or after January 1, 1993.

SEC. 2262. COVERAGE OF WELL-CHILD CARE.

(a) IN GENERAL.—Section 1861(s)(2) of the Social Security Act (42 U.S.C. 1395x(s)(2)) is amended—

(1) by striking "and" at the end of subparagraph (O);

(2) by striking the semicolon at the end of subparagraph (P) and inserting "; and"; and

(3) by adding at the end the following new subparagraph:

"(Q) well-child services (as defined in subsection (ll)(1)) provided to an individual entitled to benefits under this title who is under 7 years of age;".

(b) SERVICES DEFINED.—Section 1861 of such Act (42 U.S.C. 1395x) is amended—

(1) by redesignating the subsection (jj) added by section 4163(a)(2) of the Omnibus Budget Reconciliation Act of 1990 as subsection (kk); and

(2) by inserting after subsection (kk) (as so redesignated) the following new subsection:

"WELL-CHILD SERVICES

"(ll)(1) The term 'well-child services' means well-child care, including routine office visits, routine immunizations (including the vaccine itself), routine laboratory tests, and preventive dental care, provided in accordance with the periodicity schedule established with respect to the services under paragraph (2).

"(2) The Secretary, in consultation with the American Academy of Pediatrics, the Advisory Committee on Immunization Practices, and other entities considered appropriate by the Secretary, shall establish a schedule of periodicity which reflects the appropriate frequency with which the services referred to in paragraph (1) should be provided to healthy children.".

(c) CONFORMING AMENDMENTS.—(1) Section 1862(a)(1) of such Act (42 U.S.C. 1395y(a)(1)), as amended by section 2261(b), is amended—

(A) in subparagraph (F), by striking "and" at the end;

(B) in subparagraph (G), by striking the semicolon at the end and inserting ", and"; and

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

"(H) in the case of well-child services, which are provided more frequently than is provided under the schedule of periodicity established by the Secretary under section 1861(ll)(2) for such services;".

(2) Section 1862(a)(7) of such Act (42 U.S.C. 1395y(a)(7)), as amended by section 2261(c), is amended by striking "or (G)" and inserting "(G), or (H)".

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to well-child services provided on or after January 1, 1993.

SEC. 2263. DEMONSTRATION PROJECTS FOR COVERAGE OF OTHER PREVENTIVE SERVICES.

(a) ESTABLISHMENT.—The Secretary of Health and Human Services (hereafter referred to as the "Secretary") shall establish and provide for a series of ongoing demonstration projects under which the Secretary shall provide for coverage of the preventive services described in subsection (c) under the medicare program in order to determine—

(1) the feasibility and desirability of expanding coverage of medical and other health services under the medicare program to include coverage of such services for all individuals enrolled under part B of title XVIII of the Social Security Act; and

(2) appropriate methods for the delivery of those services to medicare beneficiaries.

(b) SITES FOR PROJECT.—The Secretary shall provide for the conduct of the demonstration projects established under subsection (a) at the sites at which the Secretary conducts the demonstration program established under section 9314 of the Consolidated Omnibus Budget Reconciliation Act of 1985 and at such other sites as the Secretary considers appropriate.

(c) SERVICES COVERED UNDER PROJECTS.—The Secretary shall cover the following services under the series of demonstration projects established under subsection (a):

(1) Glaucoma screening.

(2) Cholesterol screening and cholesterol-reducing drug therapies.

(3) Screening and treatment for osteoporosis, including tests for bone-mass measurement and hormone replacement therapy.

(4) Screening services for pregnant women, including ultrasound and clamydial testing and maternal serum alfa-protein.

(5) One-time comprehensive assessment for individuals beginning at age 65 or 75.

(6) Prostate-specific antigen (PSA) testing.

(7) Other services considered appropriate by the Secretary.

Not more than one such service shall be covered at each site.

(d) REPORTS TO CONGRESS.—Not later than October 1, 1994, and every 2 years thereafter, the Secretary shall submit a report to the Committee on Finance of the Senate and the Committee on Ways and Means and the Committee on Energy and Commerce of the House of Representatives describing findings made under the demonstration projects conducted pursuant to subsection (a) during the preceding 2-year period and the Secretary's plans for the demonstration projects during the succeeding 2-year period.

(e) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated from the Federal Supplementary Medical Insurance Trust Fund for expenses incurred in carrying out the series of demonstration projects established under subsection (a) the following amounts:

(1) $4,000,000 for fiscal year 1993.

(2) $4,000,000 for fiscal year 1994.

(3) $5,000,000 for fiscal year 1995.

(4) $5,000,000 for fiscal year 1996.

(5) $6,000,000 for fiscal year 1997.

SEC. 2264. OTA STUDY OF PROCESS FOR REVIEW OF MEDICARE COVERAGE OF PREVENTIVE SERVICES.

(a) STUDY.—The Director of the Office of Technology Assessment (hereafter referred to as the "Director") shall, subject to the approval of the Technology Assessment Board, conduct a study to develop a process for the regular review for the consideration of coverage of preventive services under the medicare program, and shall include in such study a consideration of different types of evaluations, the use of demonstration projects to obtain data and experience, and the types of measures, outcomes, and criteria that should be used in making coverage decisions.

(b) REPORT.—Not later than 2 years after the date of the enactment of this section, the Director shall submit a report to the Committee on Finance of the Senate and the Committee on Ways and Means and the Committee on Energy and Commerce of the House of Representatives on the study conducted under subsection (a).

SEC. 2265. FINANCING OF ADDITIONAL BENEFITS.

(a) PREMIUMS FOR 1993–1995.—Section 1839(e)(1)(B) of the Social Security Act (42 U.S.C. 1395r(e)(1)(B)) is amended—

(1) in clause (iii) by striking "$36.60" and inserting "$36.70",

(2) in clause (iv) by striking "$41.10" and inserting "$41.20", and

(3) in clause (v) by striking "$46.10" and inserting "$46.20".

(b) PREMIUMS FOR 1996–1997.—(1) Section 1839 of the Social Security Act (42 U.S.C. 1395r) is amended by adding at the end the following new subsection:

"(g) Except as provided in subsections (b) and (f), the monthly premium otherwise determined, without regard to this subsection, for each individual enrolled under this part shall be increased by 10 cents for each month in 1996 and 1997.".

(2) Section 1839 of such Act (42 U.S.C. 1395r) is amended—

(A) in subsection (a)(2), by striking "(b) and (e)" and inserting "(b), (e), and (g)",

(B) in subsection (a)(3), by striking "subsection (e)" and inserting "subsections (e) and (g)", and

(C) in subsection (b), by striking "determined under subsection (a) or (e)" and inserting "otherwise determined under this section (without regard to subsection (f))".

Subtitle D—Capital Gain Provisions

PART I—PROGRESSIVE CAPITAL GAIN RATES

SEC. 2301. PROGRESSIVE CAPITAL GAIN RATES.

(a) IN GENERAL.—Section 1(h) (relating to maximum capital gains rate) is amended to read as follows:

"(h) PROGRESSIVE CAPITAL GAINS RATE.—

"(1) IN GENERAL.—If a taxpayer has qualified capital gain for any taxable year, then the tax imposed by this section shall be equal to the sum of—

"(A) a tax computed at the rates and in the same manner as if this subsection had not been enacted on taxable income reduced by the amount of qualified capital gain, plus

"(B) the excess (if any) of—

"(i) a tax computed under the substitute table on taxable income, over

"(ii) a tax computed under the substitute table on taxable income reduced by the amount of qualified capital gain.

"(2) SUBSTITUTE TABLES.—

"(A) IN GENERAL.—In the case of any taxable year ending after January 31, 1992, the Secretary shall prescribe a substitute table for each of the tables under subsections (a), (b), (c), (d), and (e).

"(B) METHOD OF PRESCRIBING TABLES.—The tables under subparagraph (A) for any taxable year shall be the tables in effect without regard to this subsection, adjusted by—

"(i) substituting the capital gain rates for the rates of tax contained therein, and

"(ii) modifying the amounts setting forth the tax to the extent necessary to reflect the adjustments under clause (i).

"(C) CAPITAL GAIN RATES.—For purposes of subparagraph (B)(i), the capital gain rates shall be determined as follows:

"If the rate of tax is:	The capital gain rate is:
15 percent	5 percent
28 percent	19 percent
31 percent	23 percent
36 percent	28 percent.

"(3) QUALIFIED CAPITAL GAIN.—For purposes of this subsection—

"(A) IN GENERAL.—The term 'qualified capital gain' means net capital gain determined without regard to any gain taken into account in computing the exclusion under section 1202 (relating to gain from sale of small business stock).

"(B) TRANSITION RULE.—In the case of any taxable year beginning before February 1, 1992, and ending on or after such date, qualified capital gain shall be equal to the lesser of—

"(i) net capital gain, or

"(ii) net capital gain determined by taking into account only gain or loss properly taken into account for the portion of the taxable year after January 31, 1992.

If the amount under clause (i) exceeds the amount under clause (ii) for such taxable year, the rate of tax under this section shall not exceed 28 percent with respect to such excess.

"(C) SPECIAL RULE FOR PASS-THRU ENTITIES.—

"(i) IN GENERAL.—In applying subparagraph (B) with respect to any pass-thru entity, the determination of when gain is properly taken into account shall be made at the entity level.

"(ii) PASS-THRU ENTITY DEFINED.—For purposes of clause (i), the term 'pass-thru entity' means—

"(I) a regulated investment company,

"(II) a real estate investment trust,

"(III) an S corporation,

"(IV) a partnership,

"(V) an estate or trust, and

"(VI) a common trust fund."

(b) TREATMENT OF COLLECTIBLES.—

(1) IN GENERAL.—Section 1222 is amended by inserting after paragraph (11) the following new paragraph:

"(12) SPECIAL RULE FOR COLLECTIBLES.—

"(A) IN GENERAL.—Any gain or loss from the sale or exchange of a collectible shall be treated as a short-term capital gain or loss (as the case may be), without regard to the period such asset was held. The preceding sentence shall apply only to the extent the gain or loss is taken into account in computing taxable income.

"(B) TREATMENT OF CERTAIN SALES OF INTEREST IN PARTNERSHIP, ETC.—For purposes of subparagraph (A), any gain from the sale or exchange of an interest in a partnership, S corporation, or trust which is attributable to unrealized appreciation in the value of collectibles held by such entity shall be treated as gain from the sale or exchange of a collectible. Rules similar to the rules of section 751(f) shall apply for purposes of the preceding sentence.

"(C) COLLECTIBLE.—For purposes of this paragraph, the term 'collectible' means any capital asset which is a collectible (as defined in section 408(m) without regard to paragraph (3) thereof)."

(2) CHARITABLE DEDUCTION NOT AFFECTED.—

(A) Paragraph (1) of section 170(e) is amended by adding at the end thereof the following new sentence: "For purposes of this paragraph, section 1222 shall be applied without regard to paragraph (12) thereof (relating to special rule for collectibles)."

(B) Clause (iv) of section 170(b)(1)(C) is amended by inserting before the period at the end thereof the following: "and section 1222 shall be applied without regard to paragraph (12) thereof (relating to special rule for collectibles)".

(c) EFFECTIVE DATES.—

(1) IN GENERAL.—The amendment made by subsection (a) shall apply to taxable years ending after January 31, 1992.

(2) COLLECTIBLES.—The amendments made by subsection (b) shall apply to dispositions after January 31, 1992.

SEC. 2302. INCREASE IN HOLDING PERIOD REQUIRED FOR LONG-TERM CAPITAL GAIN TREATMENT.

(a) IN GENERAL.—

(1) CAPITAL GAIN.—Paragraphs (1) and (3) of section 1222 (relating to other terms relating to capital gains and losses) are each amended by striking "1 year" and inserting "2 years".

(2) CAPITAL LOSSES.—Paragraphs (2) and (4) of section 1222 are each amended by striking "1 year" and inserting "2 years".

(b) CONFORMING AMENDMENTS.—The following provisions are each amended by striking "1 year" each place it appears and inserting "2 years":

(1) Section 166(d)(1)(B).

(2) Section 422(a)(1).

(3) Section 423(a)(1).

(4) Section 584(c).

(5) Subsections (a), (b), and (c) of section 631.

(6) Section 642(c)(3).

(7) Paragraphs (1) and (2) of section 702(a).

(8) Section 818(b)(1).

(9) Section 852(b)(3)(B).

(10) Section 856(c)(4)(A).

(11) Section 857(b)(3)(B).

(12) Paragraphs (11) and (12) of section 1223.

(13) Subsections (b), (d), and subparagraph (A) of subchapter (e)(4) of section 1233.

(14) Section 1234(b)(1).

(15) Section 1235(a).

(16) Subsections (b) and (g)(2)(C) of section 1248.

(c) TECHNICAL AMENDMENTS.—

(1) Section 7518(g)(3)(B) is amended by striking "6 months" and inserting "2 years".

(2) Section 1231 (b)(3)(B) is amended by striking "12 months" and inserting "24 months".

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 1992.

SEC. 2303. RECAPTURE UNDER SECTION 1250 OF TOTAL AMOUNT OF DEPRECIATION.

(a) GENERAL RULE.—Subsections (a) and (b) of section 1250 (relating to gain from disposition of certain depreciable realty) are amended to read as follows:

"(a) GENERAL RULE.—Except as otherwise provided in this section, if section 1250 property is disposed of, the lesser of—

"(1) the depreciation adjustments in respect of such property, or

"(2) the excess of—

"(A) the amount realized (or, in the case of a disposition other than sale, exchange, or involuntary conversion, the fair market value of such property), over

"(B) the adjusted basis of such property,

shall be treated as gain which is ordinary income. Such gain shall be recognized notwithstanding any other provision of this subtitle.

"(b) DEPRECIATION ADJUSTMENTS.—For purposes of this section, the term 'depreciation adjustments' means, in respect of any property, all adjustments attributable to periods after December 31, 1963, reflected in the adjusted basis of such property on account of deductions (whether in respect of the same or other property) allowed or allowable to the taxpayer or to any other person for exhaustion, wear and tear, obsolescence, or amortization (other than amortization under section 168 (as in effect before its repeal by the Tax Reform Act of 1976), 169, 185 (as in effect before its repeal by the Tax Reform Act of 1986), 188 (as in effect before its repeal by the Revenue Reconciliation Act of 1990), 190, or 193). For purposes of the preceding sentence, if the taxpayer can establish by adequate records or other sufficient evidence that the amount allowed as a deduction for any period was less than the amount allowable, the amount taken into account for such period shall be the amount allowed."

(b) MAXIMUM RATE ON RECAPTURE AMOUNT.—Section 1 (relating to tax imposed) is amended by adding at the end the following new section:

"(i) MAXIMUM RATE OF TAX ON SECTION 1250 RECAPTURE AMOUNTS.—If a taxpayer has any amount treated as ordinary income under section 1250 for any taxable year, then the tax imposed by this section shall not exceed the sum of—

"(1) a tax computed at the rates and in the same manner as if this subsection had not been enacted on the greater of—

"(A) taxable income reduced by the amount treated as ordinary income under section 1250, or

"(B) the amount of taxable income taxed at a rate below 31 percent, plus

"(2) a tax of 31 percent of the amount of taxable income in excess of the amount determined under paragraph (1)."

(c) LIMITATION IN CASE OF INSTALLMENT SALES.—Subsection (i) of section 453 is amended—

(1) by striking "1250" the first place it appears and inserting "1250 (as in effect on December 31, 1991)", and

(2) by striking "1250" the second place it appears and inserting "1250 (as so in effect)".

(d) CONFORMING AMENDMENTS.—

(1) Subparagraph (E) of section 1250(d)(4) is amended—

(A) by striking "additional depreciation" and inserting "amount of the depreciation adjustments", and

(B) by striking "ADDITIONAL DEPRECIATION" in the subparagraph heading and inserting "DEPRECIATION ADJUSTMENTS".

(2) Subparagraph (B) of section 1250(d)(6) is amended to read as follows:

"(B) DEPRECIATION ADJUSTMENTS.—In respect of any property described in subparagraph (A), the amount of the depreciation adjustments attributable to periods before the distribution by the partnership shall be—

"(i) the amount of gain to which subsection (a) would have applied if such property had been sold by the partnership immediately before the distribution at its fair market value at such time, reduced by

"(ii) the amount of such gain to which section 751(b) applied."

(3) Subsection (d) of section 1250 is amended by striking paragraph (10).

(4) Section 1250 is amended by striking subsections (e) and (f) and by redesignating subsections (g) and (h) as subsections (e) and (f), respectively.

(5) Paragraph (4) of section 50(c) is amended to read as follows:

"(4) RECAPTURE OF REDUCTION.—For purposes of sections 1245 and 1250, any reduction under this subsection shall be treated as a deduction allowed for depreciation."

(6) Clause (i) of section 267(e)(5)(D) is amended by striking "section 1250(a)(1)(B)" and inserting "section 1250(a)(1)(B) (as in effect on December 31, 1991)".

(7)(A) Subsection (a) of section 291 is amended by striking paragraph (1) and redesignating paragraphs (2), (3), (4), and (5) as paragraphs (1), (2), (3), and (4), respectively.

(B) Subsection (c) of section 291 is amended to read as follows:

"(c) SPECIAL RULE FOR POLLUTION CONTROL FACILITIES.—Section 168 shall apply with respect to that portion of the basis of any property not taken into account under section 169 by reason of subsection (a)(4)."

(C) Section 291 is amended by striking subsection (d) and redesignating subsection (e) as subsection (d).

(D) Paragraph (2) of section 291(d) (as redesignated by subparagraph (C)) is hereby repealed.

(E) Subparagraph (A) of section 265(b)(3) is amended by striking "291(e)(1)(B)" and inserting "291(d)(1)(B)".

(F) Subsection (c) of section 1277 is amended by striking "291(e)(1)(B)(ii)" and inserting "291(d)(1)(B)(ii)".

(8) Subsection (d) of section 1017 is amended to read as follows:

"(d) RECAPTURE OF DEDUCTIONS.—For purposes of sections 1245 and 1250—

"(1) any property the basis of which is reduced under this section and which is neither section 1245 property nor section 1250 property shall be treated as section 1245 property, and

"(2) any reduction under this section shall be treated as a deduction allowed for depreciation."

(9) Paragraph (5) of section 7701(e) is amended by striking "(relating to low-income housing)" and inserting "(as in effect on December 31, 1991)".

(e) EFFECTIVE DATE.—The amendments made by this section shall apply to dispositions after January 31, 1992, in taxable years ending after such date.

PART II—SMALL BUSINESS STOCK

SEC. 2311. 50-PERCENT EXCLUSION FOR GAIN FROM CERTAIN SMALL BUSINESS STOCK.

(a) GENERAL RULE.—Part I of subchapter P of chapter 1 (relating to capital gains and losses) is amended by adding at the end thereof the following new section:

"SEC. 1202. 50-PERCENT EXCLUSION FOR GAIN FROM CERTAIN SMALL BUSINESS STOCK.

"(a) GENERAL RULE.—Gross income shall not include 50 percent of any gain from the sale or exchange of qualified small business stock held for more than 5 years.

"(b) QUALIFIED SMALL BUSINESS STOCK.—For purposes of this section—

"(1) IN GENERAL.—Except as otherwise provided in this section, the term 'qualified small business stock' means any stock in a corporation which is originally issued on or after February 1, 1992, if—

"(A) as of the date of issuance, such corporation is a qualified small business, and

"(B) except as provided in subsections (d) and (e), such stock is acquired by the taxpayer at its original issue (directly or through an underwriter)—

"(i) in exchange for money or other property (not including stock), or

"(ii) as compensation for services (other than services performed as an underwriter of such stock).

"(2) ACTIVE BUSINESS REQUIREMENT.—Stock in a corporation shall not be treated as qualified small business stock unless, during substantially all of the taxpayer's holding period for such stock, such corporation meets the active business requirements of subsection (d).

"(3) CERTAIN PURCHASES BY CORPORATION OF ITS OWN STOCK.—

"(A) IN GENERAL.—Stock issued by a corporation shall not be treated as qualified small business stock if such corporation has purchased or purchases any of its stock within the 2-year period beginning 1 year before the date of the issuance of such stock.

"(B) EXCEPTION WHERE BUSINESS PURPOSE.—Subparagraph (A) shall not apply where the issuing corporation establishes that there was a business purpose for the purchase of the stock and such purchase is not inconsistent with the purposes of this section.

"(C) MEMBERS OF AFFILIATED GROUP.—For purposes of this paragraph, the purchase by any corporation which is a member of the same affiliated group (within the meaning of section 1504) as the issuing corporation of any stock in any corporation which is a member of such group shall be treated as a purchase by the issuing corporation of its stock.

"(c) QUALIFIED SMALL BUSINESS.—For purposes of this section—

"(1) IN GENERAL.—The term 'qualified small business' means any domestic corporation if—

"(A) the aggregate capitalization of such corporation (or any predecessor thereof) at all times on or after February 1, 1992, and before the issuance did not exceed $100,000,000, and

"(B) the aggregate capitalization of such corporation immediately after the issuance (determined by taking into account amounts to be received in the issuance) does not exceed $100,000,000.

"(2) AGGREGATE CAPITALIZATION.—For purposes of paragraph (1), the term 'aggregate capitalization' means the excess of—

"(A) the amount of cash and the aggregate adjusted bases of other property held by the corporation, over

"(B) the aggregate amount of the short-term indebtedness of the corporation.

For purposes of the preceding sentence, the term 'short-term indebtedness' means any indebtedness which, when incurred, did not have a term in excess of 1 year.

"(3) LOOK-THRU IN CASE OF SUBSIDIARIES.—In determining whether a corporation meets the requirements of this subsection—

"(A) stock and debt of any subsidiary (as defined in subsection (d)(4)(C)) held by such corporation shall be disregarded, and

"(B) such corporation shall be treated as holding its ratable share of the assets of such subsidiary and as being liable for its ratable share of the indebtedness of such subsidiary.

"(d) ACTIVE BUSINESS REQUIREMENT.—For purposes of this section—

"(1) IN GENERAL.—For purposes of subsection (b)(2), the requirements of this subsection are met for any period if during such period—

"(A) the corporation is engaged in the active conduct of a trade or business,

"(B) substantially all of the assets of such corporation are used in the active conduct of a trade or business, and

"(C) such corporation is an eligible corporation.

"(2) SPECIAL RULE FOR CERTAIN ACTIVITIES.—For purposes of paragraph (1), if, in connection with any future trade or business, a corporation is engaged in—

"(A) start-up activities described in section 195(c)(1)(A),

"(B) activities resulting in the payment or incurring of expenditures which may be treated as research and experimental expenditures under section 174, or

"(C) activities with respect to in-house research expenses described in section 41(b)(4), such corporation shall be treated with respect to such activities as engaged in (and assets used in such activities shall be treated as used in) the active conduct of a trade or business. Any determination under this paragraph shall be made without regard to whether a corporation has any gross income from such activities at the time of the determination.

"(3) ELIGIBLE CORPORATION.—For purposes of this subsection—

"(A) IN GENERAL.—The term 'eligible corporation' means any domestic corporation; except that such term shall not include—

"(i) any corporation predominantly engaged in a disqualified business,

"(ii) any corporation the principal activity of which is the performance of personal services,

"(iii) a DISC,

"(iv) a corporation with respect to which an election under 936 is in effect,

"(v) any regulated investment company, real estate investment trust, or REMIC,

"(vi) any cooperative, and

"(vii) in the case of a corporate shareholder, any corporation which at any time was a subsidiary (as defined in paragraph (4)(C)) of such corporate shareholder.

"(B) DISQUALIFIED BUSINESS.—The term 'disqualified business' means—

"(i) any banking, insurance, financing, or similar business,

"(ii) any farming business (other than the business of raising or harvesting trees), and

"(iii) any business of operating a hotel, motel, or restaurant or similar business.

"(4) STOCK IN OTHER CORPORATIONS.—

"(A) LOOK-THRU IN CASE OF SUBSIDIARIES.—For purposes of this subsection, stock and debt in any subsidiary corporation shall be disregarded and the parent corporation shall be deemed to own its ratable share of the subsidiary's assets, and to conduct its ratable share of the subsidiary's activities.

"(B) PORTFOLIO STOCK OR SECURITIES.—A corporation shall be treated as failing to meet the requirements of paragraph (1) for any period during which more than 10 percent of the value of its assets (in excess of liabilities) consist of stock or securities in other corporations which are not subsidiaries of such corporation (other than assets described in paragraph (5)).

"(C) SUBSIDIARY.—For purposes of this paragraph, a corporation shall be considered a subsidiary if the parent owns more than 50 percent of the combined voting power of all classes of stock entitled to vote, or more than 50 percent in value of all outstanding stock, of such corporation.

"(5) WORKING CAPITAL.—For purposes of paragraph (1)(B), any assets which—

"(A) are held for investment, and

"(B) are to be used to finance future research and experimentation or working capital needs of the corporation,

shall be treated as used in the active conduct of a trade or business.

"(6) MAXIMUM REAL ESTATE HOLDINGS.—A corporation shall not be treated as meeting the requirements of paragraph (1) for any period during which more than 10 percent of the total value of its assets is real property which is not used in the active conduct of a trade or business. For purposes of the preceding sentence, the ownership of, dealing in, or renting of real property shall not be treated as the active conduct of a trade or business.

"(7) COMPUTER SOFTWARE ROYALTIES.—For purposes of paragraph (1), rights to computer software which produces income described in section 543(d) shall be treated as an asset used in the active conduct of a trade or business.

"(e) STOCK ACQUIRED ON CONVERSION OF PREFERRED STOCK.—If any stock is acquired through the conversion of other stock which is qualified small business stock in the hands of the taxpayer—

"(1) the stock so acquired shall be treated as qualified small business stock in the hands of the taxpayer, and

"(2) the stock so acquired shall be treated as having been held during the period during which the converted stock was held.

"(f) TREATMENT OF PASS-THRU ENTITIES.—

"(1) IN GENERAL.—Any amount included in income by reason of holding an interest in a pass-thru entity shall be treated as gain described in subsection (a) if such amount meets the requirements of paragraph (2).

"(2) REQUIREMENTS.—An amount meets the requirements of this paragraph if—

"(A) such amount is attributable to gain on the sale or exchange by the pass-thru entity of stock which is qualified small business stock in the hands of such entity and which was held by such entity for more than 5 years, and

"(B) such amount is includible in the gross income of the taxpayer by reason of the holding of an interest in such entity which was held by the taxpayer on the date on which such pass-thru entity acquired such stock and at all times thereafter before the disposition of such stock by such pass-thru entity.

"(3) LIMITATION BASED ON INTEREST ORIGINALLY HELD BY TAXPAYER.—Paragraph (1) shall not apply to any amount to the extent such amount exceeds the amount to which paragraph (1) would have applied if such amount were determined by reference to the interest the taxpayer held in the pass-thru entity on the date the qualified small business stock was acquired.

"(4) PASS-THRU ENTITY.—For purposes of this subsection, the term 'pass-thru entity' means—

"(A) any partnership,

"(B) any S corporation,

"(C) any regulated investment company, and

"(D) any common trust fund.

"(g) CERTAIN TAX-FREE AND OTHER TRANSFERS.—For purposes of this section—

"(1) IN GENERAL.—In the case of a transfer of stock to which this subsection applies, the transferee shall be treated as—

"(A) having acquired such stock in the same manner as the transferor, and

"(B) having held such stock during any continuous period immediately preceding the transfer during which it was held (or treated as held under this subsection) by the transferor.

"(2) TRANSFERS TO WHICH SUBSECTION APPLIES.—This subsection shall apply to any transfer—

"(A) by gift,

"(B) at death,

"(C) from a partnership to a partner of stock with respect to which the requirements of subsection (f) are met at the time of the transfer (without regard to the 5-year holding requirement), or

"(D) to the extent that the basis of the property in the hands of the transferee is determined by reference to the basis of the property in the hands of the transferor by reason of section 334(b), but only if requirements similar to the requirements of subsection (f) are met with respect to the stock.

"(3) CERTAIN RULES MADE APPLICABLE.—Rules similar to the rules of section 1244(d)(2) shall apply for purposes of this section.

"(4) INCORPORATIONS AND REORGANIZATIONS INVOLVING NONQUALIFIED STOCK.—

"(A) IN GENERAL.—In the case of a transaction described in section 351 or a reorganization described in section 368, if a qualified small business stock is transferred for other stock, such transfer shall be treated as a transfer to which this subsection applies solely with respect to the person receiving such other stock.

"(B) LIMITATION.—This section shall apply to the sale or exchange of stock treated as qualified small business stock by reason of subparagraph (A) only to the extent of the gain (if any) which would have been recognized at the time of the transfer described in subparagraph (A) if section 351 or 368 had not applied at such time.

"(C) SUCCESSIVE APPLICATION.—For purposes of this paragraph, stock treated as qualified small business stock under subparagraph (A) shall be so treated for subsequent transactions or reorganizations, except that the limitation of subparagraph (B) shall be applied as of the time of the first transfer to which subparagraph (A) applied.

"(D) CONTROL TEST.—Except in the case of a transaction described in section 368, this paragraph shall apply only if, immediately after the transaction, the corporation issuing the stock owns directly or indirectly stock representing control (within the meaning of section 368(c)) of the corporation whose stock was transferred.

"(h) BASIS RULES.—

"(1) STOCK EXCHANGED FOR PROPERTY.—For purposes of this section, in the case where

the taxpayer transfers property (other than money or stock) to a corporation in exchange for stock in such corporation—

"(A) such stock shall be treated as having been acquired by the taxpayer on the date of such exchange, and

"(B) the basis of such stock in the hands of the taxpayer shall in no event be less than the fair market value of the property exchanged.

"(2) BASIS OF S CORPORATION STOCK.—For purposes of this section, the adjusted basis of stock in an S corporation shall in no event be less than its adjusted basis determined without regard to any adjustment to the basis of such stock under section 1367.

"(i) REGULATIONS.—The Secretary shall prescribe such regulations as may be appropriate to carry out the purposes of this section, including regulations to prevent the avoidance of the purposes of this section through split-ups or otherwise."

(b) EXCLUSION TREATED AS PREFERENCE FOR MINIMUM TAX.—

(1) IN GENERAL.—Subsection (a) of section 57 (relating to items of tax preference) is amended by adding at the end thereof the following new paragraph:

"(8) EXCLUSION FOR GAINS ON SALE OF CERTAIN SMALL BUSINESS STOCK.—An amount equal to the amount excluded from gross income for the taxable year under section 1202."

(2) CONFORMING AMENDMENT.—Subclause (II) of section 53(d)(2)(B)(ii) is amended by striking "and (6)" and inserting "(6), and (8)".

(c) CONFORMING AMENDMENTS.—

(1)(A) Section 172(d)(2) (relating to modifications with respect to net operating loss deduction) is amended to read as follows:

"(2) CAPITAL GAINS AND LOSSES OF TAXPAYERS OTHER THAN CORPORATIONS.—In the case of a taxpayer other than a corporation—

"(A) the amount deductible on account of losses from sales or exchanges of capital assets shall not exceed the amount includable on account of gains from sales or exchanges of capital assets; and

"(B) the exclusion provided by section 1202 shall not be allowed."

(B) Subparagraph (B) of section 172(d)(4) is amended by inserting ", (2)(B)," after "paragraph (1)".

(2) Paragraph (4) of section 642(c) is amended to read as follows:

"(4) ADJUSTMENTS.—To the extent that the amount otherwise allowable as a deduction under this subsection consists of gain described in section 1202(a), proper adjustment shall be made for any exclusion allowable to the estate or trust under section 1202. In the case of a trust, the deduction allowed by this subsection shall be subject to section 681 (relating to unrelated business income)."

(3) Paragraph (3) of section 643(a) is amended by adding at the end thereof the following new sentence: "The exclusion under section 1202 shall not be taken into account."

(4) Paragraph (4) of section 691(c) is amended by striking "1201, and 1211" and inserting "1201, 1202, and 1211".

(5) The second sentence of paragraph (2) of section 871(a) is amended by inserting "such gains and losses shall be determined without regard to section 1202 and" after "except that".

(6) The table of sections for part I of subchapter P of chapter 1 is amended by adding after the item relating to section 1201 the following new item:

"Sec. 1202. 50-percent exclusion for gain from certain small business stock."

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to stock issued on or after February 1, 1992.

Subtitle E—Investment in Real Estate

PART I—FIRST-TIME HOMEBUYER CREDIT

SEC. 2401. CREDIT FOR PURCHASE OF NEW PRINCIPAL RESIDENCE BY FIRST-TIME HOMEBUYER.

(a) IN GENERAL.—Subpart A of part IV of subchapter A of chapter 1 (relating to nonrefundable personal credits), as amended by section 2121, is amended by inserting after section 23 the following new section:

"SEC. 24. PURCHASE OF NEW PRINCIPAL RESIDENCE BY FIRST-TIME HOMEBUYER.

"(a) ALLOWANCE OF CREDIT.—

"(1) IN GENERAL.—In the case of a first-time homebuyer, there shall be allowed as a credit against the tax imposed by this chapter an amount equal to 10 percent of the purchase price of an eligible principal residence purchased by the taxpayer during a portion of the taxable year which occurs within the eligibility period.

"(2) MAXIMUM CREDIT.—The credit allowed by subsection (a) to the taxpayer shall not exceed $5,000.

"(b) ELIGIBLE PRINCIPAL RESIDENCE.—For purposes of subsection (a), the term 'eligible principal residence' means a principal residence—

"(1) the original use of which begins with the taxpayer, and

"(2) which is the first principal residence purchased by the taxpayer during the eligibility period.

"(c) FIRST-TIME HOMEBUYER.—For purposes of this section—

"(1) IN GENERAL.—The term 'first-time homebuyer' means any individual unless such individual or such individual's spouse had a present ownership interest in any principal residence at any time during the 3-year period ending on the date of the purchase of the residence referred to in subsection (a).

"(2) UNMARRIED JOINT OWNERS.—An individual shall not be treated as a first-time homebuyer with respect to any residence unless all the individuals purchasing such residence with such individual are first-time homebuyers.

"(3) ALLOCATION OF LIMITS.—All individuals purchasing a residence shall be treated as 1 individual for purposes of determining the maximum credit under subsection (a), and such maximum credit shall be allocated among such individuals under regulations prescribed by the Secretary.

"(4) CERTAIN INDIVIDUALS INELIGIBLE.—The term 'first-time homebuyer' shall not include any individual if, on the date of the purchase of the residence, the period of time specified in section 1034(a) is suspended under subsection (h) or (k) of section 1034 with respect to such individual.

"(d) OTHER DEFINITIONS.—For purposes of this section—

"(1) ELIGIBILITY PERIOD.—

"(A) IN GENERAL.—The term 'eligibility period' means the period beginning after January 31, 1992, and ending before January 1, 1994.

"(B) BINDING CONTRACTS.—A residence shall be treated as purchased during the eligibility period if—

"(i) during the eligibility period, the purchaser enters into a binding contract to purchase the residence, and

"(ii) the purchaser purchases and occupies the residence before the close of the 90-day period beginning on the date the contract was entered into.

For purposes of clause (i), a contract shall not fail to be treated as binding merely because it is contingent on financing or on the condition of the residence.

"(2) PURCHASE.—The term 'purchase' means any acquisition of property, but only if—

"(A) the property is not acquired from a person whose relationship to the person acquiring it would result in the disallowance of losses under section 267 or 707(b), and

"(B) the basis of the property in the hands of the person acquiring it is not determined—

"(i) in whole or in part by reference to the adjusted basis of such property in the hands of the person from whom acquired, or

"(ii) under section 1014(a) (relating to property acquired from a decedent).

"(3) PRINCIPAL RESIDENCE.—The term 'principal residence' has the same meaning as when used in section 1034.

"(4) PURCHASE PRICE.—The term 'purchase price' means the adjusted basis of the residence on the date of its acquisition.

"(e) CARRYOVER OF UNUSED CREDIT.—

"(1) IN GENERAL.—If—

"(A) the credit allowable under subsection (a) exceeds

"(B) the limitation imposed by section 26(a) reduced by the sum of the credits allowable under sections 21, 22, and 23,

such excess shall be carried to the succeeding taxable year and shall be allowable under subsection (a) for such succeeding taxable year.

"(2) 5-YEAR LIMIT ON CARRYFORWARD.—No amount may be carried under paragraph (1) to any taxable year after the 5th taxable year after the taxable year in which the residence is purchased.

"(f) RECAPTURE OF CREDIT FOR CERTAIN DISPOSITIONS.—

"(1) IN GENERAL.—Except as provided in paragraphs (2) and (3), if the taxpayer disposes of property with respect to the purchase of which a credit was allowed under subsection (a) and such disposition occurs at any time within 36 months after the date the taxpayer acquired the property as his principal residence, then the tax imposed under this chapter for the taxable year in which the disposition occurs is increased by an amount equal to the amount allowed as a credit for the purchase of such property.

"(2) ACQUISITION OF NEW RESIDENCE.—If, in connection with a disposition described in paragraph (1) and within the applicable period prescribed in section 1034, the taxpayer purchases a new principal residence, then paragraph (1) shall not apply and the tax imposed by this chapter for the taxable year in which the new principal residence is purchased is increased to the extent the amount of the credit that could be claimed under this section on the purchase of the new residence (were such residence the first residence purchased during the eligibility period) is less than the amount of credit claimed by the taxpayer under this section.

"(3) DEATH OF OWNER; CASUALTY LOSS; INVOLUNTARY CONVERSION; ETC.—Paragraph (1) shall not apply to—

"(A) a disposition of a residence made on account of the death of any individual having a legal or equitable interest therein occurring during the 36-month period referred to in paragraph (1),

"(B) a disposition of the old residence if it is substantially or completely destroyed by a casualty described in section 165(c)(3) or compulsorily or involuntarily converted (within the meaning of section 1033(a)), or

"(C) a disposition pursuant to a settlement in a divorce or legal separation proceeding where the residence is sold or the other

spouse retains the residence as a principal residence."

(b) CLERICAL AMENDMENT.—The table of sections for subpart A of part IV of subchapter A of chapter 1, as amended by section 2121, is amended by inserting after the item relating to section 23 the following new item:

"Sec. 24. Purchase of new principal residence by first-time homebuyer."

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years ending on or after February 1, 1992.

PART II—MODIFICATION OF PASSIVE LOSS RULES

SEC. 2411. MODIFICATION OF PASSIVE LOSS RULES.

(a) GENERAL RULE.—Section 469 (relating to passive activity losses and credits limited) is amended by redesignating subsections (l) and (m) as subsections (m) and (n), respectively, and by inserting after subsection (k) the following new subsection:

"(l) SPECIAL RULES FOR REAL ESTATE ACTIVITIES.—

"(1) CERTAIN ACTIVITIES TREATED AS NOT PASSIVE.—

"(A) IN GENERAL.—If the taxpayer meets the requirements of paragraph (2) for the taxable year, all—

"(i) activities consisting of the performance of qualified real estate services, and

"(ii) rental activities with respect to qualified real property,

shall be treated as a single activity which is not a passive activity.

"(B) EXCEPTION.—

"(i) IN GENERAL.—Paragraph (1) shall not apply with respect to any activity with respect to any real property originally placed in service after March 3, 1992 (whether or not by the taxpayer).

"(ii) SUBSTANTIAL RENOVATIONS.—For purposes of clause (i), any real property substantially renovated after March 3, 1992, shall be treated as originally placed in service after such date. For purposes of this clause, property shall be treated as substantially renovated if, during any 24-month period beginning after such date, additions to basis with respect to the property exceed an amount equal to the adjusted basis of the property at the beginning of the 24-month period.

"(C) LIMITATION ON INCOME WHICH RENTAL ACTIVITY LOSSES OR CREDITS MAY OFFSET.—The aggregate losses from all activities described in subparagraph (A)(ii) for which a deduction is allowed for any taxable year shall not exceed the sum of—

"(i) the aggregate income from such activities, plus

"(ii) the net income from passive activities to which this subsection does not apply, plus

"(iii) an amount equal to 80 percent of the lesser of—

"(I) the net income from activities described in subparagraph (A)(i), or

"(II) the taxable income of the taxpayer determined without regard to any item of income, gain, loss, or deduction allocable to activities described in subparagraph (A)(ii).

Any passive activity credits from activities described in subparagraph (A)(ii) shall not be allowed to the extent such credits exceed the regular tax liability of the taxpayer allocable to the amounts described in clauses (i), (ii), and (iii).

"(D) TREATMENT OF SUSPENDED LOSSES AND CREDITS.—In the case of any unused deductions or credits from activities described in subparagraph (A)(ii)—

"(i) subsection (f) shall not apply, but

"(ii) such deductions or credits shall be treated as from such activities for purposes of applying subparagraph (C).

"(2) REQUIREMENTS.—A taxpayer meets the requirements of this paragraph for any taxable year if the taxpayer materially participates during such taxable year in activities referred to in subparagraphs (A) and (B) of paragraph (1) (as determined under subsection (h) by treating all of such activities as a single activity).

"(3) QUALIFIED REAL ESTATE SERVICES.—For purposes of this subsection, the term 'qualified real estate services' means services in the construction, substantial renovation, and management of real property or in the lease-up and sale of qualified real property.

"(4) QUALIFIED REAL PROPERTY.—For purposes of this subsection—

"(A) IN GENERAL.—The term 'qualified real property' means any real property if during the taxable year the taxpayer actively participates in rental activities with respect to such property.

"(B) ACTIVE PARTICIPATION.—For purposes of subparagraph (A), active participation shall be determined under subsection (i)(6), except that subparagraph (A) thereof shall be applied by substituting 'a de minimis portion' for 'less than 10 percent (by value)'.

"(5) SPECIAL RULE.—For purposes of this subsection—

"(A) NON-OWNER EMPLOYEES.—Qualified real estate services shall not include any services performed by an individual as an employee unless the employee owns more than a de minimis interest in the employer.

"(B) CLOSELY HELD C CORPORATIONS.—This subsection shall not apply to any interests held by a closely held C corporation."

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to taxable years beginning after December 31, 1991.

PART III—PROVISIONS RELATING TO REAL ESTATE INVESTMENTS BY PENSION FUNDS

SEC. 2421. REAL ESTATE PROPERTY ACQUIRED BY A QUALIFIED ORGANIZATION.

(a) MODIFICATIONS OF EXCEPTIONS.—Paragraph (9) of section 514(c) (relating to real property acquired by a qualified organization) is amended by adding at the end thereof the following new subparagraphs:

"(G) SPECIAL RULES FOR PURPOSES OF THE EXCEPTIONS.—Except as otherwise provided by regulations—

"(i) SMALL LEASES DISREGARDED.—For purposes of clauses (iii) and (iv) of subparagraph (B), a lease to a person described in such clause (iii) or (iv) shall be disregarded if no more than 20 percent of the leasable floor space in a building is covered by the lease and if the lease is on commercially reasonable terms.

"(ii) COMMERCIALLY REASONABLE FINANCING.—Clause (v) of subparagraph (B) shall not apply if the financing is on commercially reasonable terms. For purposes of this clause, financing shall be treated on commercially reasonable terms if the downpayment is at least 15 percent of the sales price and the interest rate is at least 150 percent of the applicable Federal rate determined under section 1274(d).

"(H) QUALIFYING SALES OUT OF FORECLOSURE BY FINANCIAL INSTITUTIONS.—

"(i) IN GENERAL.—In the case of a qualifying sale out of foreclosure by a financial institution, except as provided in regulations, clauses (i) and (ii) of subparagraph (B) shall not apply with respect to financing provided by such institution for such sale.

"(ii) QUALIFYING SALE.—For purposes of this clause, there is a qualifying sale out of foreclosure by a financial institution where—

"(I) a qualified organization acquires foreclosure property from a financial institution and the financial institution treats such property as property which is not a capital asset,

"(II) the stated principal amount of the financing provided by the financial institution does not exceed the amount of the outstanding indebtedness (including accrued but unpaid interest) of the financial institution with respect to the foreclosure property immediately before the acquisition referred to in clause (iv), and

"(III) the value (determined as of the time of the sale) of the amount pursuant to the financing that is determined by reference to the revenue, income, or profits derived from the property does not exceed 25 percent of the value of the property (determined as of such time).

"(iii) FINANCIAL INSTITUTION.—For purposes of this subparagraph, the term 'financial institution' means—

"(I) any financial institution described in section 581 or 591(a),

"(II) any other corporation which is a member of an affiliated group (as defined in section 1504(a)) which includes an institution referred to in subclause (I) but only if such other corporation is subject to supervision and examination by the same Federal or State agency as the institution referred to in subclause (I), and

"(III) any person acting as a conservator or receiver of an entity referred to in subclause (I) or (II).

"(iv) FORECLOSURE PROPERTY.—For purposes of this subparagraph, the term 'foreclosure property' means any real property acquired by the financial institution as the result of having bid on such property at foreclosure, or by operation of an agreement or process of law, after there was a default (or a default was imminent) on indebtedness which such property secured."

(b) INTERESTS IN MORTGAGES NOT TREATED AS REAL PROPERTY.—

(1) IN GENERAL.—Paragraph (9) of section 514(c) is amended—

(A) by adding the following new sentence at the end of subparagraph (A): "For purposes of this paragraph, an interest in a mortgage shall in no event be treated as real property.", and

(B) by striking the last sentence of subparagraph (B).

(2) EXCEPTION.—Paragraph (9) of section 514(c), as amended by subsection (a), is amended by adding at the end the following new subparagraph:

"(I) QUALIFIED MORTGAGE INTEREST TREATED AS REAL PROPERTY.—

"(i) IN GENERAL.—The last sentence of subparagraph (A) shall not apply to any qualified mortgage investment during the 30-month period beginning on the date such investment is acquired.

"(ii) QUALIFIED MORTGAGE INVESTMENT.—For purposes of this subparagraph, the term 'qualified mortgage investment' means any interest in 1 or more mortgages—

"(I) acquired after January 31, 1992, and before January 1, 1994, from a financial institution described in section 581 or 591(a) which is in conservatorship or receivership, or the conservator or receiver of such an institution,

"(II) with respect to which there is no acquisition indebtedness other than financing provided by the person described in subclause (I), and

"(III) the acquisition indebtedness provided by such person is less than 50 percent

of the sales price with respect to such interest."

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to acquisitions on or after February 1, 1992.

SEC. 2422. SPECIAL RULES FOR INVESTMENTS IN PARTNERSHIPS.

(a) MODIFICATION TO ANTI-ABUSE RULES.—Paragraph (9) of section 514(c) (as amended by section 2421) is amended by adding at the end thereof the following new subparagraph:

"(J) PARTNERSHIPS NOT INVOLVING TAX AVOIDANCE.—

"(i) DE MINIMIS RULE FOR CERTAIN LARGE PARTNERSHIPS.—The provisions of subparagraph (B) shall not apply to an investment in a partnership having at least 250 partners if—

"(I) interests in such partnership were offered for sale in an offering registered with the Securities and Exchange Commission,

"(II) at least 50 percent of each class of interests in such partnership is owned by individuals who are not disqualified persons, and

"(III) the principal purpose of partnership allocations is not tax avoidance.

The Secretary may disregard inadvertent failures to meet the requirements of subclause (II).

"(ii) DISQUALIFIED PERSONS.—For purposes of this subparagraph, the term 'disqualified person' means any person described in clause (iii) or (iv) of subparagraph (B) and any person who is not a United States person."

(b) REPEAL OF SPECIAL TREATMENT OF PUBLICLY TRADED PARTNERSHIPS.—Subsection (c) of section 512 is amended—

(1) by striking paragraph (2),

(2) by redesignating paragraph (3) as paragraph (2), and

(3) by striking "paragraph (1) or (2)" in paragraph (2) (as so redesignated) and inserting "paragraph (1)".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to partnership interests acquired on or after February 1, 1992.

SEC. 2423. TITLE-HOLDING COMPANIES PERMITTED TO RECEIVE SMALL AMOUNTS OF UNRELATED BUSINESS TAXABLE INCOME.

(a) GENERAL RULE.—Paragraph (25) of section 501(c) is amended by adding at the end thereof the following new subparagraph:

"(G)(i) An organization shall not be treated as failing to be described in this paragraph merely by reason of the receipt of any income which is incidentally derived from the holding of real property.

"(ii) Clause (i) shall not apply if the amount of gross income described in such clause exceeds 10 percent of the organization's gross income for the taxable year unless the organization establishes to the satisfaction of the Secretary that the receipt of gross income described in clause (i) in excess of such limitation was inadvertent and reasonable steps are being taken to correct the circumstances giving rise to such income."

(b) CONFORMING AMENDMENT.—Paragraph (2) of section 501(c) is amended by adding at the end thereof the following new sentence: "Rules similar to the rules of subparagraph (G) of paragraph (25) shall apply for purposes of this paragraph."

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 1991.

SEC. 2424. EXCLUSION FROM UNRELATED BUSINESS TAX OF GAINS FROM CERTAIN PROPERTY.

(a) GENERAL RULE.—Subsection (b) of section 512 (relating to modifications) is amended by adding at the end thereof the following new paragraph:

"(16) Notwithstanding paragraph (5)(B), there shall be excluded all gains or losses from the sale, exchange, or other disposition of any real property if—

"(A) such property was acquired by the organization from—

"(i) a financial institution described in section 581 or 591(a) which is in conservatorship or receivership, or

"(ii) the conservator or receiver of such an institution,

"(B) such property is designated by the organization within the 6-month period beginning on the date of its acquisition as property held for sale,

"(C) such sale, exchange, or disposition occurs before the later of—

"(i) the date which is 30 months after the date of the acquisition of such property, or

"(ii) the date specified by the Secretary in order to assure an orderly disposition of property held by persons described in subparagraph (A), and

"(D) while such property was held by the organization, such property was not substantially improved or renovated and there were no substantial development activities with respect to such property.

For purposes of this paragraph, an interest in a mortgage shall be treated as real property."

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to property acquired on or after February 1, 1992.

SEC. 2425. EXCLUSION FROM UNRELATED BUSINESS TAX OF CERTAIN FEES AND OPTION PREMIUMS.

(a) LOAN COMMITMENT FEES.—Paragraph (1) of section 512(b) (relating to modifications) is amended by inserting "amounts received or accrued as consideration for entering into agreements to make loans," before "and annuities".

(b) OPTION PREMIUMS.—The second sentence of section 512(b)(5) is amended by inserting "or real property" before the period.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to amounts received on or after February 1, 1992.

SEC. 2426. EXCLUSION FROM UNRELATED BUSINESS TAX OF CERTAIN HOTEL RENTAL INCOME.

(a) IN GENERAL.—Section 512(b)(3) (relating to rents) is amended by adding at the end the following new subparagraph:

"(D)(i) Notwithstanding subparagraph (B), there shall be excluded under subparagraph (A) all rents from any real property described in clause (ii).

"(ii) Property is described in this clause if it is a hotel or motel with respect to which the predominant portion of accommodations is used by transients and—

"(I) which is acquired on or after February 1, 1992, from a financial institution described in section 581 or 591(a) which is in conservatorship or receivership, or from the conservator or receiver of such an institution, and

"(II) which is designated by the organization within the 6-month period beginning on the date of its acquisition as property held for sale.

"(iii) Clause (i) shall not apply to any real property unless, during the 30-month period beginning on the date of acquisition—

"(I) the organization sells such property, or

"(II) the organization enters into a contract with an independent contractor to provide all related services in connection with the property, and such contract does not permit the organization to derive or receive any income from the independent contractor (within the meaning of section 856(d)(2)(C)).

"(iv) If clause (iii)(II) applies to any property, clause (i) shall apply to rents from such property only during the continuous period beginning with the date the property is acquired and ending on the earlier of—

"(I) the first date after the 30-month period described in clause (iii) on which a contract described in clause (iii)(II) is not in effect, or

"(II) the date on which the property is sold."

(b) EFFECTIVE DATE.—The amendment made by this section applies to property acquired after January 31, 1992.

PART IV—OTHER PROVISIONS

SEC. 2431. LOW-INCOME HOUSING CREDIT.

(a) EXTENSION.—

(1) IN GENERAL.—

(A) Paragraph (1) of section 42(o) (relating to termination of low-income housing credit) is amended—

(i) by inserting ", for any calendar year after 1993" after "paragraph (2)",

(ii) by striking "to any amount allocated after June 30, 1992" in subparagraph (A), and

(iii) by striking "June 30, 1992" in subparagraph (B) and inserting "1993".

(B) Paragraph (2) of section 42(o) is amended—

(i) by striking "July 1, 1992" each place it appears and inserting "1994",

(ii) by striking "June 30, 1992" in subparagraph (B) and inserting "December 31, 1993",

(iii) by striking "June 30, 1994" in subparagraph (B) and inserting "December 31, 1995", and

(iv) by striking "July 1, 1994" in subparagraph (C) and inserting "January 1, 1996".

(2) EFFECTIVE DATE.—The amendments made by paragraph (1) shall apply to periods ending after June 30, 1992.

(b) MODIFICATIONS.—

(1) CARRYFORWARD RULES.—

(A) IN GENERAL.—Clause (ii) of section 42(h)(3)(D) (relating to unused housing credit carryovers allocated among certain States) is amended by striking "the excess" and all that follows and inserting "the excess (if any) of the unused State housing credit ceiling for the year preceding such year over the aggregate housing credit dollar amount allocated for such year."

(B) CONFORMING AMENDMENT.—The second sentence of section 42(h)(3)(C) (relating to State housing credit ceiling) is amended by striking "clauses (i) and (iii)" and inserting "clauses (i) through (iv)".

(2) 10-YEAR ANTI-CHURNING RULE WAIVER EXPANDED.—Clause (ii) of section 42(d)(6)(B) (defining federally assisted building) is amended by inserting ", 221(d)(4)," after "221(d)(3)".

(3) LIMITATION ON ELIGIBLE BASIS OF UNITS.—Paragraph (5) of section 42(d) (relating to special rules for determining eligible basis) is amended by adding at the end thereof the following new subparagraph:

"(D) MAXIMUM LIMIT PER UNIT.—

"(i) IN GENERAL.—Notwithstanding any other provision of this section, and before the application of subparagraph (C), the eligible basis of each unit of any building shall not exceed $124,875.

"(ii) INFLATION ADJUSTMENT.—For any calendar year beginning after 1992, the dollar amount referred to in clause (i) shall be increased by an amount equal to—

"(I) such dollar amount, multiplied by

"(II) the cost-of-living adjustment determined under section 1(f)(3), for such calendar year, by substituting 'calendar year 1991' for 'calendar year 1989' in subparagraph (B) thereof.

If any dollar amount after being increased under paragraph (1) is not a multiple of $10, such dollar amount shall be rounded to the

nearest multiple of $10 (or, if such dollar amount is a multiple of $5, such dollar amount shall be increased to the next higher multiple of $10)."

(4) UNITS WITH CERTAIN FULL-TIME STUDENTS NOT DISQUALIFIED.—Subparagraph (D) of section 42(i) (relating to definitions and special rules) is amended to read as follows:

"(D) CERTAIN STUDENTS NOT TO DISQUALIFY UNIT.—A unit shall not fail to be treated as a low-income unit merely because it is occupied—

"(i) by an individual who is—

"(I) a student and receiving assistance under title IV of the Social Security Act, or

"(II) enrolled in a job training program receiving assistance under the Job Training Partnership Act or under other similar Federal, State, or local laws, or

"(ii) entirely by full-time students if such students are—

"(I) single parents and their children and such parents and children are not dependents (as defined in section 152) of another individual, or

"(II) married and file a joint return."

(5) TREASURY WAIVERS OF CERTAIN DE MINIMIS ERRORS AND RECERTIFICATIONS.—Subsection (g) of section 42 (relating to qualified low-income housing projects) is amended by adding at the end thereof the following new paragraph:

"(8) WAIVER OF CERTAIN DE MINIMIS ERRORS AND RECERTIFICATIONS.—On application by the taxpayer, the Secretary may waive—

"(A) any recapture under subsection (j) in the case of any de minimis error in complying with paragraph (1), or

"(B) any annual recertification of tenant income for purposes of this subsection, if the entire building is occupied by low-income tenants."

(6) BASIS OF COMMUNITY SERVICE AREAS INCLUDED IN ADJUSTED BASIS.—Paragraph (4) of section 42(d) (relating to special rules relating to determination of adjusted basis) is amended—

(A) by striking "subparagraph (B)" in subparagraph (A) and inserting "subparagraphs (B) and (C)",

(B) by redesignating subparagraph (C) as subparagraph (D), and

(C) by inserting after subparagraph (B) the following new subparagraph:

"(C) BASIS OF PROPERTY IN COMMUNITY SERVICE AREAS INCLUDED.—The adjusted basis of any building located in a qualified census tract shall be determined by taking into account the adjusted basis of property (of a character subject to the allowance for depreciation) used in functionally related and subordinate community activity facilities if—

"(i) the size of the facilities is commensurate with tenant needs,

"(ii) the use of such facilities is predominantly by tenants and employees of the building owner, and

"(iii) not more than 20 percent of the building's eligible basis is attributable to the aggregate basis of such facilities."

(7) EFFECTIVE DATES.—

(A) IN GENERAL.—Except as provided in subparagraph (B), the amendments made by this subsection shall apply to—

(i) determinations under section 42 of the Internal Revenue Code of 1986 with respect to housing credit dollar amounts allocated from State housing credit ceilings after June 30, 1992, or

(ii) buildings placed in service after June 30, 1992, to the extent paragraph (1) of section 42(h) of such Code does not apply to any building by reason of paragraph (4) thereof, but only with respect to bonds issued after such date.

(B) WAIVER AUTHORITY.—The amendments made by paragraphs (2) and (5) shall take effect on the date of the enactment of this Act.

SEC. 2432. QUALIFIED MORTGAGE BONDS.

(a) IN GENERAL.—Subparagraph (B) of section 143(a)(1) (defining qualified mortgage bond) is amended by striking "June 30, 1992" and inserting "December 31, 1993".

(b) MORTGAGE CREDIT CERTIFICATES.—Subsection (h) of section 25 (relating to interest on certain home mortgages) is amended by striking "June 30, 1992" and inserting "December 31, 1993".

(c) EFFECTIVE DATES.—

(1) BONDS.—The amendment made by subsection (a) shall apply to bonds issued after June 30, 1992.

(2) CERTIFICATES.—The amendment made by subsection (b) shall apply to elections for periods after June 30, 1992.

Subtitle F—Other Incentives

PART I—SPECIAL DEPRECIATION ALLOWANCE

SEC. 2501. SPECIAL DEPRECIATION ALLOWANCE FOR CERTAIN EQUIPMENT ACQUIRED IN 1992.

(a) IN GENERAL.—Section 168 (relating to accelerated cost recovery system) is amended by adding at the end the following new subsection:

"(j) SPECIAL ALLOWANCE FOR CERTAIN EQUIPMENT ACQUIRED IN 1992.—

"(1) ADDITIONAL ALLOWANCE.—In the case of any qualified equipment—

"(A) the depreciation deduction provided by section 167(a) for the taxable year in which such equipment is placed in service shall include an allowance equal to 10 percent of the adjusted basis of the qualified equipment, and

"(B) the adjusted basis of the qualified equipment shall be reduced by the amount of such deduction before computing the amount otherwise allowable as a depreciation deduction under this chapter for such taxable year and any subsequent taxable year.

"(2) QUALIFIED EQUIPMENT.—For purposes of this subsection—

"(A) IN GENERAL.—The term 'qualified equipment' means property to which this section applies—

"(i) which is section 1245 property (within the meaning of section 1245(a)(3)),

"(ii) the original use of which commences with the taxpayer on or after February 1, 1992,

"(iii) which is—

"(I) acquired by the taxpayer on or after February 1, 1992, and before January 1, 1993, but only if no written binding contract for the acquisition was in effect before February 1, 1992, or

"(II) acquired by the taxpayer pursuant to a written binding contract which was entered into on or after February 1, 1992, and before January 1, 1993, and

"(iv) which is placed in service by the taxpayer before July 1, 1993.

"(B) EXCEPTIONS.—

"(i) ALTERNATIVE DEPRECIATION PROPERTY.—The term 'qualified equipment' shall not include any property to which the alternative depreciation system under subsection (g) applies, determined—

"(I) without regard to paragraph (7) of subsection (g) (relating to election to have system apply), and

"(II) after application of section 280F(b) (relating to listed property with limited business use).

"(ii) ELECTION OUT.—If a taxpayer makes an election under this clause with respect to any class of property for any taxable year, this subsection shall not apply to all property in such class placed in service during such taxable year.

"(C) SPECIAL RULES RELATING TO ORIGINAL USE.—

"(i) SELF-CONSTRUCTED PROPERTY.—In the case of a taxpayer manufacturing, constructing, or producing property for the taxpayer's own use, the requirements of clause (iii) of subparagraph (A) shall be treated as met if the taxpayer begins manufacturing, constructing, or producing the property on and after February 1, 1992, and before January 1, 1993.

"(ii) SALE-LEASEBACKS.—For purposes of subparagraph (A)(ii), if property—

"(I) is originally placed in service on or after February 1, 1992, by a person, and

"(II) is sold and leased back by such person within 3 months after the date such property was originally placed in service,

such property shall be treated as originally placed in service not earlier than the date on which such property is used under the leaseback referred to in subclause (II).

"(D) COORDINATION WITH SECTION 280F.—For purposes of section 280F—

"(i) AUTOMOBILES.—In the case of a passenger automobile (as defined in section 280F(d)(5)) which is qualified equipment, the Secretary shall increase the limitation under section 280F(a)(1)(A)(i), and decrease each other limitation under subparagraphs (A) and (B) of section 280F(a)(1), to appropriately reflect the amount of the deduction allowable under paragraph (1).

"(ii) LISTED PROPERTY.—The deduction allowable under paragraph (1) shall be taken into account in computing any recapture amount under section 280F(b)(2)."

(b) ALLOWANCE AGAINST ALTERNATIVE MINIMUM TAX.—

(1) IN GENERAL.—Section 56(a)(1)(A) (relating to depreciation adjustment for alternative minimum tax) is amended by adding at the end the following new clause:

"(iii) ADDITIONAL ALLOWANCE FOR EQUIPMENT ACQUIRED IN 1992.—The deduction under section 168(j) shall be allowed."

(2) CONFORMING AMENDMENT.—Clause (i) of section 56(a)(1)(A) is amended by inserting "or (iii)" after "(ii)".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to property placed in service on or after February 1, 1992, in taxable years ending on or after such date.

PART II—MODIFICATIONS TO MINIMUM TAX

SEC. 2502. TEMPORARY REPEAL OF PREFERENCE FOR CONTRIBUTIONS OF APPRECIATED PROPERTY.

(a) TEMPORARY REPEAL.—

(1) IN GENERAL.—Paragraph (6) of section 57(a) is amended by adding at the end the following new subparagraph:

"(C) TERMINATION.—This paragraph shall not apply to any contribution during 1992 or 1993."

(2) CONFORMING AMENDMENT.—Subparagraph (B) of section 57(a)(6) is amended by striking the last sentence.

(3) EFFECTIVE DATE.—The amendments made by this subsection shall apply to contributions after December 31, 1991.

(b) ADVANCE DETERMINATION OF VALUE OF CHARITABLE GIFTS.—

(1) IN GENERAL.—The Secretary of the Treasury or his delegate shall develop and implement a procedure under which the Secretary's position as to the value of tangible personal property would be determined for Federal income tax purposes prior to the transfer of such property to a charitable organization.

(2) REPORT.—Not later than December 31, 1992, the Secretary of the Treasury shall re-

port to the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives with respect to the development of the procedure under paragraph (1) and the timetable for its implementation.

(c) STUDY OF CORPORATE SPONSORSHIP PAYMENTS.—

(1) IN GENERAL.—The Secretary of the Treasury or his delegate shall conduct a study of the tax treatment of corporate sponsorship payments received by tax-exempt organizations in connection with athletic and other events, including the ramifications of Announcement 92-15, 1992—5 I.R.B. 51.

(2) REPORT.—Not later than 1 year after the date of the enactment of this Act, the Secretary shall report to the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives the results of the study under paragraph (1).

SEC. 2503. MINIMUM TAX TREATMENT OF CERTAIN ENERGY PREFERENCES.

(a) MODIFICATION OF ADJUSTED CURRENT EARNINGS.—Clause (i) of section 56(g)(4)(D) is amended by striking "The" and inserting "In the case of an integrated oil company (as defined in section 291(b)(4)), the".

(b) MODIFICATIONS OF ENERGY PREFERENCE ADJUSTMENT.—

(1) IN GENERAL.—Subparagraph (A) of section 56(h)(3) is amended to read as follows:

"(A) 50 percent of the intangible drilling cost preference, plus".

(2) CONFORMING AMENDMENTS.—

(A) Paragraph (1) of section 56(h) is amended by inserting "(as defined in section 291(b)(4))" after "company".

(B) Paragraph (4) of section 56(h) is amended to read as follows:

"(4) INTANGIBLE DRILLING COST PREFERENCE.—For purposes of this subsection, the term 'intangible drilling cost preference' means the amount by which alternative minimum taxable income would be reduced if it were computed without regard to section 57(a)(2)."

(C) Section 56(h) is amended by striking paragraph (6) and by redesignating paragraphs (7) and (8) as paragraphs (6) and (7).

(c) NET INCOME LIMITATION.—Subparagraph (A) of section 57(a)(2) is amended by adding at the end the following new sentence: "In the case of a taxpayer other than an integrated oil company (as defined in section 291(b)(4)), the preceding sentence shall be applied by substituting '70 percent' for '65 percent'".

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 1991.

SEC. 2504. ELIMINATION OF ACE DEPRECIATION ADJUSTMENT.

(a) IN GENERAL.—Clause (i) of section 56(g)(4)(A) (relating to depreciation adjustments for computing adjusted current earnings) is amended by adding at the end the following new sentence: "The preceding sentence shall not apply to property placed in service on or after February 1, 1992, and the depreciation deduction with respect to such property shall be determined under the rules of subsection (a)(1)(A)."

(b) EFFECTIVE DATES.—

(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section shall apply to property placed in service on or after February 1, 1992, in taxable years ending after such date.

(2) COORDINATION WITH TRANSITIONAL RULES.—The amendments made by this section shall not apply to any property to which paragraph (1) of section 56(a) of the Internal Revenue Code of 1986 does not apply by reason of subparagraph (C)(i) of such paragraph (1).

PART III—EXTENSION OF OTHER EXPIRING TAX PROVISIONS

SEC. 2505. EXTENSION OF RESEARCH CREDIT.

(a) IN GENERAL.—Subsection (h) of section 41 (relating to credit for increasing research activities) is amended—

(1) by striking "June 30, 1992" each place it appears and inserting "December 31, 1993"; and

(2) by striking "July 1, 1992" each place it appears and inserting "January 1, 1994".

(b) CONFORMING AMENDMENT.—Subparagraph (D) of section 28(b)(1) is amended by striking "June 30, 1992" and inserting "December 31, 1993".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to amounts paid or incurred after June 30, 1992.

SEC. 2506. EXTENSION OF SMALL ISSUE BONDS.

(a) IN GENERAL.—Subparagraph (B) of section 144(a)(12) (relating to termination dates) is amended by striking "June 30, 1992" and inserting "December 31, 1993".

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to bonds issued after June 30, 1992.

SEC. 2507. EXTENSION OF ENERGY INVESTMENT CREDIT FOR SOLAR AND GEOTHERMAL PROPERTY.

(a) IN GENERAL.—Subparagraph (B) of section 48(a)(2) (relating to energy percentage) is amended by striking "June 30, 1992" and inserting "December 31, 1993".

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to property placed in service after June 30, 1992.

SEC. 2508. EXCISE TAX ON CERTAIN VACCINES.

(a) TAX.—Paragraphs (2) and (3) of section 4131(c) (relating to tax on certain vaccines) are each amended by striking "1992" each place it appears and inserting "1994".

(b) TRUST FUND.—Paragraph (1) of section 9510(c) (relating to expenditures from Vaccine Injury Compensation Trust Fund) is amended by striking "1992" and inserting "1994".

(c) STUDY.—The Secretary of the Treasury, in consultation with the Secretary of Health and Human Services, shall conduct a study of—

(1) the estimated amount that will be paid from the Vaccine Injury Compensation Trust Fund with respect to vaccines administered after September 30, 1988, and before October 1, 1994,

(2) the rates of vaccine-related injury or death with respect to the various types of such vaccines,

(3) new vaccines and immunization practices being developed or used for which amounts may be paid from such Trust Fund, and

(4) whether additional vaccines should be included in the vaccine injury compensation program.

The report of such study shall be submitted not later than January 1, 1994, to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate.

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

SEC. 2509. CERTAIN TRANSFERS TO RAILROAD RETIREMENT ACCOUNT.

Subsection (c)(1)(A) of section 224 of the Railroad Retirement Solvency Act of 1983 (relating to section 72(r) revenue increase transferred to certain railroad accounts) is amended by striking "with respect to benefits received before October 1, 1992".

SEC. 2510. EXTENSION OF TAX CREDIT FOR ORPHAN DRUG CLINICAL TESTING EXPENSES.

(a) IN GENERAL.—Subsection (e) of section 28 (relating to clinical testing expenses for certain drugs for rare diseases or conditions) is amended by striking "June 30, 1992" and inserting "December 31, 1993".

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to taxable years ending after June 30, 1992.

PART IV—REPEAL OF CERTAIN LUXURY EXCISE TAXES; TAX ON DIESEL FUEL USED IN NONCOMMERCIAL MOTORBOATS

SEC. 2511. REPEAL OF LUXURY EXCISE TAXES OTHER THAN ON PASSENGER VEHICLES.

(a) IN GENERAL.—Subchapter A of chapter 31 (relating to retail excise taxes) is amended to read as follows:

"Subchapter A—Luxury Passenger Automobiles

"Sec. 4001. Imposition of tax.

"Sec. 4002. 1st retail sale; uses, etc. treated as sales; determination of price.

"Sec. 4003. Special rules.

"SEC. 4001. IMPOSITION OF TAX.

"(a) IMPOSITION OF TAX.—There is hereby imposed on the 1st retail sale of any passenger vehicle a tax equal to 10 percent of the price for which so sold to the extent such price exceeds $30,000.

"(b) PASSENGER VEHICLE.—

"(1) IN GENERAL.—For purposes of this subchapter, the term 'passenger vehicle' means any 4-wheeled vehicle—

"(A) which is manufactured primarily for use on public streets, roads, and highways, and

"(B) which is rated at 6,000 pounds unloaded gross vehicle weight or less.

"(2) SPECIAL RULES.—

"(A) TRUCKS AND VANS.—In the case of a truck or van, paragraph (1)(B) shall be applied by substituting 'gross vehicle weight' for 'unloaded gross vehicle weight'.

"(B) LIMOUSINES.—In the case of a limousine, paragraph (1) shall be applied without regard to subparagraph (B) thereof.

"(c) EXCEPTIONS FOR TAXICABS, ETC.—The tax imposed by this section shall not apply to the sale of any passenger vehicle for use by the purchaser exclusively in the active conduct of a trade or business of transporting persons or property for compensation or hire.

"(d) EXEMPTION FOR LAW ENFORCEMENT USES, ETC.—No tax shall be imposed by this section on the sale of any passenger vehicle—

"(1) to the Federal Government, or a State or local government, for use exclusively in police, firefighting, search and rescue, or other law enforcement or public safety activities, or in public works activities, or

"(2) to any person for use exclusively in providing emergency medical services.

"(e) INFLATION ADJUSTMENT.—

"(1) IN GENERAL.—In the case of any calendar year after 1991, the $30,000 amount in subsection (a) and section 4003(a) shall be increased by an amount equal to—

"(A) $30,000, multiplied by

"(B) the cost-of-living adjustment under section 1(f)(3) for such calendar year, determined by substituting 'calendar year 1990' for 'calendar year 1991' in subparagraph (B) thereof.

"(2) ROUNDING.—If any amount as adjusted under paragraph (1) is not a multiple of $100,

such amount shall be rounded to the nearest multiple of $100 (or, if such amount is a multiple of $50 and not of $100, such amount shall be rounded to the next highest multiple of $100).

"(f) TERMINATION.—The tax imposed by this section shall not apply to any sale or use after December 31, 1999.

"SEC. 4002. 1ST RETAIL SALE; USES, ETC. TREATED AS SALES; DETERMINATION OF PRICE.

"(a) 1ST RETAIL SALE.—For purposes of this subchapter, the term '1st retail sale' means the 1st sale, for a purpose other than resale, after manufacture, production, or importation.

"(b) USE TREATED AS SALE.—

"(1) IN GENERAL.—If any person uses a passenger vehicle (including any use after importation) before the 1st retail sale of such vehicle,then such person shall be liable for tax under this subchapter in the same manner as if such vehicle were sold at retail by him.

"(2) EXEMPTION FOR FURTHER MANUFACTURE.—Paragraph (1) shall not apply to use of a vehicle as material in the manufacture or production of, or as a component part of, another vehicle taxable under this subchapter to be manufactured or produced by him.

"(3) EXEMPTION FOR DEMONSTRATION USE.—Paragraph (1) shall not apply to any use of a passenger vehicle as a demonstrator for a potential customer while the potential customer is in the vehicle.

"(4) EXCEPTION FOR USE AFTER IMPORTATION OF CERTAIN VEHICLES.—Paragraph (1) shall not apply to the use of a vehicle after importation if the user or importer establishes to the satisfaction of the Secretary that the 1st use of the vehicle occurred before January 1, 1991, outside the United States.

"(5) COMPUTATION OF TAX.—In the case of any person made liable for tax by paragraph (1), the tax shall be computed on the price at which similar vehicles are sold at retail in the ordinary course of trade, as determined by the Secretary.

"(c) LEASES CONSIDERED AS SALES.—For purposes of this subchapter—

"(1) IN GENERAL.—Except as otherwise provided in this subsection, the lease of a vehicle (including any renewal or any extension of a lease or any subsequent lease of such vehicle) by any person shall be considered a sale of such vehicle at retail.

"(2) SPECIAL RULES FOR LONG-TERM LEASES.—

"(A) TAX NOT IMPOSED ON SALE FOR LEASING IN A QUALIFIED LEASE.—The sale of a passenger vehicle to a person engaged in a passenger vehicle leasing or rental trade or business for leasing by such person in a long-term lease shall not be treated as the 1st retail sale of such vehicle.

"(B) LONG-TERM LEASE.—For purposes of subparagraph (A), the term 'long-term lease' means any long-term lease (as defined in section 4052).

"(C) SPECIAL RULES.—In the case of a long-term lease of a vehicle which is treated as the 1st retail sale of such vehicle—

"(i) DETERMINATION OF PRICE.—The tax under this subchapter shall be computed on the lowest price for which the vehicle is sold by retailers in the ordinary course of trade.

"(ii) PAYMENT OF TAX.—Rules similar to the rules of section 4217(e)(2) shall apply.

"(iii) NO TAX WHERE EXEMPT USE BY LESSEE.—No tax shall be imposed on any lease payment under a long-term lease if the lessee's use of the vehicle under such lease is an exempt use (as defined in section 4003(b)) of such vehicle.

"(d) DETERMINATION OF PRICE.—

"(1) IN GENERAL.—In determining price for purposes of this subchapter—

"(A) there shall be included any charge incident to placing the article in condition ready for use,

"(B) there shall be excluded—

"(i) the amount of the tax imposed by this subchapter,

"(ii) if stated as a separate charge, the amount of any retail sales tax imposed by any State or political subdivision thereof or the District of Columbia, whether the liability for such tax is imposed on the vendor or vendee, and

"(iii) the value of any component of such article if—

"(I) such component is furnished by the 1st user of such article, and

"(II) such component has been used before such furnishing, and

"(C) the price shall be determined without regard to any trade-in.

"(2) OTHER RULES.—Rules similar to the rules of paragraphs (2) and (4) of section 4052(b) shall apply for purposes of this subchapter.

"SEC. 4003. SPECIAL RULES.

"(a) SEPARATE PURCHASE OF VEHICLE AND PARTS AND ACCESSORIES THEREFOR.—Under regulations prescribed by the Secretary—

"(1) IN GENERAL.—Except as provided in paragraph (2), if—

"(A) the owner, lessee, or operator of any passenger vehicle installs (or causes to be installed) any part or accessory on such vehicle, and

"(B) such installation is not later than the date 6 months after the date the vehicle was 1st placed in service,

then there is hereby imposed on such installation a tax equal to 10 percent of the price of such part or accessory and its installation.

"(2) LIMITATION.—The tax imposed by paragraph (1) on the installation of any part or accessory shall not exceed 10 percent of the excess (if any) of—

"(A) the sum of—

"(i) the price of such part or accessory and its installation,

"(ii) the aggregate price of the parts and accessories (and their installation) installed before such part or accessory, plus

"(iii) the price for which the passenger vehicle was sold, over

"(B) $30,000.

"(3) EXCEPTIONS.—Paragraph (1) shall not apply if—

"(A) the part or accessory installed is a replacement part or accessory,

"(B) the part or accessory is installed to enable or assist an individual with a disability to operate the vehicle, or to enter or exit the vehicle, by compensating for the effect of such disability, or

"(C) the aggregate price of the parts and accessories (and their installation) described in paragraph (1) with respect to the vehicle does not exceed $200 (or such other amount or amounts as the Secretary may by regulation prescribe).

"(4) INSTALLERS SECONDARILY LIABLE FOR TAX.—The owners of the trade or business installing the parts or accessories shall be secondarily liable for the tax imposed by this subsection.

"(b) IMPOSITION OF TAX ON SALES, ETC., WITHIN 2 YEARS OF VEHICLES PURCHASED TAX-FREE.—

"(1) IN GENERAL.—If—

"(A) no tax was imposed under this subchapter on the 1st retail sale of any passenger vehicle by reason of its exempt use, and

"(B) within 2 years after the date of such 1st retail sale, such vehicle is resold by the purchaser or such purchaser makes a substantial nonexempt use of such vehicle,

then such sale or use of such vehicle by such purchaser shall be treated as the 1st retail sale of such vehicle for a price equal to its fair market value at the time of such sale or use.

"(2) EXEMPT USE.—For purposes of this subsection, the term 'exempt use' means any use of a vehicle if the 1st retail sale of such vehicle is not taxable under this subchapter by reason of such use.

"(c) PARTS AND ACCESSORIES SOLD WITH TAXABLE ARTICLE.—Parts and accessories sold on, in connection with, or with the sale of any passenger vehicle shall be treated as part of the vehicle.

"(d) PARTIAL PAYMENTS, ETC.—In the case of a contract, sale, or arrangement described in paragraph (2), (3), or (4) of section 4216(c), rules similar to the rules of section 4217(e)(2) shall apply for purposes of this subchapter."

(b) TECHNICAL AMENDMENTS.—

(1) Subsection (c) of section 4221 is amended by striking "4002(b), 4003(c), 4004(a)" and inserting "4001(d)".

(5) Subsection (d) of section 4222 is amended by striking "4002(b), 4003(c), 4004(a)" and inserting "4001(d)".

(3) The table of subchapters for chapter 31 is amended by striking the item relating to subchapter A and inserting the following:

"Subchapter A. Luxury passenger vehicles."

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect on February 1, 1992.

SEC. 2512. TAX ON DIESEL FUEL USED IN NONCOMMERCIAL MOTORBOATS.

(a) GENERAL RULE.—

(1) Paragraph (2) of section 4092(a) (defining diesel fuel) is amended by striking "or a diesel-powered train" and inserting ", a diesel-powered train, or a diesel-powered motorboat".

(2) Paragraph (1) of section 4041(a) is amended—

(A) by striking "diesel-powered highway vehicle" each place it appears and inserting "diesel-powered highway vehicle or diesel-powered motorboat", and

(B) by striking "such vehicle" and inserting "such vehicle or motorboat".

(3) Subparagraph (B) of section 4092(b)(1) is amended by striking "commercial and noncommercial vessels" each place it appears and inserting "vessels for use in an off-highway business use (as defined in section 6421(e)(2)(B))".

(b) EXEMPTION FOR USE IN FISHERIES OR COMMERCIAL NAVIGATION.—Subparagraph (B) of section 6421(e)(2) is amended to read as follows:

"(B) USES IN MOTORBOATS.—The term 'off-highway business use' does not include any use in a motorboat; except that such term shall include any use in—

"(i) a vessel employed in the fisheries or in the whaling business, and

"(ii) a motorboat in the active conduct of—

"(I) a trade or business of commercial fishing or transporting persons or property for compensation or hire, or

"(II) any other trade or business unless the motorboat is used predominantly in any activity which is of a type generally considered to constitute entertainment, amusement or recreation."

(c) RETENTION OF TAXES IN GENERAL FUND.—

(1) TAXES IMPOSED AT HIGHWAY TRUST FUND FINANCING RATE.—Paragraph (4) of section

9503(b) (relating to transfers to Highway Trust Fund) is amended—

(A) by striking "and" at the end of subparagraph (A),

(B) by striking the period at the end of subparagraph (B) and inserting ", and", and

(C) by adding at the end thereof the following new subparagraph:

"(C) there shall not be taken into account the taxes imposed by sections 4041 and 4091 on diesel fuel sold for use or used as fuel in a diesel-powered motorboat."

(2) TAXES IMPOSED AT LEAKING UNDERGROUND STORAGE TANK TRUST FUND FINANCING RATE.—Subsection (b) of section 9508 (relating to transfers to Leaking Underground Storage Tank Trust Fund) is amended by adding at the end thereof the following new sentence: "For purposes of this subsection, there shall not be taken into account the taxes imposed by sections 4041 and 4091 on diesel fuel sold for use or used as fuel in a diesel-powered motorboat."

(d) EFFECTIVE DATE.—The amendments made by this section shall take effect on July 1, 1992.

PART V—OTHER PROVISIONS

SEC. 2513. TREATMENT OF EMPLOYER-PROVIDED TRANSPORTATION BENEFITS.

(a) EXCLUSION.—Subsection (a) of section 132 (relating to exclusion of certain fringe benefits) is amended by striking "or" at the end of paragraph (3), by striking the period at the end of paragraph (4) and inserting ", or", and by adding at the end thereof the following new paragraph:

"(5) qualified transportation fringe."

(b) QUALIFIED TRANSPORTATION FRINGE.—Section 132 is amended by redesignating subsections (f), (g), (h), (i), (j), and (k) as subsections (g), (h), (i), (j), (k), and (l), respectively, and by inserting after subsection (e) the following new subsection:

"(f) QUALIFIED TRANSPORTATION FRINGE.—

"(1) IN GENERAL.—For purposes of this section, the term 'qualified transportation fringe' means any of the following provided by an employer to an employee:

"(A) Transportation in a commuter highway vehicle if such transportation is in connection with travel between the employee's residence and place of employment.

"(B) Any transit pass.

"(C) Qualified parking.

"(2) LIMITATION ON EXCLUSION.—The amount of the fringe benefits which are provided by an employer to any employee and which may be excluded from gross income under subsection (a)(5) shall not exceed—

"(A) $60 per month in the case of the aggregate of the benefits described in subparagraphs (A) and (B) of paragraph (1), and

"(B) $160 per month in the case of qualified parking.

"(3) BENEFIT NOT IN LIEU OF COMPENSATION.—Subsection (a)(5) shall not apply to any qualified transportation fringe unless such benefit is provided in addition to (and not in lieu of) any compensation otherwise payable to the employee.

"(4) DEFINITIONS.—For purposes of this subsection—

"(A) TRANSIT PASS.—The term 'transit pass' means any pass, token, farecard, voucher, or similar item entitling a person to transportation (or transportation at a reduced price) if such transportation is—

"(i) on mass transit facilities (whether or not publicly owned), or

"(ii) provided by any person in the business of transporting persons for compensation or hire if such transportation is provided in a vehicle meeting the requirements of subparagraph (B)(i).

"(B) COMMUTER HIGHWAY VEHICLE.—The term 'commuter highway vehicle' means any highway vehicle—

"(i) the seating capacity of which is at least 6 adults (not including the driver), and

"(ii) at least 80 percent of the mileage use of which can reasonably be expected to be—

"(I) for purposes of transporting employees in connection with travel between their residences and their place of employment, and

"(II) on trips during which the number of employees transported for such purposes is at least ½ of the adult seating capacity of such vehicle (not including the driver).

"(C) QUALIFIED PARKING.—The term 'qualified parking' means parking provided to an employee on or near the business premises of the employer or on or near a location from which the employee commutes to work by transportation described in subparagraph (A), in a commuter highway vehicle, or by carpool.

"(D) TRANSPORTATION PROVIDED BY EMPLOYER.—Transportation referred to in paragraph (1)(A) shall be considered to be provided by an employer if such transportation is furnished in a commuter highway vehicle operated by or for the employer.

"(E) EMPLOYEE.—For purposes of this subsection, the term 'employee' does not include an individual who is an employee within the meaning of section 401(c)(1).

"(5) INFLATION ADJUSTMENT.—In the case of any taxable year beginning in a calendar year after 1992, the dollar amounts contained in paragraph (2)(A) and (B) shall be increased by an amount equal to—

"(A) such dollar amount, multiplied by

"(B) the cost-of-living adjustment determined under section 1(f)(3) for the calendar year in which the taxable year begins by substituting 'calendar year 1991' for 'calendar year 1989' in subparagraph (B) thereof.

If any increase determined under the preceding sentence is not a multiple of $1, such increase shall be rounded to the next lowest multiple of $1.

"(6) COORDINATION WITH OTHER PROVISIONS.—For purposes of this section, the terms 'working condition fringe' and 'de minimis fringe' shall not include any qualified transportation fringe (determined without regard to paragraph (2))."

(c) CONFORMING AMENDMENT.—Subsection (i) of section 132 (as redesignated by subsection (b)) is amended by striking paragraph (4) and redesignating the following paragraphs accordingly.

(d) EFFECTIVE DATE.—

(1) IN GENERAL.—The amendments made by this section shall apply to benefits provided after December 31, 1991.

(2) PARKING LIMIT.—The limitation of subparagraph (B) of section 132(f)(2) of the Internal Revenue Code of 1986 (as amended by this section) shall only apply to benefits provided for months beginning after the date of the enactment of this Act.

TITLE III—DEFENSE, DOMESTIC, AND INTERNATIONAL DISCRETIONARY SPENDING REDUCTIONS

SEC. 3001. REDUCTIONS IN DEFENSE, DOMESTIC, AND INTERNATIONAL DISCRETIONARY SPENDING.

(a) LIMITATION ON AMOUNTS OF PROPOSED OUTLAYS AND BUDGET AUTHORITY FOR DEFENSE DISCRETIONARY.—

(1) PRESIDENT'S BUDGET.—A budget submitted by the President under section 1105(a) of title 31, United States Code, for fiscal year 1993, 1994, 1995, or 1996 shall not propose outlays or budget authority for the defense discretionary category such that the aggregate amount of outlays or budget authority for that category for that year would exceed—

(A)(i) $292,000,000,000 in outlays for fiscal year 1993;

(ii) $284,000,000,000 in outlays for fiscal year 1994;

(iii) $283,800,000,000 in outlays for fiscal year 1995; or

(iv) $286,900,000,000 in outlays for fiscal year 1996; and

(B)(i) $281,600,000,000 in budget authority for fiscal year 1993;

(ii) $282,300,000,000 in budget authority for fiscal year 1994;

(iii) $285,000,000,000 in budget authority for fiscal year 1995; or

(iv) $286,300,000,000 in budget authority for fiscal year 1996.

(2) POINT OF ORDER.—Section 301 of the Congressional Budget Act of 1974 (12 U.S.C. 632) is amended by adding at the end thereof the following new subsection:

"(j) DEFENSE SPENDING LIMITS.—It shall not be in order in either the Senate or the House of Representatives to consider a concurrent resolution on the budget for fiscal year 1993, 1994, 1995, or 1996 that includes outlays or budget authority for the defense discretionary category such that the aggregate amount of outlays or budget authority for that category for that year would exceed—

"(1)(A) $292,000,000,000 in outlays for fiscal year 1993;

"(B) $284,000,000,000 in outlays for fiscal year 1994;

"(C) $283,800,000,000 in outlays for fiscal year 1995; or

"(D) $286,900,000,000 in outlays for fiscal year 1996; and

"(2)(A) $281,600,000,000 in budget authority for fiscal year 1993;

"(B) $282,300,000,000 in budget authority for fiscal year 1994;

"(C) $285,000,000,000 in budget authority for fiscal year 1995; or

"(D) $286,300,000,000 in budget authority for fiscal year 1996.".

(3) REDUCTION OF MAXIMUM DEFICIT AMOUNTS.—Notwithstanding any other law, the maximum deficit amounts under section 601(a)(1) of the Congressional Budget Act of 1974 (2 U.S.C. 665(a)(1)) shall be adjusted to include the reductions made by paragraph (2) for the purposes of the President's budget submitted pursuant to section 1105(a) of title 31, United States Code, and for the purposes of any concurrent resolution on the budget.

(b) LIMITATION ON AMOUNTS OF PROPOSED OUTLAYS AND BUDGET AUTHORITY FOR DOMESTIC AND INTERNATIONAL DISCRETIONARY ACCOUNTS.—

(1) PRESIDENT'S BUDGET.—A budget submitted by the President under section 1105(a) of title 31, United States Code, for fiscal year 1993, 1994, 1995, or 1996 shall not propose outlays or budget authority for—

(A) the domestic discretionary category as defined in section 250(c)(4) of the Balanced Budget and Emergency Deficit Control Act of 1985 such that the aggregate amount of outlays or budget authority for that category for that year would exceed—

(i) $216,200,000,000 in outlays; or

(ii) $189,000,000,000 in budget authority; and

(B) the international discretionary category as defined in section 250(c)(4) of the Balanced Budget and Emergency Deficit Control Act of 1985 such that the aggregate amount of outlays or budget authority for that category for that year would exceed—

(i) $20,100,000,000 in outlays; or

(ii) $21,300,000,000 in budget authority.

(2) POINT OF ORDER.—Section 301 of the Congressional Budget Act of 1974 (12 U.S.C.

632) is amended by adding at the end thereof the following new subsection:

"(j) DOMESTIC DISCRETIONARY SPENDING LIMITS.—It shall not be in order in either the Senate or the House of Representatives to consider a concurrent resolution on the budget for fiscal year 1993, 1994, 1995, or 1996 that includes outlays or budget authority for—

"(1) the domestic discretionary category as defined in section 250(c)(4) of the Balanced Budget and Emergency Deficit Control Act of 1985 such that the aggregate amount of outlays or budget authority for that category for that year would exceed—

"(A) $216,200,000,000 in outlays; or

"(B) $189,000,000,000 in budget authority; and

"(2) the international discretionary category as defined in section 250(c)(4) of the Balanced Budget and Emergency Deficit Control Act of 1985 such that the aggregate amount of outlays or budget authority for that category for that year would exceed—

"(A) $20,100,000,000 in outlays; or

"(B) $21,300,000,000 in budget authority.".

(3) REDUCTION OF MAXIMUM DEFICIT AMOUNTS.—Notwithstanding any other law, the maximum deficit amounts under section 601(a)(1) of the Congressional Budget Act of 1974 (2 U.S.C. 665(a)(1)) shall be adjusted to include the reductions made by paragraph (2) for the purposes of the President's budget submitted pursuant to section 1105(a) of title 31, United States Code, and for the purposes of any concurrent resolution on the budget.

(c) NO SEQUESTRATION.—Notwithstanding any other law, there shall be no sequestration under part C of the Balanced Budget and Emergency Deficit Control Act of 1985 (2 U.S.C. 900 et seq.) as a result of any reduction in tax revenues caused by application of the provisions of and amendments made by this Act.

TITLE IV—SIMPLIFICATION PROVISIONS

Subtitle A—Provisions Relating to Individuals

SEC. 4101. SIMPLIFICATION OF RULES ON ROLLOVER OF GAIN ON SALE OF PRINCIPAL RESIDENCE IN CASE OF DIVORCE.

(a) TREATMENT IN CASE OF DIVORCES.—Subsection (c) of section 1034 is amended by adding at the end thereof the following new paragraph:

"(5) If—

"(A) a residence is sold by an individual pursuant to a divorce or marital separation, and

"(B) the taxpayer used such residence as his principal residence at any time during the 2-year period ending on the date of such sale,

for purposes of this section, such residence shall be treated as the taxpayer's principal residence at the time of such sale."

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to sales of old residences (within the meaning of section 1034 of the Internal Revenue Code of 1986) after the date of the enactment of this Act.

SEC. 4102. PAYMENT OF TAX BY CREDIT CARD.

(a) GENERAL RULE.—Section 6311 is amended to read as follows:

"SEC. 6311. PAYMENT BY CHECK, MONEY ORDER, OR OTHER MEANS.

"(a) AUTHORITY TO RECEIVE.—It shall be lawful for the Secretary to receive for internal revenue taxes (or in payment for internal revenue stamps) checks, money orders, or any other commercially acceptable means that the Secretary deems appropriate, including payment by use of credit cards, to the extent and under the conditions provided in regulations prescribed by the Secretary.

"(b) ULTIMATE LIABILITY.—If a check, money order, or other method of payment so received is not duly paid, the person by whom such check, or money order, or other method of payment has been tendered shall remain liable for the payment of the tax or for the stamps, and for all legal penalties and additions, to the same extent as if such check, money order, or other method of payment had not been tendered.

"(c) LIABILITY OF BANKS AND OTHERS.—If any certified, treasurer's, or cashier's check (or other guaranteed draft), or any money order, or any other means of payment that has been guaranteed by a financial institution (such as a guaranteed credit card transaction) so received is not duly paid, the United States shall, in addition to its right to exact payment from the party originally indebted therefor, have a lien for—

"(1) the amount of such check (or draft) upon all assets of the financial institution on which drawn,

"(2) the amount of such money order upon all the assets of the issuer thereof, or

"(3) the guaranteed amount of any other transaction upon all the assets of the institution making such guarantee,

and such amount shall be paid out of such assets in preference to any other claims whatsoever against such financial institution, issuer, or guaranteeing institution, except the necessary costs and expenses of administration and the reimbursement of the United States for the amount expended in the redemption of the circulating notes of such financial institution.

"(d) PAYMENT BY OTHER MEANS.—

"(1) AUTHORITY TO PRESCRIBE REGULATIONS.—The Secretary shall prescribe such regulations as the Secretary deems necessary to receive payment by commercially acceptable means, including regulations that—

"(A) specify which methods of payment by commercially acceptable means will be acceptable,

"(B) specify when payment by such means will be considered received,

"(C) identify types of nontax matters related to payment by such means that are to be resolved by persons ultimately liable for payment and financial intermediaries, without the involvement of the Secretary, and

"(D) ensure that tax matters will be resolved by the Secretary, without the involvement of financial intermediaries.

"(2) AUTHORITY TO ENTER INTO CONTRACTS.—Notwithstanding section 3718(f) of title 31, United States Code, the Secretary is authorized to enter into contracts to obtain services related to receiving payment by other means where cost beneficial to the government and is further authorized to pay any fees required by such contracts.

"(3) SPECIAL PROVISIONS FOR USE OF CREDIT CARDS.—If use of credit cards is accepted as a method of payment of taxes pursuant to subsection (a)—

"(A) except as provided by regulations, subject to the provisions of section 6402, any refund due a person who makes a payment by use of a credit card shall be made directly to such person, notwithstanding any other provision of law or any contract made pursuant to paragraph (2),

"(B) any credit card transaction shall not be considered a 'sales transaction' under the Federal Truth-in-Lending Act (15 U.S.C. 1601 et seq.),

"(C) all nontax matters as defined by regulations prescribed under paragraph (1)(C), including billing errors as defined in section 161(b) of such Act, shall be resolved by the person tendering the credit card and the credit card issuer, without the involvement of the Secretary, and

"(D) the provisions of sections 161(e) and 170 of such Act shall not apply."

(b) CLERICAL AMENDMENT.—The table of sections for subchapter B of chapter 64 is amended by striking the item relating to section 6311 and inserting the following:

"Sec. 6311. Payment by check, money order, or other means."

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

SEC. 4103. MODIFICATIONS TO ELECTION TO INCLUDE CHILD'S INCOME ON PARENT'S RETURN.

(a) ELIGIBILITY FOR ELECTION.—Clause (ii) of section 1(g)(7)(A) (relating to election to include certain unearned income of child on parent's return) is amended to read as follows:

"(i) such gross income is more than the amount described in paragraph (4)(A)(ii)(I) and less than 10 times the amount so described,".

(b) COMPUTATION OF TAX.—Subparagraph (B) of section 1(g)(7) (relating to income included on parent's return) is amended—

(1) by striking "$1,000" in clause (i) and inserting "twice the amount described in paragraph (4)(A)(ii)(I)", and

(2) by amending subclause (II) of clause (ii) to read as follows:

"(II) for each such child, 15 percent of the lesser of the amount described in paragraph (4)(A)(ii)(I) or the excess of the gross income of such child over the amount so described, and".

(c) MINIMUM TAX.—Subparagraph (B) of section 59(j)(1) is amended by striking "$1,000" and inserting "twice the amount in effect for the taxable year under section 63(c)(5)(A)".

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 1991.

SEC. 4104. SIMPLIFIED FOREIGN TAX CREDIT LIMITATION FOR INDIVIDUALS.

(a) GENERAL RULE.—Section 904 (relating to limitations on foreign tax credit) is amended by redesignating subsection (j) as subsection (k) and by inserting after subsection (i) the following new subsection:

"(j) SIMPLIFIED LIMITATION FOR CERTAIN INDIVIDUALS.—

"(1) IN GENERAL.—In the case of an individual to whom this subsection applies for any taxable year, the limitation of subsection (a) shall be the lesser of—

"(A) 25 percent of such individual's gross income for the taxable year from sources without the United States, or

"(B) the amount of the creditable foreign taxes paid or accrued by the individual during the taxable year (determined without regard to subsection (c)).

No taxes paid or accrued by the individual during such taxable year may be deemed paid or accrued in any other taxable year under subsection (c).

"(2) INDIVIDUALS TO WHOM SUBSECTION APPLIES.—This subsection shall apply to an individual for any taxable year if—

"(A) the entire amount of such individual's gross income for the taxable year from sources without the United States consists of qualified passive income,

"(B) the amount of the creditable foreign taxes paid or accrued by the individual during the taxable year does not exceed $200, and

"(C) such individual elects to have this subsection apply for the taxable year.

"(3) DEFINITIONS.—For purposes of this subsection—

"(A) QUALIFIED PASSIVE INCOME.—The term 'qualified passive income' means any item of gross income if—

"(i) such item of income is passive income (as defined in subsection (d)(2)(A) without regard to clause (iii) thereof), and

"(ii) such item of income is shown on a payee statement furnished to the individual.

"(B) CREDITABLE FOREIGN TAXES.—The term 'creditable foreign taxes' means any taxes for which a credit is allowable under section 901; except that such term shall not include any tax unless such tax is shown on a payee statement furnished to such individual.

"(C) PAYEE STATEMENT.—The term 'payee statement' has the meaning given to such term by section 6724(d)(2).

"(D) ESTATES AND TRUSTS NOT ELIGIBLE.—This subsection shall not apply to any estate or trust."

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to taxable years beginning after December 31, 1991.

SEC. 4105. TREATMENT OF PERSONAL TRANSACTIONS BY INDIVIDUALS UNDER FOREIGN CURRENCY RULES.

(a) GENERAL RULE.—Subsection (e) of section 988 (relating to application to individuals) is amended to read as follows:

"(e) APPLICATION TO INDIVIDUALS.—

"(1) IN GENERAL.—The preceding provisions of this section shall not apply to any section 988 transaction entered into by an individual which is a personal transaction.

"(2) EXCLUSION FOR CERTAIN PERSONAL TRANSACTIONS.—If—

"(A) nonfunctional currency is disposed of by an individual in any transaction, and

"(B) such transaction is a personal transaction,

no gain shall be recognized for purposes of this subtitle by reason of changes in exchange rates after such currency was acquired by such individual and before such disposition. The preceding sentence shall not apply if the gain which would otherwise be recognized exceeds $200.

"(3) PERSONAL TRANSACTIONS.—For purposes of this subsection, the term 'personal transaction' means any transaction entered into by an individual, except that such term shall not include any transaction to the extent that expenses properly allocable to such transaction meet the requirements of section 162 or 212 (other than that part of section 212 dealing with expenses incurred in connection with taxes)."

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 1991.

SEC. 4106. EXCLUSION OF COMBAT PAY FROM WITHHOLDING LIMITED TO AMOUNT EXCLUDABLE FROM GROSS INCOME.

(a) IN GENERAL.—Paragraph (1) of section 3401(a) (defining wages) is amended by inserting before the semicolon the following: "to the extent remuneration for such service is excludable from gross income under such section".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to remuneration paid after December 31, 1992.

SEC. 4107. EXPANDED ACCESS TO SIMPLIFIED INCOME TAX RETURNS.

(a) GENERAL RULE.—The Secretary of the Treasury or his delegate shall take such actions as may be appropriate to expand access to simplified individual income tax returns and otherwise simplify the individual income tax returns.

(b) REPORT.—Not later than the date 1 year after the date of the enactment of this Act, the Secretary of the Treasury or his delegate shall submit a report to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate, a report on his actions under subsection (a), together with such recommendations as he may deem advisable.

SEC. 4108. TREATMENT OF CERTAIN REIMBURSED EXPENSES OF RURAL MAIL CARRIERS.

(a) IN GENERAL.—Section 162 (relating to trade or business expenses), as amended by section 3006, is amended by redesignating subsection (n) as subsection (o) and by inserting after subsection (m) the following new subsection:

"(n) TREATMENT OF CERTAIN REIMBURSED EXPENSES OF RURAL MAIL CARRIERS.—

"(1) GENERAL RULE.—In the case of any employee of the United States Postal Service who performs services involving the collection and delivery of mail on a rural route and who receives qualified reimbursements for the expenses incurred by such employee for the use of a vehicle in performing such services—

"(A) the amount allowable as a deduction under this chapter for the use of a vehicle in performing such services shall be equal to the amount of such qualified reimbursements; and

"(B) such qualified reimbursements shall be treated as paid under a reimbursement or other expense allowance arrangement for purposes of section 62(a)(2)(A) (and section 62(c) shall not apply to such qualified reimbursements).

"(2) DEFINITION OF QUALIFIED REIMBURSEMENTS.—For purposes of this subsection, the term 'qualified reimbursements' means the amounts paid by the United States Postal Service to employees as an equipment maintenance allowance under the 1991 collective bargaining agreement between the United States Postal Service and the National Rural Letter Carriers' Association. Amounts paid as an equipment maintenance allowance by such Postal Service under later collective bargaining agreements that supersede the 1991 agreement shall be considered qualified reimbursements if such amounts do not exceed the amounts that would have been paid under the 1991 agreement, adjusted for changes in the Consumer Price Index (as defined in section 1(f)(5)) since 1991."

(b) TECHNICAL AMENDMENT.—Section 6008 of the Technical and Miscellaneous Revenue Act of 1988 is hereby repealed.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 1991.

SEC. 4109. EXEMPTION FROM LUXURY EXCISE TAX FOR CERTAIN EQUIPMENT INSTALLED ON PASSENGER VEHICLES FOR USE BY DISABLED INDIVIDUALS.

(a) IN GENERAL.—Paragraph (3) of section 4004(b) of the Internal Revenue Code of 1986 (relating to separate purchase of article and parts and accessories therefor) is amended—

(1) by striking "or" at the end of subparagraph (A),

(2) by redesignating subparagraph (B) as subparagraph (C), and

(3) by inserting after subparagraph (A) the following new subparagraph:

"(B) the part or accessory is installed on a passenger vehicle to enable or assist an individual with a disability to operate the vehicle, or to enter or exit the vehicle, by compensating for the effect of such disability, or".

(b) EFFECTIVE DATE.—The amendments made by this section shall take effect as if included in the amendments made by section 11221(a) of the Omnibus Budget Reconciliation Act of 1990.

Subtitle B—Pension Simplification

PART I—SIMPLIFIED DISTRIBUTION RULES

SEC. 4201. TAXABILITY OF BENEFICIARY OF QUALIFIED PLAN.

(a) IN GENERAL.—So much of section 402 (relating to taxability of beneficiary of employees' trust) as precedes subsection (g) thereof is amended to read as follows:

"SEC. 402. TAXABILITY OF BENEFICIARY OF EMPLOYEES' TRUST.

"(a) TAXABILITY OF BENEFICIARY OF EXEMPT TRUST.—Except as otherwise provided in this section, any amount actually distributed to any distributee by any employees' trust described in section 401(a) which is exempt from tax under section 501(a) shall be taxable to the distributee, in the taxable year of the distributee in which distributed, under section 72 (relating to annuities).

"(b) TAXABILITY OF BENEFICIARY OF NONEXEMPT TRUST.—

"(1) CONTRIBUTIONS.—Contributions to an employees' trust made by an employer during a taxable year of the employer which ends with or within a taxable year of the trust for which the trust is not exempt from tax under section 501(a) shall be included in the gross income of the employee in accordance with section 83 (relating to property transferred in connection with performance of services), except that the value of the employee's interest in the trust shall be substituted for the fair market value of the property for purposes of applying such section.

"(2) DISTRIBUTIONS.—The amount actually distributed or made available to any distributee by any trust described in paragraph (1) shall be taxable to the distributee, in the taxable year in which so distributed or made available, under section 72 (relating to annuities), except that distributions of income of such trust before the annuity starting date (as defined in section 72(c)(4)) shall be included in the gross income of the employee without regard to section 72(e)(5) (relating to amounts not received as annuities).

"(3) GRANTOR TRUSTS.—A beneficiary of any trust described in paragraph (1) shall not be considered the owner of any portion of such trust under subpart E of part I of subchapter J (relating to grantors and others treated as substantial owners).

"(4) FAILURE TO MEET REQUIREMENTS OF SECTION 410(b).—

"(A) HIGHLY COMPENSATED EMPLOYEES.—If 1 of the reasons a trust is not exempt from tax under section 501(a) is the failure of the plan of which it is a part to meet the requirements of section 401(a)(26) or 410(b), then a highly compensated employee shall, in lieu of the amount determined under this subsection, include in gross income for the taxable year with or within which the taxable year of the trust ends an amount equal to the vested accrued benefit of such employee (other than the employee's investment in the contract) as of the close of such taxable year of the trust.

"(B) FAILURE TO MEET COVERAGE TESTS.—If a trust is not exempt from tax under section 501(a) for any taxable year solely because such trust is part of a plan which fails to meet the requirements of section 401(a)(26) or 410(b), this subsection shall not apply by reason of such failure to any employee who was not a highly compensated employee during—

"(i) such taxable year, or

"(ii) any preceding period for which service was creditable to such employee under the plan.

"(C) HIGHLY COMPENSATED EMPLOYEE.—For purposes of this paragraph, the term 'highly compensated employee' has the meaning given such term by section 414(q).

"(c) RULES APPLICABLE TO ROLLOVERS FROM EXEMPT TRUSTS.—

"(1) EXCLUSION FROM INCOME.—If—

"(A) any portion of the balance to the credit of an employee in a qualified trust is paid to the employee in an eligible rollover distribution,

"(B) the distributee transfers any portion of the property received in such distribution to an eligible retirement plan, and

"(C) in the case of a distribution of property other than money, the amount so transferred consists of the property distributed,

then such distribution (to the extent so transferred) shall not be includible in gross income for the taxable year in which paid.

"(2) MAXIMUM AMOUNT WHICH MAY BE ROLLED OVER.—In the case of any eligible rollover distribution, the maximum amount transferred to which paragraph (1) applies shall not exceed the portion of such distribution which is includible in gross income (determined without regard to paragraph (1)).

"(3) TRANSFER MUST BE MADE WITHIN 60 DAYS OF RECEIPT.—Paragraph (1) shall not apply to any transfer of a distribution made after the 60th day following the day on which the distributee received the property distributed.

"(4) ELIGIBLE ROLLOVER DISTRIBUTION.—For purposes of this subsection, the term 'eligible rollover distribution' means any distribution to an employee of all or any portion of the balance to the credit of the employee in a qualified trust; except that such term shall not include—

"(A) any distribution which is part of a series of substantially equal periodic payments (not less frequently than annually) made—

"(i) for the life (or life expectancy) of the employee or the joint lives (or joint life expectancies) of the employee and the employee's designated beneficiary, or

"(ii) for a specified period of 10 years or more, and

"(B) any distribution to the extent such distribution is required under section 401(a)(9).

"(5) TRANSFER TREATED AS ROLLOVER CONTRIBUTION UNDER SECTION 408.—For purposes of this title, a transfer resulting in any portion of a distribution being excluded from gross income under paragraph (1) to an eligible retirement plan described in clause (i) or (ii) of paragraph (8)(B) shall be treated as a rollover contribution described in section 408(d)(3).

"(6) SALES OF DISTRIBUTED PROPERTY.—For purposes of this subsection—

"(A) TRANSFER OF PROCEEDS FROM SALE OF DISTRIBUTED PROPERTY TREATED AS TRANSFER OF DISTRIBUTED PROPERTY.—The transfer of an amount equal to any portion of the proceeds from the sale of property received in the distribution shall be treated as the transfer of property received in the distribution.

"(B) PROCEEDS ATTRIBUTABLE TO INCREASE IN VALUE.—The excess of fair market value of property on sale over its fair market value on distribution shall be treated as property received in the distribution.

"(C) DESIGNATION WHERE AMOUNT OF DISTRIBUTION EXCEEDS ROLLOVER CONTRIBUTION.—In any case where part or all of the distribution consists of property other than money, the taxpayer may designate—

"(i) the portion of the money or other property which is to be treated as attributable to amounts not included in gross income, and

"(ii) the portion of the money or other property which is to be treated as included in the rollover contribution.

Any designation under this subparagraph for a taxable year shall be made not later than the time prescribed by law for filing the return for such taxable year (including extensions thereof). Any such designation, once made, shall be irrevocable.

"(D) TREATMENT WHERE NO DESIGNATION.—In any case where part or all of the distribution consists of property other than money and the taxpayer fails to make a designation under subparagraph (C) within the time provided therein, then—

"(i) the portion of the money or other property which is to be treated as attributable to amounts not included in gross income, and

"(ii) the portion of the money or other property which is to be treated as included in the rollover contribution, shall be determined on a ratable basis.

"(E) NONRECOGNITION OF GAIN OR LOSS.—In the case of any sale described in subparagraph (A), to the extent that an amount equal to the proceeds is transferred pursuant to paragraph (1), neither gain nor loss on such sale shall be recognized.

"(7) SPECIAL RULE FOR FROZEN DEPOSITS.—

"(A) IN GENERAL.—The 60-day period described in paragraph (3) shall not—

"(i) include any period during which the amount transferred to the employee is a frozen deposit, or

"(ii) end earlier than 10 days after such amount ceases to be a frozen deposit.

"(B) FROZEN DEPOSITS.—For purposes of this subparagraph, the term 'frozen deposit' means any deposit which may not be withdrawn because of—

"(i) the bankruptcy or insolvency of any financial institution, or

"(ii) any requirement imposed by the State in which such institution is located by reason of the bankruptcy or insolvency (or threat thereof) of 1 or more financial institutions in such State.

A deposit shall not be treated as a frozen deposit unless on at least 1 day during the 60-day period described in paragraph (3) (without regard to this paragraph) such deposit is described in the preceding sentence.

"(8) DEFINITIONS.—For purposes of this subsection—

"(A) QUALIFIED TRUST.—The term 'qualified trust' means an employees' trust described in section 401(a) which is exempt from tax under section 501(a).

"(B) ELIGIBLE RETIREMENT PLAN.—The term 'eligible retirement plan' means—

"(i) an individual retirement account described in section 408(a),

"(ii) an individual retirement annuity described in section 408(b) (other than an endowment contract),

"(iii) a qualified trust, and

"(iv) an annuity plan described in section 403(a).

"(9) ROLLOVER WHERE SPOUSE RECEIVES DISTRIBUTION AFTER DEATH OF EMPLOYEE.—If any distribution attributable to an employee is paid to the spouse of the employee after the employee's death, the preceding provisions of this subsection shall apply to such distribution in the same manner as if the spouse were the employee; except that a trust or plan described in clause (iii) or (iv) of paragraph (8)(B) shall not be treated as an eligible retirement plan with respect to such distribution.

"(d) TAXABILITY OF BENEFICIARY OF CERTAIN FOREIGN SITUS TRUSTS.—For purposes of subsections (a), (b), and (c), a stock bonus, pension, or profit-sharing trust which would qualify for exemption from tax under section 501(a) except for the fact that it is a trust created or organized outside the United States shall be treated as if it were a trust exempt from tax under section 501(a).

"(e) OTHER RULES APPLICABLE TO EXEMPT TRUSTS.—

"(1) ALTERNATE PAYEES.—

"(A) ALTERNATE PAYEE TREATED AS DISTRIBUTEE.—For purposes of subsection (a) and section 72, an alternate payee who is the spouse or former spouse of the participant shall be treated as the distributee of any distribution or payment made to the alternate payee under a qualified domestic relations order (as defined in section 414(p)).

"(B) ROLLOVERS.—If any amount is paid or distributed to an alternate payee who is the spouse or former spouse of the participant by reason of any qualified domestic relations order (within the meaning of section 414(p)), subsection (c) shall apply to such distribution in the same manner as if such alternate payee were the employee.

"(2) DISTRIBUTIONS BY UNITED STATES TO NONRESIDENT ALIENS.—The amount includible under subsection (a) in the gross income of a nonresident alien with respect to a distribution made by the United States in respect of services performed by an employee of the United States shall not exceed an amount which bears the same ratio to the amount includible in gross income without regard to this paragraph as—

"(A) the aggregate basic pay paid by the United States to such employee for such services, reduced by the amount of such basic pay which was not includible in gross income by reason of being from sources without the United States, bears to

"(B) the aggregate basic pay paid by the United States to such employee for such services.

In the case of distributions under the civil service retirement laws, the term 'basic pay' shall have the meaning provided in section 8331(3) of title 5, United States Code.

"(3) CASH OR DEFERRED ARRANGEMENTS.—For purposes of this title, contributions made by an employer on behalf of an employee to a trust which is a part of a qualified cash or deferred arrangement (as defined in section 401(k)(2)) shall not be treated as distributed or made available to the employee nor as contributions made to the trust by the employee merely because the arrangement includes provisions under which the employee has an election whether the contribution will be made to the trust or received by the employee in cash.

"(4) NET UNREALIZED APPRECIATION.—

"(A) AMOUNTS ATTRIBUTABLE TO EMPLOYEE CONTRIBUTIONS.—For purposes of subsection (a) and section 72, the amount actually distributed to any distributee from a trust described in subsection (a) shall not include any net unrealized appreciation in securities of the employer corporation attributable to amounts contributed by the employee (other than deductible employee contributions within the meaning of section 72(o)(5)). This subparagraph shall not apply to a partial distribution to which subsection (c) applies.

"(B) AMOUNTS ATTRIBUTABLE TO EMPLOYER CONTRIBUTIONS.—In the case of any lump sum distribution which includes securities of the employer corporation, subparagraph (A) shall apply to the net unrealized apprecia-

tion attributable to that part of the distribution which consists of securities of the employer corporation attributable to amounts other than the amounts contributed by the employee. In accordance with rules prescribed by the Secretary, a taxpayer may elect, on the return of tax on which a lump sum distribution is required to be included, not to have this subparagraph and subparagraph (A) apply to such distribution.

"(C) DETERMINATION OF AMOUNTS AND ADJUSTMENTS.—For purposes of subparagraphs (A) and (B), net unrealized appreciation and the resulting adjustments to basis shall be determined in accordance with regulations prescribed by the Secretary.

"(D) LUMP SUM DISTRIBUTION.—For purposes of this paragraph—

"(i) IN GENERAL.—The term 'lump sum distribution' means the distribution or payment within one taxable year of the recipient of the balance to the credit of an employee which becomes payable to the recipient—

"(I) on account of the employee's death,

"(II) after the employee attains age 59½,

"(III) on account of the employee's separation from service, or

"(IV) after the employee has become disabled (within the meaning of section 72(m)(7)),

from a trust which forms a part of a plan described in section 401(a) and which is exempt from tax under section 501 or from a plan described in section 403(a). Subclause (III) of this clause shall be applied only with respect to an individual who is an employee without regard to section 401(c)(1), and subclause (IV) shall be applied only with respect to an employee within the meaning of section 401(c)(1). For purposes of this clause, a distribution to two or more trusts shall be treated as a distribution to one recipient. For purposes of this paragraph, the balance to the credit of the employee does not include the accumulated deductible employee contributions under the plan (within the meaning of section 72(o)(5)).

"(ii) AGGREGATION OF CERTAIN TRUSTS AND PLANS.—For purposes of determining the balance to the credit of an employee under clause (i)—

"(I) all trusts which are part of a plan shall be treated as a single trust, all pension plans maintained by the employer shall be treated as a single plan, all profit-sharing plans maintained by the employer shall be treated as a single plan, and all stock bonus plans maintained by the employer shall be treated as a single plan, and

"(II) trusts which are not qualified trusts under section 401(a) and annuity contracts which do not satisfy the requirements of section 404(a)(2) shall not be taken into account.

"(iii) COMMUNITY PROPERTY LAWS.—The provisions of this paragraph shall be applied without regard to community property laws.

"(iv) AMOUNTS SUBJECT TO PENALTY.—This paragraph shall not apply to amounts described in subparagraph (A) of section 72(m)(5) to the extent that section 72(m)(5) applies to such amounts.

"(v) BALANCE TO CREDIT OF EMPLOYEE NOT TO INCLUDE AMOUNTS PAYABLE UNDER QUALIFIED DOMESTIC RELATIONS ORDER.—For purposes of this paragraph, the balance to the credit of an employee shall not include any amount payable to an alternate payee under a qualified domestic relations order (within the meaning of section 414(p)).

"(vi) TRANSFERS TO COST-OF-LIVING ARRANGEMENT NOT TREATED AS DISTRIBUTION.—For purposes of this paragraph, the balance to the credit of an employee under a defined contribution plan shall not include any amount transferred from such defined contribution plan to a qualified cost-of-living arrangement (within the meaning of section 415(k)(2)) under a defined benefit plan.

"(vii) LUMP-SUM DISTRIBUTIONS OF ALTERNATE PAYEES.—If any distribution or payment of the balance to the credit of an employee would be treated as a lump-sum distribution, then, for purposes of this paragraph, the payment under a qualified domestic relations order (within the meaning of section 414(p)) of the balance to the credit of an alternate payee who is the spouse or former spouse of the employee shall be treated as a lump-sum distribution. For purposes of this clause, the balance to the credit of the alternate payee shall not include any amount payable to the employee.

"(E) DEFINITIONS.—For purposes of this paragraph—

"(i) SECURITIES.—The term 'securities' means only shares of stock and bonds or debentures issued by a corporation with interest coupons or in registered form.

"(ii) SECURITIES OF THE EMPLOYER.—The term 'securities of the employer corporation' includes securities of a parent or subsidiary corporation (as defined in subsections (e) and (f) of section 425) of the employer corporation.

"(f) WRITTEN EXPLANATION TO RECIPIENTS OF DISTRIBUTIONS ELIGIBLE FOR ROLLOVER TREATMENT.—

"(1) IN GENERAL.—The plan administrator of any plan shall, when making an eligible rollover distribution, provide a written explanation to the recipient of the provisions under which such distribution will not be subject to tax if transferred to an eligible retirement plan within 60 days after the date on which the recipient received the distribution.

"(2) DEFINITIONS.—For purposes of this subsection—

"(A) ELIGIBLE ROLLOVER DISTRIBUTION.—The term 'eligible rollover distribution' has the same meaning as when used in subsection (c) of this section or paragraph (4) of section 403(a).

"(B) ELIGIBLE RETIREMENT PLAN.—The term 'eligible retirement plan' has the meaning given such term by subsection (c)(8)(B)."

(b) REPEAL OF $5,000 EXCLUSION OF EMPLOYEES' DEATH BENEFITS.—Subsection (b) of section 101 is hereby repealed.

(c) CONFORMING AMENDMENTS.—

(1) Paragraph (1) of section 55(c) is amended by striking "shall not include any tax imposed by section 402(e) and".

(2) Paragraph (8) of section 62(a) (relating to certain portion of lump-sum distributions from pension plans taxed under section 402(e)) is hereby repealed.

(3) Paragraph (4) of section 72(o) (relating to special rule for treatment of rollover amount) is amended by striking "sections 402(a)(5), 402(a)(7)" and inserting "sections 402(c)".

(4) Paragraph (2) of section 219(d) (relating to recontributed amount) is amended by striking "section 402(a)(5), 402(a)(7)" and inserting "section 402(c)".

(5) Paragraph (20) of section 401(a) is amended by striking "qualified total distribution described in section 402(a)(5)(E)(i)(I)" and inserting "distribution to a distributee on account of a termination of the plan of which the trust is a part, or in the case of a profit-sharing or stock bonus plan, a complete discontinuance of contributions under such plan".

(6) Section 401(a)(28)(B) (relating to coordination with distribution rules) is amended by striking clause (v).

(7) Subclause (IV) of section 401(k)(2)(B)(i) is amended by striking "section 402(a)(8)" and inserting "section 402(e)(3)".

(8) Subparagraph (B)(ii) of section 401(k)(10) (relating to distributions that must be lump-sum distributions) is amended to read as follows:

"(ii) LUMP SUM DISTRIBUTION.—For purposes of this subparagraph, the term 'lump sum distribution' means any distribution of the balance to the credit of an employee immediately before the distribution."

(9) Section 402(g)(1) is amended by striking "subsections (a)(8)" and inserting "subsections (e)(3)".

(10) Section 402(i) is amended by striking ", except as otherwise provided in subparagraph (A) of subsection (e)(4)".

(11) Subsection (j) of section 402 is amended by striking "(a)(1) or (e)(4)(J)" and inserting "(e)(4)".

(12)(A) Clause (i) of section 403(a)(4)(A) is amended by inserting "in an eligible rollover distribution (within the meaning of section 402(c)(4))" before the comma at the end thereof.

(B) Subparagraph (B) of section 403(a)(4) is amended to read as follows:

"(B) CERTAIN RULES MADE APPLICABLE.—Rules similar to the rules of paragraphs (2) through (7) of section 402(c) shall apply for purposes of subparagraph (A)."

(13)(A) Clause (i) of section 403(b)(8)(A) is amended by inserting "in an eligible rollover distribution (within the meaning of section 402(c)(4))" before the comma at the end thereof.

(B) Paragraph (8) of section 403(b) is amended by striking subparagraphs (B), (C), and (D) and inserting the following:

"(B) CERTAIN RULES MADE APPLICABLE.—Rules similar to the rules of paragraphs (2) through (7) of section 402(c) shall apply for purposes of subparagraph (A)."

(14) Section 406(c) (relating to termination of status as deemed employee not to be treated as separation from service for purposes of limitation of tax) is hereby repealed.

(15) Section 407(c) (relating to termination of status as deemed employee not to be treated as separation from service for purposes of limitation of tax) is hereby repealed.

(16) Paragraph (1) of section 408(a) is amended by striking "section 402(a)(5), 402(a)(7)" and inserting "section 402(c)".

(17) Clause (ii) of section 408(d)(3)(A) is amended to read as follows:

"(ii) no amount in the account and no part of the value of the annuity is attributable to any source other than a rollover contribution (as defined in section 402) from an employee's trust described in section 401(a) which is exempt from tax under section 501(a) or from an annuity plan described in section 403(a) (and any earnings on such contribution), and the entire amount received (including property and other money) is paid (for the benefit of such individual) into another such trust or annuity plan not later than the 60th day on which the individual receives the payment or the distribution; or".

(18) Subparagraph (B) of section 408(d)(3) (relating to limitations) is amended by striking the second sentence thereof.

(19) Subparagraph (F) of section 408(d)(3) (relating to frozen deposits) is amended by striking "section 402(a)(6)(H)" and inserting "section 402(c)(7)".

(20) Subclause (I) of section 414(n)(5)(C)(iii) is amended by striking "section 402(a)(8)" and inserting "section 402(e)(3)".

(21) Clause (i) of section 414(q)(7)(B) is amended by striking "402(a)(8)" and inserting "402(e)(3)".

(22) Paragraph (2) of section 414(s) (relating to employer may elect to treat certain deferrals as compensation) is amended by striking "402(a)(8)" and inserting "402(e)(3)".

(23) Subparagraph (A) of section 415(b)(2) (relating to annual benefit in general) is amended by striking "sections 402(a)(5)" and inserting "sections 402(c)".

(24) Subparagraph (B) of section 415(b)(2) (relating to adjustment for certain other forms of benefit) is amended by striking "sections 402(a)(5)" and inserting "sections 402(c)".

(25) Paragraph (2) of section 415(c) (relating to annual addition) is amended by striking "sections 402(a)(5)" and inserting "sections 402(c)".

(26) Subparagraph (B) of section 457(c)(2) is amended by striking "section 402(a)(8)" in clause (i) thereof and inserting "section 402(e)(3)".

(27) Section 691(c) (relating to coordination with section 402(e)) is amended by striking paragraph (5).

(28) Subparagraph (B) of section 871(a)(1) (relating to income other than capital gains) is amended by striking "402(a)(2), 403(a)(2), or".

(29) Paragraph (1) of section 871(b) (relating to imposition of tax) is amended by striking "section 1, 55, or 402(e)(1)" and inserting "section 1 or 55".

(30) Paragraph (1) of section 871(k) is amended by striking "section 402(a)(4)" and inserting "section 402(e)(2)".

(31) Subsection (b) of section 877 (relating to alternative tax) is amended by striking "section 1, 55, or 402(e)(1)" and inserting "section 1 or 55".

(32) Subsection (b) of section 1441 (relating to income items) is amended by striking "402(a)(2), 403(a)(2), or".

(33) Paragraph (5) of section 1441(c) (relating to special items) is amended by striking "402(a)(2), 403(a)(2), or".

(34) Subparagraph (A) of section 3121(v)(1) is amended by striking "section 402(a)(8)" and inserting "section 402(e)(3)".

(35) Subparagraph (A) of section 3306(r)(1) is amended by striking "section 402(a)(8)" and inserting "section 402(e)(3)".

(36) Subsection (a) of section 3405 is amended by striking "PENSIONS, ANNUITIES, ETC.—" from the heading thereof and inserting "PERIODIC PAYMENTS.—".

(37) Subsection (b) of section 3405 (relating to nonperiodic distribution) is amended—

(A) by striking "the amount determined under paragraph (2)" from paragraph (1) thereof and inserting "an amount equal to 10 percent of such distribution"; and

(B) by striking paragraph (2) (relating to amount of withholding) and redesignating paragraph (3) as paragraph (2).

(38) Paragraph (4) of section 3405(d) (relating to qualified total distributions) is hereby repealed.

(39) Paragraph (8) of section 3405(d) (relating to maximum amounts withheld) is amended to read as follows:

"(8) MAXIMUM AMOUNT WITHHELD.—The maximum amount to be withheld under this section on any designated distribution shall not exceed the sum of the amount of money and the fair market value of other property (other than securities of the employer corporation) received in the distribution. No amount shall be required to be withheld under this section in the case of any designated distribution which consists only of securities of the employer corporation and cash (not in excess of $200) in lieu of financial shares. For purposes of this paragraph, the term 'securities of the employer corporation' has the meaning given such term by section 402(e)(4)(E)."

(40) Subparagraph (A) of section 4973(b)(1) is amended by striking "sections 402(a)(5), 402(a)(7)" and inserting "sections 402(c)".

(41) Paragraph (4) of section 4980A(c) (relating to special rule where taxpayer elects income averaging) is amended to read as follows:

"(4) ONE-TIME ELECTION FOR CERTAIN DISTRIBUTIONS.—If the taxpayer elects the application of this paragraph for any calendar year, paragraph (1) shall be applied for such calendar year as if the limitation under paragraph (1) were equal to 5 times such limitation determined without regard to this paragraph. No election may be made under this paragraph by any taxpayer if this paragraph applied to the taxpayer for any preceding calendar year."

(42) Subparagraph (C) of section 7701(j)(1) is amended by striking "section 402(a)(8)" and inserting "section 402(e)(3)".

(d) EFFECTIVE DATES.—

(1) IN GENERAL.—The amendments made by this section shall apply to taxable years beginning after December 31, 1992.

(2) ROLLOVERS.—The provisions of section 402(c) of the Internal Revenue Code of 1986 (as added by subsection (a)), and any amendment of any other provision of such Code relating to such provision, shall apply to distributions after the date of the enactment of this Act.

(3) RETENTION OF CERTAIN TRANSITION RULES.—Notwithstanding any other provision of this section, the amendments made by this section shall not apply to distributions to employees described in section 1122 (h)(3) or (h)(5) of the Tax Reform Act of 1986.

SEC. 4202. SIMPLIFIED METHOD FOR TAXING ANNUITY DISTRIBUTIONS UNDER CERTAIN EMPLOYER PLANS.

(a) GENERAL RULE.—Subsection (d) of section 72 (relating to annuities; certain proceeds of endowment and life insurance contracts) is amended to read as follows:

"(d) SPECIAL RULES FOR QUALIFIED EMPLOYER RETIREMENT PLANS.—

"(1) SIMPLIFIED METHOD OF TAXING ANNUITY PAYMENTS.—

"(A) IN GENERAL.—In the case of any amount received as an annuity under a qualified employer retirement plan—

"(i) subsection (b) shall not apply, and

"(ii) the investment in the contract shall be recovered as provided in this paragraph.

"(B) METHOD OF RECOVERING INVESTMENT IN CONTRACT.—

"(i) IN GENERAL.—Gross income shall not include so much of any monthly annuity payment under a qualified employer retirement plan as does not exceed the amount obtained by dividing—

"(I) the investment in the contract (as of the annuity starting date), by

"(II) the number of anticipated payments determined under the table contained in clause (iii) (or, in the case of a contract to which subsection (c)(3)(B) applies, the number of monthly annuity payments under such contract).

"(ii) CERTAIN RULES MADE APPLICABLE.—Rules similar to the rules of paragraphs (2) and (3) of subsection (b) shall apply for purposes of this paragraph.

"(iii) NUMBER OF ANTICIPATED PAYMENTS.—

"If the age of the primary annuitant on the annuity starting date is:	The number of anticipated payments is:
Not more than 55	300
More than 55 but not more than 60	260
More than 60 but not more than 65	240
More than 65 but not more than 70	170
More than 70	120

"(C) ADJUSTMENT FOR REFUND FEATURE NOT APPLICABLE.—For purposes of this paragraph, investment in the contract shall be determined under subsection (c)(1) without regard to subsection (c)(2).

"(D) SPECIAL RULE WHERE LUMP SUM PAID IN CONNECTION WITH COMMENCEMENT OF ANNUITY PAYMENTS.—If, in connection with the commencement of annuity payments under any qualified employer retirement plan, the taxpayer receives a lump sum payment—

"(i) such payment shall be taxable under subsection (e) as if received before the annuity starting date, and

"(ii) the investment in the contract for purposes of this paragraph shall be determined as if such payment had been so received.

"(E) EXCEPTION.—This paragraph shall not apply in any case where the primary annuitant has attained age 75 on the annuity starting date unless there are fewer than 5 years of guaranteed payments under the annuity.

"(F) ADJUSTMENT WHERE ANNUITY PAYMENTS NOT ON MONTHLY BASIS.—In any case where the annuity payments are not made on a monthly basis, appropriate adjustments in the application of this paragraph shall be made to take into account the period on the basis of which such payments are made.

"(G) QUALIFIED EMPLOYER RETIREMENT PLAN.—For purposes of this paragraph, the term 'qualified employer retirement plan' means any plan or contract described in paragraph (1), (2), or (3) of section 4974(c).

"(2) TREATMENT OF EMPLOYEE CONTRIBUTIONS UNDER DEFINED CONTRIBUTION PLANS.—For purposes of this section, employee contributions (and any income allocable thereto) under a defined contribution plan may be treated as a separate contract."

(b) EFFECTIVE DATE.—The amendment made by this section shall apply in cases where the annuity starting date is after December 31, 1992.

SEC. 4203. QUALIFIED PLANS MUST PROVIDE FOR TRANSFERS OF CERTAIN DISTRIBUTIONS TO OTHER PLANS.

(a) QUALIFICATION REQUIREMENT.—Section 401(a) (relating to requirements for qualification) is amended by adding after paragraph (30) the following new paragraph:

"(31) CERTAIN DISTRIBUTIONS MUST BE MADE IN FORM OF TRANSFER TO OTHER PLAN.—A trust shall not constitute a qualified trust under this section unless the plan of which it is a part meets the requirements of section 417A."

(b) TRANSFER REQUIREMENTS.—

(1) IN GENERAL.—Subpart B of part I of subchapter D of chapter 1 (relating to special rules) is amended by adding at the end thereof the following new section:

"SEC. 417A. REQUIRED TRANSFERS OF CERTAIN PLAN DISTRIBUTIONS.

"(a) GENERAL RULE.—A plan meets the requirements of this section only if all applicable distributions from the plan are made in the form of a direct trustee-to-trustee transfer to an eligible transferee plan.

"(b) APPLICABLE DISTRIBUTION.—For purposes of this section—

"(1) IN GENERAL.—The term 'applicable distribution' means any distribution from a

"(1) IN GENERAL.—The term 'applicable distribution' means any distribution from a plan in excess of $500 which, without regard to this section, would be distributed directly to a participant or to the beneficiary of a participant.

"(2) EXCEPTIONS.—The term 'applicable distribution' shall not include any of the following:

"(A) Any distribution described in section 72(t)(2)(A) (other than clause (i), (ii), or (v) thereof) or section 72(t)(2)(C).

"(B) Any distribution on or after the date the employee attains age 55.

"(C) Any distribution on or after the death of the employee other than to the surviving spouse of the employee.

"(D) In the case of a profit-sharing or stock bonus plan, a distribution upon hardship of the employee.

"(E) Any distribution of any employee contribution other than accumulated deductible contributions (within the meaning of section 72(o)(5)).

"(F) Any distribution the proceeds of which are used to repay any loan to the employee from the plan with respect to which the employee is in default.

"(c) ELIGIBLE TRANSFEREE PLAN.—For purposes of this section—

"(1) IN GENERAL.—The term 'eligible transferee plan' means an individual retirement plan designated by the employee in such form, and at such time, as the transferor plan may prescribe.

"(2) DESIGNATION BY PLAN.—

"(A) IN GENERAL.—Each plan shall provide a method for the designation of an eligible transferee plan if an employee does not designate a plan under paragraph (1).

"(B) DESIGNATION BY TRUSTEE.—The trustee shall designate the eligible transferee plan under the method prescribed under subparagraph (A) in cases—

"(i) where the employee does not designate, or

"(ii) where the transfer in accordance with an employee's designation is not practicable.

"(3) TRANSFERS TO QUALIFIED TRUSTS.—Except as otherwise provided in regulations, an eligible transferee plan shall include an employee's trust described in section 401(a) and exempt from tax under section 501(a) which is designated as provided in paragraph (2) and which—

"(A) is part of a defined contribution plan, and

"(B) provides for the acceptance of the distribution from the transferor plan.

"(d) SPECIAL RULES FOR TREATMENT OF TRANSFERS.—

"(1) WITHDRAWALS BEFORE DUE DATE.—

"(A) IN GENERAL.—For purposes of this title, if, during the distribution period with respect to any applicable distribution, the employee receives a distribution from the eligible transferee plan of any portion of the applicable distribution (and any income allocable thereto), the distribution from the eligible transferee plan shall be treated as if it were a distribution from the transferor plan in the taxable year of receipt by the employee.

"(B) DISTRIBUTION PERIOD.—For purposes of this paragraph, the term 'distribution period' means the period beginning on the date of the transfer and ending on the due date (including extensions) for the return of tax for the taxable year of the employee in which the date of transfer occurs.

"(2) SPOUSAL BENEFICIARIES.—For purposes of this section, in the case of an applicable distribution to the surviving spouse of an employee, the surviving spouse shall be treated in the same manner as an employee.

"(e) REPORTS.—

"(1) NOTICE TO EMPLOYEES.—The trustee of a plan shall notify each employee before any applicable distribution of the requirements of this section, including the time and manner of making a designation under subsection (c)(1).

"(2) AMOUNTS TRANSFERRED.—The trustee of a transferor plan shall notify the employee of the amount of any direct trustee-to-trustee transfer."

(2) CONFORMING AMENDMENT.—The table of sections for subpart B of part I of subchapter D of chapter 1 is amended by inserting after the item relating to section 417 the following new item:

"Sec. 417A. Required transfers of certain plan distributions."

(c) EXCLUSION FROM INCOME.—

(1) IN GENERAL.—Subsection (e) of section 402 (relating to taxability of beneficiary of employees' trust), as amended by section _____, is amended by adding at the end the following new paragraph:

"(5) DIRECT TRUSTEE-TO-TRUSTEE TRANSFERS.—In the case of a plan described in section 401(a) to which the requirements of section 417A apply, any amount transferred in a direct trustee-to-trustee transfer in accordance with section 417A shall not be includible in gross income for the taxable year of such transfer."

(2) DIRECT TRANSFERS FROM EMPLOYEE ANNUITIES.—

(A) QUALIFIED ANNUITY PLANS.—

(i) Paragraph (2) of section 404(a) (relating to employees' annuities) is amended by striking "and (27)" and inserting "(27), and (31)".

(ii) Subsection (a) of section 403 (relating to taxability of beneficiary under a qualified annuity plan) is amended by adding at the end the following new paragraph:

"(5) DIRECT TRANSFERS TO INDIVIDUAL RETIREMENT PLANS.—Rules similar to the rules of sections 402(e)(5) and 417A shall apply with respect to annuity contracts described in paragraph (1), and such contracts shall, for purposes of section 417A(c)(3), be treated in the same manner as a trust described in such section."

(B) ANNUITY CONTRACTS PURCHASED BY SECTION 501(C)(3) ORGANIZATIONS OR PUBLIC SCHOOLS.—Subsection (b) of section 403 (relating to taxability of beneficiary under annuity purchased by section 501(c)(3) organization or public school) is amended by adding at the end the following new paragraph:

"(13) DIRECT TRUSTEE-TO-TRUSTEE TRANSFERS.—Rules similar to the rules of sections 401(a)(31) and 417A and section 402(e)(5) shall apply with respect to annuity contracts described in paragraph (1), and such contracts shall, for purposes of section 417A(c)(3), be treated in the same manner as a trust described in such section."

(d) OTHER AMENDMENTS.—

(1) CERTAIN TRANSFERS NOT TREATED AS REDUCTIONS IN BENEFITS.—Section 411(d)(6)(B) (relating to accrued benefit not to be decreased by amendment) is amended by adding at the end the following new sentence: "Except as otherwise provided in regulations, the requirements of clause (ii) shall not be treated as violated solely by reason of a direct trustee-to-trustee transfer required by section 417A."

(2) SERVICE DISREGARDED WHERE DISTRIBUTION IS PERMITTED.—

(A) IN GENERAL.—Subparagraph (B) of section 411(a)(7) (relating to effect of certain distributions) is amended—

(i) in the matter preceding clause (i), by striking "he has received";

(ii) in clause (i), by inserting "the employee has received" after "(i)", and by striking "or";

(iii) in clause (ii), by inserting "the employee has received" after "(ii)", and by striking "receive." and inserting "receive, or";

(iv) by inserting after clause (ii) the following:

"(iii) a direct trustee-to-trustee transfer described in section 417A has been made from the plan."; and

(v) in the last sentence, by striking "Clause (ii)" and inserting "Clauses (ii) and (iii)".

(B) BUYBACK RULES.—Subparagraph (C) of section 411(a)(7) (relating to repayment of subparagraph (B) distributions) is amended by adding at the end the following new sentence: "For purposes of this subparagraph, a direct trustee-to-trustee transfer referred to in subparagraph (B)(iii) with respect to a participant shall be treated as a distribution received by the participant."

(3) NOTICE TO RECIPIENTS OF DISTRIBUTIONS ELIGIBLE FOR ROLLOVER TREATMENT.—Paragraph (1) of section 402(f) (relating to written explanation to recipients of distributions eligible for rollover treatment) is amended—

(A) by striking "when making an eligible rollover distribution, provide a written explanation to the recipient" and inserting "when making an eligible rollover distribution or a direct trustee-to-trustee transfer, provide to the recipient of the distribution or the person with respect to whom the transfer is made a written explanation of"; and

(B) by inserting ", or the income tax consequences of a direct trustee-to-trustee transfer provided in accordance with the applicable requirements of sections 417A, 403(e)(5), and 403(b)(13), respectively" before the end period.

(e) EFFECTIVE DATE.—The amendments made by this section shall apply to distributions in plan years beginning after December 31, 1993.

SEC. 4204. REQUIRED DISTRIBUTIONS.

(a) IN GENERAL.—Section 401(a)(9)(C) (defining required beginning date) is amended to read as follows:

"(C) REQUIRED BEGINNING DATE.—For purposes of this paragraph—

"(i) IN GENERAL.—The term 'required beginning date' means April 1 of the calendar year following the later of—

"(I) the calendar year in which the employee attains age 70½,

"(II) the calendar year in which the employee retires.

"(ii) EXCEPTION.—Subclause (II) of clause (i) shall not apply—

"(I) except as provided in section 409(d), in the case of an employee who is a 5-percent owner (as defined in section 416) with respect to the plan year ending in the calendar year in which the employee attains age 70½, or

"(II) for purposes of section 408(a)(6) or (b)(3).

"(iii) ACTUARIAL ADJUSTMENT.—In the case of an employee to whom clause (i)(II) applies who retires in a calendar year after the calendar year in which the employee attains age 70½, the employee's accrued benefit shall be actuarially increased to take into account the period after age 70½ in which the employee was not receiving any benefits under the plan.

"(iv) EXCEPTION FOR GOVERNMENTAL AND CHURCH PLANS.—Clauses (ii) and (iii) shall not apply in the case of a governmental plan or church plan. For purposes of this clause, the term 'church plan' means a plan main-

tained by a church for church employees, and the term 'church' means any church (as defined in section 3121(w)(3)(A)) or qualified church-controlled organization (as defined in section 3121(w)(3)(B))."

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to years beginning after December 31, 1992.

PART II—INCREASED ACCESS TO PENSION PLANS

SEC. 4211. MODIFICATIONS OF SIMPLIFIED EMPLOYEE PENSIONS.

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

(b) MODIFICATION OF PARTICIPATION REQUIREMENTS.—Section 408(k)(2)(B) is amended to read as follows:

"(B) has at least 1 year of service (as determined under section 411(a)(5)) with the employer, and".

(c) REPEAL OF PARTICIPATION REQUIREMENT.—Section 408(k)(6)(A) is amended by striking clause (ii) and by redesignating clauses (iii) and (iv) as clauses (ii) and (iii), respectively.

(d) ALTERNATIVE TEST.—Clause (iii) of section 408 (k)(6)(A) is amended by adding at the end thereof the following new flush sentence: "The requirements of the preceding sentence are met if the employer makes contributions to the simplified employee pension meeting the requirements of sections 401(k)(11) (B) or (C), 401(k)(11)(D), and 401(m)(10)(B)."

(e) EFFECTIVE DATE.—The amendments made by this section shall apply to years beginning after December 31, 1992.

SEC. 4212. TAX EXEMPT ORGANIZATIONS ELIGIBLE UNDER SECTION 401(k).

(a) GENERAL RULE.—Subparagraph (B) of section 401(k)(4) is amended to read as follows:

"(B) STATE AND LOCAL GOVERNMENTS NOT ELIGIBLE.—A cash or deferred arrangement shall not be treated as a qualified cash or deferred arrangement if it is part of a plan maintained by a State or local government or political subdivision thereof, or any agency or instrumentality thereof. This subparagraph shall not apply to a rural cooperative plan."

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to plan years beginning on or after December 31, 1992, but shall not apply to any cash or deferred arrangement to which clause (i) of section 1116(f)(2)(B) of the Tax Reform Act of 1986 applies.

SEC. 4213. DUTIES OF SPONSORS OF CERTAIN PROTOTYPE PLANS.

(a) IN GENERAL.—The Secretary of the Treasury may, as a condition of sponsorship, prescribe rules defining the duties and responsibilities of sponsors of master and prototype plans, regional prototype plans, and other Internal Revenue Service preapproved plans.

(b) DUTIES RELATING TO PLAN AMENDMENT, NOTIFICATION OF ADOPTERS, AND PLAN ADMINISTRATION.—The duties and responsibilities referred to in subsection (a) may include—

(1) the maintenance of lists of persons adopting the sponsor's plans, including the updating of such lists not less frequently than annually,

(2) the furnishing of notices at least annually to such persons and to the Secretary or his delegate, in such form and at such time as the Secretary shall prescribe,

(3) duties relating to administrative services to such persons in the operation of their plans, and

(4) other duties that the Secretary considers necessary to ensure that—

(A) the master and prototype, regional prototype, and other preapproved plans of adopting employers are timely amended to meet the requirements of the Internal Revenue Code of 1986 or of any rule or regulation of the Secretary, and

(B) adopting employers receive timely notification of amendments and other actions taken by sponsors with respect to their plans.

PART III—NONDISCRIMINATION PROVISIONS

SEC. 4221. DEFINITION OF HIGHLY COMPENSATED EMPLOYEES.

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

"(1) IN GENERAL.—The term 'highly compensated employee' means any employee who—

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

"(B) had compensation for the preceding year from the employer in excess of $50,000.

The Secretary shall adjust the $50,000 amount under subparagraph (B) at the same time and in the same manner as under section 415(d)."

(b) SPECIAL RULE WHERE NO EMPLOYEES TREATED AS HIGHLY COMPENSATED.—Paragraph (2) of section 414(q) is amended to read as follows:

"(2) SPECIAL RULE IF NO EMPLOYEE DESCRIBED IN PARAGRAPH (1).—If no employee is treated as a highly compensated employee under paragraph (1), the highest paid officer for the year shall be treated as a highly compensated employee. The preceding sentence shall not apply for purposes of section 401 (k) or (m) and shall not apply with respect to employees of an employer described in section 457(e)(1)."

(c) TREATMENT OF FAMILY MEMBERS.—Paragraph (6) of section 414(q) is hereby repealed.

(d) CONFORMING AMENDMENTS.—

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

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

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

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

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

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

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

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

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

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

(3) Paragraph (17) of section 401(a) is amended by striking the last sentence.

(4) Subsection (l) of section 404 is amended by striking the last sentence.

(e) EFFECTIVE DATE.—The amendments made by this section shall apply to years beginning after December 31, 1992, except that an employer may elect not to have such amendments apply to years beginning in 1993.

SEC. 4222. ELECTION TO TREAT BASE PAY AS COMPENSATION.

(a) IN GENERAL.—Section 414(s) is amended by redesignating paragraph (4) as paragraph (5) and by inserting after paragraph (3) the following new paragraph:

"(4) ELECTION TO USE BASE PAY.—An employer may elect to determine an employee's compensation solely by reference to that portion of the employee's compensation attributable to such employee's base pay. Such election shall apply for purposes of all applicable provisions and to all employees and, once made, may be revoked only with the consent of the Secretary."

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to years beginning after December 31, 1992.

SEC. 4223. MODIFICATION OF ADDITIONAL PARTICIPATION REQUIREMENTS.

(a) GENERAL RULE.—Section 401(a)(26)(A) (relating to additional participation requirements) is amended to read as follows:

"(A) IN GENERAL.—In the case of a trust which is a part of a defined benefit plan, such trust shall not constitute a qualified trust under this subsection unless on each day of the plan year such trust benefits at least the lesser of—

"(i) 25 employees of the employer, or

"(ii) the greater of—

"(I) 40 percent of all employees of the employer, or

"(II) 2 employees (or if there is only 1 employee, such employee)."

(b) SEPARATE LINE OF BUSINESS TEST.—Section 401(a)(26)(G) (relating to separate line of business) is amended by striking "paragraph (7)" and inserting "paragraph (2)(A) or (7)".

(c) EFFECTIVE DATES.—

(1) IN GENERAL.—Except as provided in paragraph (2), the amendment made by this section shall apply to years beginning after December 31, 1991.

(2) ELECTION.—A plan may elect to have the amendment made by this section apply as if such amendment was included in the amendment made by section 1112(b) of the Tax Reform Act of 1986. Such election shall be made at such time, and in such form, as the Secretary of the Treasury may prescribe.

SEC. 4224. NONDISCRIMINATION RULES FOR QUALIFIED CASH OR DEFERRED ARRANGEMENTS AND MATCHING CONTRIBUTIONS.

(a) ALTERNATIVE METHODS OF SATISFYING SECTION 401(k) NONDISCRIMINATION TESTS.—Section 401(k) (relating to cash or deferred arrangements) is amended by adding at the end thereof the following new paragraph:

"(11) ALTERNATIVE METHODS OF MEETING NONDISCRIMINATION REQUIREMENTS.—

"(A) IN GENERAL.—A cash or deferred arrangement shall be treated as meeting the requirements of paragraph (3)(A)(ii) if such arrangement—

"(i) meets the contribution requirements of subparagraph (B) or (C), and

"(ii) meets the notice requirements of subparagraph (D).

"(B) MATCHING CONTRIBUTIONS.—

"(i) IN GENERAL.—The requirements of this subparagraph are met if, under the arrangement, the employer makes matching contributions on behalf of each employee who is not a highly compensated employee in an amount not less than—

"(I) 100 percent of the elective contributions of the employee to the extent such elective contributions do not exceed 3 percent of the employee's compensation, and

"(II) 50 percent of the elective contributions of the employee to the extent that such elective contributions exceed 3 percent but do not exceed 5 percent of the employee's compensation.

"(ii) RATE FOR HIGHLY COMPENSATED EMPLOYEES.—The requirements of this subparagraph are not met if, under the arrangement, the matching contribution with respect to any elective contribution of a highly compensated employee at any level of compensation is greater than that with respect to an employee who is not a highly compensated employee.

"(iii) ALTERNATIVE PLAN DESIGNS.—If the matching contribution with respect to any elective contribution at any specific level of compensation is not equal to the percentage required under clause (i), an arrangement shall not be treated as failing to meet the requirements of clause (i) if—

"(I) the level of an employer's matching contribution does not increase as an employee's elective contributions increase, and

"(II) the aggregate amount of matching contributions with respect to elective contributions not in excess of such level of compensation is at least equal to the amount of matching contributions which would be made if matching contributions were made on the basis of the percentages described in clause (i).

"(C) NONELECTIVE CONTRIBUTIONS.—The requirements of this subparagraph are met if, under the arrangement, the employer is required, without regard to whether the employee makes an elective contribution or employee contribution, to make a contribution to a defined contribution plan on behalf of each employee who is not a highly compensated employee and who is eligible to participate in the arrangement in an amount equal to at least 3 percent of the employee's compensation.

"(D) NOTICE REQUIREMENT.—An arrangement meets the requirements of this paragraph if, under the arrangement, each employee eligible to participate is, within a reasonable period before any year, given written notice of the employee's rights and obligations under the arrangement which—

"(i) is sufficiently accurate and comprehensive to appraise the employee of such rights and obligations, and

"(ii) is written in a manner calculated to be understood by the average employee eligible to participate.

"(E) OTHER REQUIREMENTS.—

"(i) WITHDRAWAL AND VESTING RESTRICTIONS.—An arrangement shall not be treated as meeting the requirements of subparagraph (B) or (C) unless the requirements of subparagraphs (B) and (C) of paragraph (2) are met with respect to employer contributions.

"(ii) SOCIAL SECURITY AND SIMILAR CONTRIBUTIONS NOT TAKEN INTO ACCOUNT.—An arrangement shall not be treated as meeting the requirements of subparagraph (B) or (C) unless such requirements are met without regard to subsection (l), and, for purposes of subsection (l), employer contributions under subparagraph (B) or (C) shall not be taken into account.

"(F) OTHER PLANS.—An arrangement shall be treated as meeting the requirements under subparagraph (A)(i) if any other plan maintained by the employer meets such requirements with respect to employees eligible under the arrangement."

(b) ALTERNATIVE METHODS OF SATISFYING SECTION 401(m) NONDISCRIMINATION TESTS.—Section 401(m) (relating to nondiscrimination test for matching contributions and employee contributions) is amended by redesignating paragraph (10) as paragraph (11) and by adding after paragraph (9) the following new paragraph:

"(10) ALTERNATIVE METHOD OF SATISFYING TESTS.—

"(A) IN GENERAL.—A defined contribution plan shall be treated as meeting the requirements of paragraph (2) with respect to matching contributions if the plan—

"(i) meets the contribution requirements of subparagraph (B) or (C) of subsection (k)(11),

"(ii) meets the notice requirements of subsection (k)(11)(D), and

"(iii) meets the requirements of subparagraph (B).

"(B) LIMITATION ON MATCHING CONTRIBUTIONS.—The requirements of this subparagraph are met if—

"(i) matching contributions on behalf of any employee may not be made with respect to an employee's contributions or elective deferrals in excess of 6 percent of the employee's compensation,

"(ii) the level of an employer's matching contribution does not increase as an employee's contributions or elective deferrals increase, and

"(iii) the matching contribution with respect to any highly compensated employee at a specific level of compensation is not greater than that with respect to an employee who is not a highly compensated employee."

(c) YEAR FOR COMPUTING NONHIGHLY COMPENSATED EMPLOYEE PERCENTAGE.—

(1) CASH OR DEFERRED ARRANGEMENTS.—Clause (ii) of section 401(k)(3)(A) is amended—

(A) by striking "such year" and inserting "the plan year", and

(B) by striking "for such plan year" and inserting "the preceding plan year".

(2) MATCHING AND EMPLOYEE CONTRIBUTIONS.—Section 401(m)(2)(A) is amended—

(A) by inserting "for such plan year" after "highly compensated employee", and

(B) by inserting "for the preceding plan year" after "eligible employees" each place it appears in clause (i) and clause (ii).

(d) SPECIAL RULE FOR DETERMINING AVERAGE DEFERRAL PERCENTAGE FOR FIRST PLAN YEAR, ETC.—

(1) Paragraph (3) of section 401(k) is amended by adding at the end thereof the following new subparagraph:

"(E) For purposes of this paragraph, in the case of the first plan year of any plan, the amount taken into account as the average deferral percentage of nonhighly compensated employees for the preceding plan year shall be—

"(i) 3 percent, or

"(ii) if the employer makes an election under this subclause, the average deferral percentage of nonhighly compensated employees determined for such first plan year."

(2) Paragraph (3) of section 401(m) is amended by adding at the end thereof the following: "Rules similar to the rules of subsection (k)(3)(E) shall apply for purposes of this subsection.".

(e) DISTRIBUTION OF EXCESS CONTRIBUTIONS.—

(1) Subparagraph (C) of section 401(k)(8) (relating to arrangement not disqualified if excess contributions distributed) is amended by striking "on the basis of the respective portions of the excess contributions attributable to each of such employees" and inserting "on the basis of the amount of contributions by, or on behalf of, each of such employees".

(2) Subparagraph (C) of section 401(m)(6) (relating to method of distributing excess aggregate contributions) is amended by striking "on the basis of the respective portions of such amounts attributable to each of such employees" and inserting "on the basis of the amount of contributions on behalf of, or by, each such employee".

(f) EFFECTIVE DATE.—The amendments made by this section shall apply to years beginning after December 31, 1992.

PART IV—MISCELLANEOUS SIMPLIFICATION

SEC. 4231. TREATMENT OF LEASED EMPLOYEES.

(a) REPLACEMENT OF HISTORICAL TEST WITH CONTROL TEST.—Subparagraph (C) of section 414(n)(2) is amended to read as follows:

"(C) such services are performed by such person under the control of the recipient."

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 1983.

SEC. 4242. ELIMINATION OF HALF-YEAR REQUIREMENTS.

(a) IN GENERAL.—Each of the following provisions are amended by striking "age 59½" and inserting "age 59":

(1) Section 72(q)(2)(A).
(2) Section 72(q)(3)(B)(i).
(3) Section 72(q)(3)(B)(ii).
(4) Section 72(t)(2)(A)(i).
(5) Section 72(t)(4)(A)(ii)(I).
(6) Section 72(t)(4)(A)(ii)(II).
(7) Section 72(v)(2)(A).
(8) Section 401(k)(7)(C).
(9) Section 402(e)(4)(D)(i)(II).
(10) Section 403(b)(7)(A)(ii).
(11) Section 403(b)(11)(A).
(12) The heading for section 403(b)(11).
(13) Section 4978(d)(1)(B).

(b) OTHER PROVISIONS.—Each of the following provisions is amended by striking "70½" and inserting "70":

(1) Section 219(d)(1).
(2) The heading for section 219(d)(1).
(3) Section 401(a)(9)(B)(iv)(I).
(4) Section 401(a)(9)(C)(i)(I).
(5) Section 401(a)(9)(C)(ii)(I).
(6) Section 401(a)(9)(C)(iii).
(7) Section 408(b).

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to years beginning after December 31, 1992.

SEC. 4233. MODIFICATIONS OF COST-OF-LIVING ADJUSTMENTS.

(a) IN GENERAL.—Section 415(d) (relating to cost-of-living adjustments) is amended to read as follows:

"(d) COST-OF-LIVING ADJUSTMENTS.—

"(1) IN GENERAL.—The Secretary shall adjust annually—

"(A) the $90,000 amount in subsection (b)(1)(A), and

"(B) in the case of a participant who separated from service, the amount taken into account under subsection (b)(1)(B),

for increases in the cost-of-living in accordance with regulations prescribed by the Secretary.

"(2) METHOD.—

"(A) IN GENERAL.—The regulations prescribed under paragraph (1) shall provide for adjustment procedures which are similar to the procedures used to adjust benefit amounts under section 215(i)(2)(A) of the Social Security Act.

"(B) PERIODS FOR ADJUSTMENT OF DOLLAR AMOUNT.—For purposes of paragraph (1)(A)—

"(i) IN GENERAL.—The adjustment with respect to any calendar year shall be based on the increase in the applicable index as of the close of the calendar quarter ending Septem-

ber 30 of the preceding calendar year over such index as of the close of the base period.

"(ii) BASE PERIOD.—For purposes of clause (i), the base period is the calendar quarter beginning October 1, 1986.

"(C) BASE PERIOD FOR SEPARATIONS.—For purposes of paragraph (1)(B), the base period is the last calendar quarter of the calendar year preceding the calendar year in which the participant separated from service.

"(3) ROUNDING.—Any amount determined under paragraph (1) (or by reference to this subsection) shall be rounded to the nearest $1,000, except that the amounts under sections 402(g)(1) and 408(k)(2)(C) shall be rounded to the nearest $100."

(b) EFFECTIVE DATE.—The amendments made by this section apply to adjustments with respect to calendar years beginning after December 31, 1992.

SEC. 4234. PLANS COVERING SELF-EMPLOYED INDIVIDUALS.

(a) AGGREGATION RULES.—Section 401(d) (relating to additional requirements for qualification of trusts and plans benefiting owner-employees) is amended to read as follows:

"(d) CONTRIBUTION LIMIT ON OWNER-EMPLOYEES.—A trust forming part of a pension or profit-sharing plan which provides contributions or benefits for employees some or all of whom are owner-employees shall constitute a qualified trust under this section only if, in addition to meeting the requirements of subsection (a), the plan provides that contributions on behalf of any owner-employee may be made only with respect to the earned income of such owner-employee which is derived from the trade or business with respect to which such plan is established."

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to years beginning after December 31, 1992.

SEC. 4235. FULL-FUNDING LIMITATION OF MULTIEMPLOYER PLANS.

(a) FULL-FUNDING LIMITATION.—Section 412(c)(7)(C) (relating to full-funding limitation) is amended—

(1) by inserting "or in the case of a multiemployer plan," after "paragraph (6)(B),", and

(2) by inserting "AND MULTIEMPLOYER PLANS" after "PARAGRAPH (6)(B)" in the heading thereof.

(b) VALUATION.—Section 412(c)(9) is amended—

(1) by inserting "(3 years in the case of a multiemployer plan)" after "year", and

(2) by striking "ANNUAL VALUATION" in the heading and inserting "VALUATION".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to years beginning after December 31, 1991.

SEC. 4236. ALTERNATIVE FULL-FUNDING LIMITATION.

(a) IN GENERAL.—Subsection (c) of section 412 (relating to minimum funding standards) is amended by redesignating paragraphs (8) through (11) as paragraphs (9) through (12), respectively, and by adding after paragraph (7) the following new paragraph:

"(8) ALTERNATIVE FULL-FUNDING LIMITATION.—

"(A) GENERAL RULE.—An employer may elect the full-funding limitation under this paragraph with respect to any defined benefit plan of the employer in lieu of the full-funding limitation determined under paragraph (7) if the requirements of subparagraphs (C) and (D) are met.

"(B) ALTERNATIVE FULL-FUNDING LIMITATION.—The full-funding limitation under this paragraph is the full-funding limitation determined under paragraph (7) without regard to subparagraph (A)(i)(I) thereof.

"(C) REQUIREMENTS RELATING TO PLAN ELIGIBILITY.—

"(i) IN GENERAL.—The requirements of this subparagraph are met with respect to a defined benefit plan if—

"(I) as of the 1st day of the election period, the average accrued liability of participants accruing benefits under the plan for the 5 immediately preceding plan years is at least 80 percent of the plan's total accrued liability,

"(II) the plan is not a top-heavy plan (as defined in section 416(g)) for the 1st plan year of the election period or either of the 2 preceding plan years, and

"(III) each defined benefit plan of the employer (and each defined benefit plan of each employer who is a member of any controlled group which includes such employer) meets the requirements of subclauses (I) and (II).

"(ii) FAILURE TO CONTINUE TO MEET REQUIREMENTS.—

"(I) If any plan fails to meet the requirement of clause (i)(I) for any plan year during an election period, the benefits of the election under this paragraph shall be phased out under regulations prescribed by the Secretary.

"(II) If any plan fails to meet the requirement of clause (i)(II) for any plan year during an election period, such plan shall be treated as not meeting the requirements of clause (i) for the remainder of the election period.

If there is a failure period described in subclause (I) or (II) with respect to any plan, such plan (and each plan described in clause (i)(III) with respect to such plan) shall be treated as not meeting the requirements of clause (i) for any of the 10 plan years beginning after the election period.

"(D) REQUIREMENTS RELATING TO ELECTION.—

"(i) IN GENERAL.—The requirements of this subparagraph are met if—

"(I) FILING DATE.—Notice of such election is filed with the Secretary (in such form and manner and containing such information as the Secretary may provide) by January 1 of any calendar year, and is effective as of the 1st day of the election period beginning on or after January 1 of the following calendar.

"(II) CONSISTENT ELECTION.—Such an election is made for all defined benefit plans maintained by the employer or by any member of a controlled group which includes the employer.

"(ii) TRANSITION PERIOD.—In the case of any election period beginning after December 31, 1991, and before January 1, 1994, the requirements of clause (i) shall not apply and the requirements of this subparagraph are met with respect to such election period if—

"(I) FILING DATE.—Notice of election is filed with the Secretary by December 31, 1992.

"(II) INFORMATION.—The notice sets forth the name and tax identification number of the plan sponsor, the names and tax identification numbers of the plans to which the election applies, the limitation under paragraph (7) (determined with and without regard to this paragraph), and a signed certification by an officer of the employer stating that the requirements of this paragraph have been met.

"(E) TERM OF ELECTION.—Any election made under this paragraph shall apply for the election period.

"(F) OTHER CONSEQUENCES OF ELECTION.—

"(i) NO FUNDING WAIVERS.—In the case of a plan with respect to which an election is made under this paragraph, no waiver may be granted under subsection (d) for any plan year beginning after the date the election was made and ending at the close of the election period with respect thereto.

"(ii) FAILURE TO MAKE SUCCESSIVE ELECTIONS.—If an election is made under this paragraph with respect to any plan and such an election does not apply for each successive plan year of such plan, such plan shall be treated as not meeting the requirements of subparagraph (C) for the period of 10 plans years beginning after the close of the last election period for such plan.

"(G) DEFINITIONS.—For purposes of this paragraph—

"(i) ELECTION PERIOD.—The term 'election period' means the period of 5 consecutive plan years beginning with the 1st plan year for which the election is made.

"(ii) CONTROLLED GROUP.—The term 'controlled group' means all persons who are treated as a single employer under subsection (b), (c), (m), or (o) of section 414.

"(H) PROCEDURES IF ALTERNATIVE FUNDING LIMITATION REDUCES NET FEDERAL REVENUES.—

"(i) IN GENERAL.—At least once with respect to each fiscal year, the Secretary shall estimate whether the application of this paragraph will result in a net reduction in Federal revenues for such fiscal year.

"(ii) ADJUSTMENT OF FULL-FUNDING LIMITATION IF REVENUE SHORTFALL.—If the Secretary estimates that the application of this paragraph will result in a more than insubstantial net reduction in Federal revenues for any fiscal year, the Secretary—

"(I) shall make the adjustment described in clause (iii), and

"(II) to the extent such adjustment is not sufficient to reduce such reduction to an insubstantial amount, shall make the adjustment described in clause (iv).

Such adjustments shall apply only to defined benefit plans with respect to which an election under this paragraph is not in effect.

"(iii) REDUCTION IN LIMITATION BASED ON 150 PERCENT OF CURRENT LIABILITY.—The adjustment described in this clause is an adjustment which substitutes a percentage (not lower than 140 percent) for the percentage described in paragraph (7)(A)(i)(I) determined by reducing the percentage of current liability taken into account with respect to participants who are not accruing benefits under the plan.

"(iv) REDUCTION IN LIMITATION BASED ON ACCRUED LIABILITY.—The adjustment described in this clause is an adjustment which reduces the percentage of accrued liability taken into account under paragraph (7)(A)(i)(II). In no event may the amount of accrued liability taken into account under such paragraph after the adjustment be less than 140 of current liability."

(b) ALTERATION OF DISCRETIONARY REGULATORY AUTHORITY.—Subparagraph (D) of section 412(c)(7) is amended by striking "provide—" and all that follows through "(iii) for" and inserting "provide for".

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

SEC. 4237. DISTRIBUTIONS UNDER RURAL COOPERATIVE PLANS.

(a) DISTRIBUTIONS AFTER CERTAIN AGE.—Section 401(k)(7) is amended by adding at the end thereof the following new subparagraph:

"(C) SPECIAL RULE FOR CERTAIN DISTRIBUTIONS.—A rural cooperative plan which includes a qualified cash or deferred arrangement shall not be treated as violating the requirements of section 401(a) merely by reason of a distribution to a participant after attainment of age 59½."

(b) EFFECTIVE DATE.—The amendments made by this section shall take effect as if included in the amendments made by section 1011(k)(9) of the Technical and Miscellaneous Revenue Act of 1988.

SEC. 4238. TREATMENT OF GOVERNMENTAL PLANS.

(a) DEFINITION OF COMPENSATION.—

(1) LIMITATIONS ON BENEFITS AND CONTRIBUTIONS UNDER QUALIFIED PLANS.—Subsection (k) of section 415 (regarding limitations on benefits and contributions under qualified plans) is amended by at the end the following new paragraph:

"(3) DEFINITION OF COMPENSATION FOR GOVERNMENTAL PLANS.—For purposes of this section, in the case of a governmental plan (as defined in section 414(d)), the term 'compensation' includes, in addition to the amounts described in subsection (c)(3), any amount which is contributed by the employer pursuant to a salary reduction agreement and which is not includible in the gross income of an employee under section 125, 402(e)(3), 403(b), 414(h)(2), or 457."

(2) OTHER USES.—Paragraph (2) of section 414(s) (defining compensation) is amended—

(A) by inserting "subsection (h) or" before "section 125", and

(B) by striking ", or 403(b)" and inserting ", 403(b), or 457".

(b) COMPENSATION LIMIT.—Subsection (b) of section 415 is amended by at the end the following new paragraph:

"(11) SPECIAL LIMITATION RULE FOR GOVERNMENTAL PLANS.—In the case of a governmental plan (as defined in section 414(d)), subparagraph (B) of paragraph (1) shall not apply."

(c) TREATMENT OF CERTAIN EXCESS BENEFIT PLANS.—

(1) IN GENERAL.—Section 415 is amended by inserting after subsection (l) the following new subsection:

"(m) TREATMENT OF QUALIFIED GOVERNMENTAL EXCESS BENEFIT ARRANGEMENTS.—

"(1) GOVERNMENTAL PLAN NOT AFFECTED.—In determining whether a governmental plan (as defined in section 414(d)) meets the requirements of this section, benefits provided under a qualified governmental excess benefit arrangement shall not be taken into account.

"(2) INCOMING ACCRUING TO PLAN.—For purposes of section 115, income accruing to a governmental plan in respect of a qualified governmental excess benefit arrangement (or to a trust maintained solely for the purpose of providing benefits under such arrangement) shall be treated as income derived from the exercise of an essential governmental function.

"(3) TAXATION OF PARTICIPANT.—For purposes of this chapter—

"(A) the taxable year or years for which amounts in respect of a qualified governmental excess benefit arrangement are includible in gross income by a participant, and

"(B) the treatment of such amounts when so includible by the participant,

shall be determined as if such qualified governmental excess benefit arrangement were treated as a plan for the deferral of compensation which is maintained by a corporation not exempt from tax under this chapter and which does not meet the requirements for qualification under section 401.

"(4) QUALIFIED GOVERNMENTAL EXCESS BENEFIT ARRANGEMENT.—For purposes of this subsection, the term 'qualified governmental excess benefit arrangement' means a portion of a governmental plan if—

"(A) such portion is maintained solely for the purpose of providing to participants in the plan that part of the participant's annual benefit (otherwise payable under the terms of the plan) in excess of the limitations on benefits imposed by this section,

"(B) under such portion no election is provided at any time to the participant (directly or indirectly) to defer compensation, and

"(C) benefits described in subparagraph (A) are not paid from a trust forming a part of such governmental plan unless such trust is maintained solely for the purpose of providing such benefits."

(2) CONFORMING AMENDMENT.—Paragraph (2) of section 457(f) is amended by striking "and" at the end of subparagraph (C), by striking the period after subparagraph (D) and inserting ", and", and by inserting at the end thereof the following new subparagraph:

"(E) a qualified governmental excess benefit arrangement described in section 415(m)."

(d) EXEMPTION FOR SURVIVOR AND DISABILITY BENEFITS.—Paragraph (2) of section 415(b) is amended by inserting at the end the following new subparagraph:

"(I) EXEMPTION FOR SURVIVOR AND DISABILITY BENEFITS PROVIDED UNDER GOVERNMENTAL PLANS.—Subparagraph (B) of paragraph (1), subparagraph (C) of this paragraph, and paragraph (5) shall not apply to—

"(i) income received from a governmental plan (as defined in section 414(d)) as a pension, annuity, or similar allowance as the result of the recipient becoming disabled by reason of personal injuries or sickness, or

"(ii) amounts received from a governmental plan by the beneficiaries, survivors, or the estate of an employee as the result of the death of the employee."

(e) REVOCATION OF GRANDFATHER ELECTION.—Subparagraph (C) of section 415(b)(10) is amended by adding at the end thereof the following new sentences: "If all employers maintaining a plan consent, a plan may revoke an election under the preceding sentence if such revocation is filed with the Secretary not later than the last day of the 3rd plan year beginning after the date of the enactment of this sentence. Such revocation shall apply to all plan years for which the election was in effect, except that the limitations under this section for any amount paid by the plan in a taxable year ending after revocation of such election with respect to benefits attributable to a preceding taxable year during which such election was in effect shall be determined as if such amount had been received in such preceding taxable year."

(f) EFFECTIVE DATES.—

(1) IN GENERAL.—The amendments made by subsections (a), (b), (c), and (d) shall apply to taxable years beginning after the date of enactment. The amendments made by subsection (e) shall apply with respect to revocations adopted after the date of enactment of this section.

(2) TREATMENT FOR YEARS BEGINNING BEFORE DATE OF ENACTMENT.—A governmental plan (as defined in section 414(d) of such Code) shall be treated as satisfying the requirements of section 415 of such Code for all taxable years beginning before the date of the enactment of this Act.

SEC. 4239. USE OF EXCESS ASSETS OF BLACK LUNG BENEFIT TRUSTS FOR HEALTH CARE BENEFITS.

(a) GENERAL RULE.—Paragraph (21) of section 501(c) is amended to read as follows:

"(21)(A) A trust or trusts established in writing, created or organized in the United States, and contributed to by any person (except an insurance company) if—

"(i) the purpose of such trust or trusts is exclusively—

"(I) to satisfy, in whole or in part, the liability of such person for, or with respect to, claims for compensation for disability or death due to pneumoconiosis under Black Lung Acts,

"(II) to pay premiums for insurance exclusively covering such liability,

"(III) to pay administrative and other incidental expenses of such trust in connection with the operation of the trust and the processing of claims against such person under Black Lung Acts, and

"(IV) to pay accident or health benefits for retired miners and their spouses and dependents (including administrative and other incidental expenses of such trust in connection therewith) or premiums for insurance exclusively covering such benefits, and

"(ii) no part of the assets of the trust may be used for, or diverted to, any purpose other than—

"(I) the purposes described in clause (i),

"(II) investment (but only to the extent that the trustee determines that a portion of the assets is not currently needed for the purposes described in clause (i)) in qualified investments, or

"(III) payment into the Black Lung Disability Trust Fund established under section 9501, or into the general fund of the United States Treasury (other than in satisfaction of any tax or other civil or criminal liability of the person who established or contributed to the trust).

"(B) No deduction shall be allowed under this chapter for any payment described in subparagraph (A)(i)(IV) from such trust.

"(C) Payments described in subparagraph (A)(i)(IV) may be made from such trust during a taxable year only to the extent that the aggregate amount of such payments during such taxable year does not exceed the lesser of—

"(i) the excess (if any) (as of the close of the preceding taxable year) of—

"(I) the fair market value of the assets of the trust, over

"(II) 110 percent of the present value of the liability described in subparagraph (A)(i)(I) of such person, or

"(ii) the excess (if any) of—

"(I) the sum of a similar excess determined as of the close of the last taxable year ending before the date of the enactment of this subparagraph plus earnings thereon as of the close of the taxable year preceding the taxable year involved, over

"(II) the aggregate payments described in subparagraph (A)(i)(IV) made from the trust during all taxable years beginning after the date of the enactment of this subparagraph. The determinations under the preceding sentence shall be made by an independent actuary using actuarial methods and assumptions (not inconsistent with the regulations prescribed under section 192(c)(1)(A)) each of which is reasonable and which are reasonable in the aggregate.

"(D) For purposes of this paragraph—

"(i) The term 'Black Lung Acts' means part C of title IV of the Federal Mine Safety and Health Act of 1977, and any State law providing compensation for disability or death due to pneumoconiosis.

"(ii) The term 'qualified investments' means—

"(I) public debt securities of the United States,

"(II) obligations of a State or local government which are not in default as to principal or interest, and

"(III) time or demand deposits in a bank (as defined in section 581) or an insured cred-

it union (within the meaning of section 101(6) of the Federal Credit Union Act, 12 U.S.C. 1752(6)) located in the United States.

"(iii) The term 'miner' has the same meaning as such term has when used in section 402(d) of the Black Lung Benefits Act (30 U.S.C. 902(d)).

"(iv) The term 'incidental expenses' includes legal, accounting, actuarial, and trustee expenses."

(b) EXCEPTION FROM TAX ON SELF-DEALING.—Section 4951(f) is amended by striking "clause (i) of section 501(c)(21)(A)" and inserting "subclause (I) or (IV) of section 501(c)(21)(A)(i)".

(c) TECHNICAL AMENDMENT.—Paragraph (4) of section 192(c) is amended by striking "clause (ii) of section 501(c)(21)(B)" and inserting "subclause (II) of section 501(c)(21)(A)(ii)".

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 1991.

SEC. 4240. REPORTS OF PENSION AND ANNUITY PAYMENTS.

(a) AMENDMENTS RELATED TO DEFINITION OF INFORMATION RETURN.—

(1) Subparagraph (A) of section 6724(d)(1) is amended—

(A) by redesignating clauses (iv) through (vii) as clauses (vi) through (ix),

(B) by inserting after clause (iii) the following new clause:

"(v) section 6047(d) (relating to reports by employers, plan administrators, etc.),",

(C) by redesignating clauses (i) through (iii) as clauses (ii) through (iv), and

(D) by inserting before clause (ii) (as so redesignated) the following new clause:

"(i) section 408(i) (relating to individual retirement account and simplified employee pension reports),".

(2) Paragraph (1) of section 6724(d) is amended by adding at the end thereof the following new sentence: "For purposes of clauses (i) and (v) of subparagraph (A), such term shall include only those statements filed with the Secretary with respect to information required to be supplied to both the Secretary and the recipient of the payment."

(b) AMENDMENTS RELATED TO DEFINITION OF PAYEE STATEMENT.—

(1) Paragraph (2) of section 6724(d) is amended—

(A) by redesignating subparagraphs (H) through (S) as subparagraphs (J) through (U),

(B) by inserting after subparagraph (G) the following new subparagraph:

"(I) section 6047(d) (relating to reports by employers, plan administrators, etc.),",

(C) by redesignating subparagraphs (A) through (G) as subparagraphs (B) through (H), and

(D) by inserting before subparagraph (B) (as so redesignated) the following new subparagraph:

"(A) section 408(i) (relating to individual retirement account and simplified employee pension reports),".

(2) Paragraph (2) of section 6724(d) is amended by adding at the end thereof the following new sentence: "For purposes of subparagraphs (A) and (I), such term shall only include statements with respect to information required to be supplied to both the Secretary and the recipient of the payment."

(c) AMENDMENTS RELATED TO REPORTS OF DESIGNATED DISTRIBUTION.—

(1) Subsection (i) of section 408 is amended by inserting "aggregating $10 or more" after distributions".

(2) Section 6047(d)(1) is amended by adding at the end thereof the following sentence: "However, no returns or reports shall be required with respect to payments of designated distributions aggregating less than $10 to any person in any year."

(d) TECHNICAL AMENDMENTS.—

(1) Paragraph (1) of section 6047(f) is amended by striking "section 6652(e)" and inserting "sections 6652(e), 6721, and 6722".

(2) Subsection (e) of section 6652 is amended by adding at the end thereof the following: "However, failures to file returns and statements also described in section 6724(d)(1) or 6724(d)(2) shall be subject to penalties under part II of chapter 68B of this subtitle, and not under this section."

(e) EFFECTIVE DATE.—The amendments made by this section shall apply to returns and statements required to be filed after December 31, 1992.

SEC. 4241. CONTRIBUTIONS ON BEHALF OF DISABLED EMPLOYEES.

(a) ALL DISABLED PARTICIPANTS RECEIVING CONTRIBUTIONS.—Section 415(c)(3)(C) is amended by adding at the end thereof the following: "If a defined contribution plan provides for the continuation of contributions on behalf of all participants described in clause (i) for a fixed or determinable period, this subparagraph shall be applied without regard to clauses (ii) and (iii)."

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to years beginning after December 31, 1992.

SEC. 4242. AFFILIATED EMPLOYERS.

(a) IN GENERAL.—For purposes of Treasury Regulations section 1.501(c)(9)-2(a)(1), employers shall be deemed to be affiliated if they satisfy the requirements of subsection (b).

(b) AFFILIATION.—The requirements of subsection (b) shall be satisfied with respect to employers if—

(1) the employers are in the same line of business,

(2) the employers act jointly to perform tasks that are integral to the activities of each of the employers,

(3) the employers act jointly to such an extent that the joint maintenance of a voluntary employees' beneficiary association is not a major part of the employers' joint activities, and

(4) a substantial number of the employers are exempt from tax under subtitle A of the Internal Revenue Code of 1986.

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

SEC. 4243. DISAGGREGATION OF UNION PLANS.

(a) IN GENERAL.—Paragraph (3) of section 410(b) (relating to exclusion of certain employees) is amended by adding at the end thereof the following new sentence: "At the election of an employer, subparagraph (A) (and the exclusion of employees described in subparagraph (A) for purposes of section 401(a)(4) and 414(r)) shall not apply to a unit of employees who benefit under the plan on the same terms."

(b) CONFORMING AMENDMENT.—Paragraph (4) of section 401(a) is amended by inserting "and except as provided in section 410(b)(3)," after "paragraph,".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to years beginning after December 31, 1992.

SEC. 4244. UNIFORM RETIREMENT AGE.

(a) DISCRIMINATION TESTING.—Paragraph (5) of section 401(a) (relating to special rules relating to nondiscrimination requirements) is amended by adding at the end thereof the following new subparagraph:

"(F) SOCIAL SECURITY RETIREMENT AGE.—For purposes of testing for discrimination under paragraph (4)—

"(i) the social security retirement age (as defined in section 415(b)(8)) shall be treated as a uniform retirement age, and

"(ii) subsidized early retirement benefits and joint and survivor annuities which are based in whole or in part on an employee's social security retirement age (as so defined) shall be treated as being available to employees on the same terms."

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to years beginning after December 31, 1992.

SEC. 4245. SPECIAL RULES FOR PLANS COVERING PILOTS.

(a) GENERAL RULE.—

(1) Subparagraph (B) of section 410(b)(3) is amended to read as follows:

"(B) in the case of a plan established or maintained by one or more employers to provide contributions or benefits for air pilots employed by one or more common carriers engaged in interstate or foreign commerce or air pilots employed by carriers transporting mail for or under contract with the United States Government, all employees who are not air pilots."

(2) Paragraph (3) of section 410(b) is amended by striking the last sentence and inserting the following new sentence: "Subparagraph (B) shall not apply in the case of a plan which provides contributions or benefits for employees who are not air pilots or for air pilots whose principal duties are not customarily performed aboard aircraft in flight."

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall apply to years beginning after December 31, 1992.

SEC. 4246. NATIONAL COMMISSION ON PRIVATE PENSION PLANS.

(a) ESTABLISHMENT.—There is hereby established a commission to be known as the National Commission on Private Pension Plans (in this section referred to as the "Commission").

(b) MEMBERSHIP.—

(1) The Commission shall consist of—

(A) 6 members to be appointed by the President;

(B) 6 members to be appointed by the Speaker of the House of Representatives; and

(C) 6 members to be appointed by the President pro tempore of the Senate.

(2) The appointments made pursuant to subparagraphs (B) and (C) of paragraph (1) shall be made in consultation with the chairmen of the committees of the House of Representatives and the Senate, respectively, having jurisdiction over relevant Federal pension programs.

(c) DUTIES AND FUNCTIONS OF COMMISSION; PUBLIC HEARINGS IN DIFFERENT GEOGRAPHICAL AREAS; BROAD SPECTRUM OF WITNESSES AND TESTIMONY.—

(1) It shall be the duty and function of the Commission to conduct the studies and issue the report required by subsection (d) of this section.

(2) The Commission (and any committees that it may form) may conduct public hearings in order to receive the views of a broad spectrum of the public on the status of the Nation's private retirement system.

(d) REPORT TO THE PRESIDENT AND CONGRESS; RECOMMENDATIONS.—The Commission shall submit to the President, to the Majority Leader and the Minority Leader of the Senate, and to the Majority Leader and the Minority Leader of the House of Representatives a report no later than September 1, 1994, reviewing existing Federal incentives and programs that encourage and protect private retirement savings. The final report shall also set forth recommendations where

appropriate for increasing the level and security of private retirement savings.

(e) TIME OF APPOINTMENT OF MEMBERS; VACANCIES; ELECTION OF CHAIRMAN; QUORUM; CALLING OF MEETINGS; NUMBER OF MEETINGS; VOTING; COMPENSATION AND EXPENSES.—

(1)(A) Members of the Commission shall first be appointed not later than December 31, 1992, for terms ending on September 1, 1994.

(B) A vacancy in the Commission shall not affect its powers, but shall be filled in the same manner as the vacant position was first filled.

(2) The Commission shall elect 1 of its members to serve as Chairman of the Commission.

(3) A majority of the members of the Commission shall constitute a quorum for the transaction of business.

(4) The Commission shall meet at the call of the Chairman.

(5) Decisions of the Commission shall be according to the vote of a simple majority of those present and voting at a properly called meeting.

(6) Members of the Commission shall serve without compensation, but shall be reimbursed for travel, subsistence, and other necessary expenses incurred in the performance of their duties as members of the Commission.

(f) EXECUTIVE DIRECTOR AND ADDITIONAL PERSONNEL; APPOINTMENT AND COMPENSATION; CONSULTANTS.—

(1) The Commission shall appoint an Executive Director of the Commission. In addition to the Executive Director, the Commission may appoint and fix the compensation of such personnel as it deems advisable. Such appointments and compensation may be made without regard to the provisions of title 5, United States Code, that govern appointments in the competitive service, and the provisions of chapter 51 and subchapter III of chapter 53 of such title that relate to classifications and the General Schedule pay rates.

(2) The Commission may procure such temporary and intermittent services of consultants under section 3109(b) of title 5, United States Code, as the Commission determines to be necessary to carry out the duties of the Commission.

(g) TIME AND PLACE OF HEARINGS AND NATURE OF TESTIMONY AUTHORIZED.—In carrying out its duties, the Commission, or any duly organized committee thereof, is authorized to hold such hearings, sit and act at such times and places, and take such testimony, with respect to matters for which it has a responsibility under this section, as the Commission or committee may deem advisable.

(h) DATA AND INFORMATION FROM OTHER AGENCIES AND DEPARTMENTS.—

(1) The Commission may secure directly from any department or agency of the United States such data and information as may be necessary to carry out its responsibilities.

(2) Upon request of the Commission, any such department or agency shall furnish any such data or information.

(i) SUPPORT SERVICES BY GENERAL SERVICES ADMINISTRATION.—The General Services Administration shall provide to the Commission, on a reimbursable basis, such administrative support services as the Commission may request.

(j) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated through fiscal year 1994, such sums as may be necessary to carry out this section for each of fiscal years 1992, 1993, and 1994.

(k) DONATIONS ACCEPTED AND DEPOSITED IN TREASURY IN SEPARATE FUND; EXPENDITURES; GIFT OR BEQUEST TO OR FOR USE OF UNITED STATES.—

(1) The Commission is authorized to accept donations of money, property, or personal services. Funds received from donations shall be deposited in the Treasury in a separate fund created for this purpose. Funds appropriated for the Commission and donated funds may be expended for such purposes as official reception and representation expenses, public surveys, public service announcements, preparation of special papers, analyses, and documentaries, and for such other purposes as determined by the Commission to be in furtherance of its mission to review national issues affecting private pension plans.

(2) For purposes of Federal income, estate, and gift taxation, money and other property accepted under paragraph (1) of this subsection shall be considered as a gift or bequest to or for the use of the United States.

(3) Expenditures of appropriated and donated funds shall be subject to such rules and regulations as may be adopted by the Commission and shall not be subject to Federal procurement requirements.

(l) PUBLIC SURVEYS.—The Commission is authorized to conduct such public surveys as it deems necessary in support of its review of national issues affecting private pension plans and, in conducting such surveys, the Commission shall not be deemed to be an "agency" for the purpose of section 3502 of title 44, United States Code.

SEC. 4247. DATE FOR ADOPTION OF PLAN AMENDMENTS.

If any amendment made by this Act requires an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after January 1, 1994, if—

(1) during the period after such amendment takes effect and before such first plan year, the plan is operated in accordance with the requirements of such amendment, and

(2) such plan amendment applies retroactively to such period.

Subtitle C—Treatment of Large Partnerships

PART I—GENERAL PROVISIONS

SEC. 4301. SIMPLIFIED FLOW-THROUGH FOR LARGE PARTNERSHIPS.

(a) GENERAL RULE.—Subchapter K (relating to partners and partnerships) is amended by adding at the end thereof the following new part:

"PART IV—SPECIAL RULES FOR LARGE PARTNERSHIPS

"Sec. 771. Application of subchapter to large partnerships.

"Sec. 772. Simplified flow-through.

"Sec. 773. Computations at partnership level.

"Sec. 774. Other modifications.

"Sec. 775. Large partnership defined.

"Sec. 776. Special rules for partnerships holding oil and gas properties.

"Sec. 777. Regulations.

"SEC. 771. APPLICATION OF SUBCHAPTER TO LARGE PARTNERSHIPS.

"The preceding provisions of this subchapter to the extent inconsistent with the provisions of this part shall not apply to a large partnership and its partners.

"SEC. 772. SIMPLIFIED FLOW-THROUGH.

"(a) GENERAL RULE.—In determining the income tax of a partner of a large partnership, such partner shall take into account separately such partner's distributive share of the partnership's—

"(1) taxable income or loss from passive loss limitation activities,

"(2) taxable income or loss from other activities,

"(3) net capital gain (or net capital loss)—

"(A) to the extent allocable to passive loss limitation activities, and

"(B) to the extent allocable to other activities,

"(4) tax-exempt interest,

"(5) applicable net AMT adjustment separately computed for—

"(A) passive loss limitation activities, and

"(B) other activities,

"(6) general credits,

"(7) low-income housing credit determined under section 42,

"(8) rehabilitation credit determined under section 47,

"(9) foreign income taxes, and

"(10) the credit allowable under section 29.

"(b) SEPARATE COMPUTATIONS.—In determining the amounts required under subsection (a) to be separately taken into account by any partner, this section and section 773 shall be applied separately with respect to such partner by taking into account such partner's distributive share of the items of income, gain, loss, deduction, or credit of the partnership.

"(c) TREATMENT AT PARTNER LEVEL.—

"(1) IN GENERAL.—Except as provided in this subsection, rules similar to the rules of section 702(b) shall apply to any partner's distributive share of the amounts referred to in subsection (a).

"(2) INCOME OR LOSS FROM PASSIVE LOSS LIMITATION ACTIVITIES.—For purposes of this chapter, any partner's distributive share of any income or loss described in subsection (a)(1) shall be treated as an item of income or loss (as the case may be) from the conduct of a trade or business which is a single passive activity (as defined in section 469). A similar rule shall apply to a partner's distributive share of amounts referred to in paragraphs (3)(A) and (5)(A) of subsection (a).

"(3) INCOME OR LOSS FROM OTHER ACTIVITIES.—

"(A) IN GENERAL.—For purposes of this chapter, any partner's distributive share of any income or loss described in subsection (a)(2) shall be treated as an item of income or expense (as the case may be) with respect to property held for investment.

"(B) DEDUCTIONS FOR LOSS NOT SUBJECT TO SECTION 67.—The deduction under section 212 for any loss described in subparagraph (A) shall not be treated as a miscellaneous itemized deduction for purposes of section 67.

"(4) TREATMENT OF NET CAPITAL GAIN OR LOSS.—For purposes of this chapter, any partner's distributive share of any gain or loss described in subsection (a)(3) shall be treated as a long-term capital gain or loss, as the case may be.

"(5) MINIMUM TAX TREATMENT.—In determining the alternative minimum taxable income of any partner, such partner's distributive share of any applicable net AMT adjustment shall be taken into account in lieu of making the separate adjustments provided in sections 56, 57, and 58 with respect to the items of the partnership. Except as provided in regulations, the applicable net AMT adjustment shall be treated, for purposes of section 53, as an adjustment or item of tax preference not specified in section 53(d)(1)(B)(ii).

"(6) GENERAL CREDITS.—A partner's distributive share of the amount referred to in paragraph (6) of subsection (a) shall be taken into account as a current year business credit.

"(d) OPERATING RULES.—For purposes of this section—

"(1) PASSIVE LOSS LIMITATION ACTIVITY.—The term 'passive loss limitation activity' means—

"(A) any activity which involves the conduct of a trade or business, and

"(B) any rental activity.

For purposes of the preceding sentence, the term 'trade or business' includes any activity treated as a trade or business under paragraph (5) or (6) of section 469(c).

"(2) TAX-EXEMPT INTEREST.—The term 'tax-exempt interest' means interest excludable from gross income under section 103.

"(3) APPLICABLE NET AMT ADJUSTMENT.—

"(A) IN GENERAL.—The applicable net AMT adjustment is—

"(i) with respect to taxpayers other than corporations, the net adjustment determined by using the adjustments applicable to individuals, and

"(ii) with respect to corporations, the net adjustment determined by using the adjustments applicable to corporations.

"(B) NET ADJUSTMENT.—The term 'net adjustment' means the net adjustment in the items attributable to passive loss activities or other activities (as the case may be) which would result if such items were determined with the adjustments of sections 56, 57, and 58.

"(4) TREATMENT OF CAPITAL GAINS AND LOSSES.—

"(A) EXCLUSION FOR CERTAIN PURPOSES.—In determining the amounts referred to in paragraphs (1) and (2) of subsection (a), any net capital gain or net capital loss (as the case may be) shall be excluded.

"(B) ALLOCATION RULES.—The net capital gain shall be treated—

"(i) as allocable to passive loss limitation activities to the extent the net capital gain does not exceed the net capital gain determined by only taking into account gains and losses from sales and exchanges of property used in connection with such activities, and

"(ii) as allocable to other activities to the extent such gain exceeds the amount allocated under clause (i).

A similar rule shall apply for purposes of allocating any net capital loss.

"(C) NET CAPITAL LOSS.—The term 'net capital loss' means the excess of the losses from sales or exchanges of capital assets over the gains from sales or exchange of capital assets.

"(5) GENERAL CREDITS.—The term 'general credits' means any credit other than the low-income housing credit, the rehabilitation credit, the foreign tax credit, and the credit allowable under section 29.

"(6) FOREIGN INCOME TAXES.—The term 'foreign income taxes' means taxes described in section 901 which are paid or accrued to foreign countries and to possessions of the United States.

"(e) SPECIAL RULE FOR UNRELATED BUSINESS TAX.—In the case of a partner which is an organization subject to tax under section 511, such partner's distributive share of any items shall be taken into account separately to the extent necessary to comply with the provisions of section 512(c)(1).

"(f) SPECIAL RULES FOR APPLYING PASSIVE LOSS LIMITATIONS.—If any person holds an interest in a large partnership other than as a limited partner—

"(1) paragraph (2) of subsection (c) shall not apply to such partner, and

"(2) such partner's distributive share of the partnership items allocable to passive loss limitation activities shall be taken into account separately to the extent necessary to comply with the provisions of section 469.

The preceding sentence shall not apply to any items allocable to an interest held as a limited partner.

"SEC. 773. COMPUTATIONS AT PARTNERSHIP LEVEL.

"(a) GENERAL RULE.—

"(1) TAXABLE INCOME.—The taxable income of a large partnership shall be computed in the same manner as in the case of an individual except that—

"(A) the items described in section 772(a) shall be separately stated, and

"(B) the modifications of subsection (b) shall apply.

"(2) ELECTIONS.—All elections affecting the computation of the taxable income of a large partnership or the computation of any credit of a large partnership shall be made by the partnership; except that the election under section 901 shall be made by each partner separately.

"(3) LIMITATIONS, ETC.—

"(A) IN GENERAL.—Except as provided in subparagraph (B), all limitations and other provisions affecting the computation of the taxable income of a large partnership or the computation of any credit of a large partnership shall be applied at the partnership level (and not at the partner level).

"(B) CERTAIN LIMITATIONS APPLIED AT PARTNER LEVEL.—The following provisions shall be applied at the partner level (and not at the partnership level):

"(i) Section 68 (relating to overall limitation on itemized deductions).

"(ii) Sections 49 and 465 (relating to at risk limitations).

"(iii) Section 469 (relating to limitation on passive activity losses and credits).

"(iv) Any other provision specified in regulations.

"(4) COORDINATION WITH OTHER PROVISIONS.—Paragraphs (2) and (3) shall apply notwithstanding any other provision of this chapter other than this part.

"(b) MODIFICATIONS TO DETERMINATION OF TAXABLE INCOME.—In determining the taxable income of a large partnership—

"(1) CERTAIN DEDUCTIONS NOT ALLOWED.—The following deductions shall not be allowed:

"(A) The deduction for personal exemptions provided in section 151.

"(B) The net operating loss deduction provided in section 172.

"(C) The additional itemized deductions for individuals provided in part VII of subchapter B (other than section 212 thereof).

"(2) CHARITABLE DEDUCTIONS.—In determining the amount allowable under section 170, the limitation of section 170(b)(2) shall apply.

"(3) COORDINATION WITH SECTION 67.—In lieu of applying section 67, 70 percent of the amount of the miscellaneous itemized deductions shall be disallowed.

"(c) SPECIAL RULES FOR INCOME FROM DISCHARGE OF INDEBTEDNESS.—If a large partnership has income from the discharge of any indebtedness—

"(1) such income shall be excluded in determining the amounts referred to in section 772(a), and

"(2) in determining the income tax of any partner of such partnership—

"(A) such income shall be treated as an item required to be separately taken into account under section 772(a), and

"(B) the provisions of section 108 shall be applied without regard to this part.

"SEC. 774. OTHER MODIFICATIONS.

"(a) TREATMENT OF CERTAIN OPTIONAL ADJUSTMENTS, ETC.—In the case of a large partnership—

"(1) computations under section 773 shall be made without regard to any adjustment under section 743(b) or 108(b), but

"(2) a partner's distributive share of any amount referred to in section 772(a) shall be appropriately adjusted to take into account any adjustment under section 743(b) or 108(b) with respect to such partner.

"(b) DEFERRED SALE TREATMENT OF CONTRIBUTED PROPERTY.—

"(1) TREATMENT OF PARTNERSHIP.—In the case of any contribution of property to which this subsection applies—

"(A) the basis of such property to the partnership shall be its fair market value as of the time of such contribution, and

"(B) section 704(c) shall not apply to such property.

"(2) TREATMENT OF CONTRIBUTING PARTNER.—

"(A) IN GENERAL.—In the case of any partner who makes a contribution of property to which this subsection applies—

"(i) such partner shall recognize the precontribution gain or loss from such property as provided in this paragraph, and

"(ii) appropriate adjustments to the basis of such partner's interest in the partnership shall be made for the amounts recognized under this paragraph.

"(B) CHARACTER.—The character of any gain or loss recognized under this paragraph shall be determined by reference to the character which would have resulted if the property had been sold to the partnership at the time of the contributions; except that any gain or loss recognized under subparagraph (C)(i) shall be treated as ordinary income or loss, as the case may be.

"(C) TRANSACTIONS AT PARTNERSHIP LEVEL.—

"(i) DEPRECIATION, ETC.—If any partnership deduction for depreciation, depletion, or amortization is increased by reason of an increase in the basis of any property under paragraph (1), the contributing partner shall recognize so much of the precontribution gain with respect to such property as does not exceed the increase in such deduction. If there is a precontribution loss, a similar rule shall apply to any decrease in such a deduction.

"(ii) DISPOSITIONS.—

"(I) IN GENERAL.—Except as otherwise provided in this clause, any precontribution gain or loss with respect to any property (to the extent not previously taken into account under this paragraph) shall be recognized by the contributing partner if the partnership makes any disposition of the property.

"(II) DISTRIBUTIONS TO CONTRIBUTING PARTNER.—No gain or loss shall be recognized under subclause (I) by reason of any distribution of the contributed property to the contributing partner (and subparagraph (D)(ii) shall not apply to any such distribution). In any such case, no adjustment shall be made under section 734 on account of such distribution and the adjusted basis of such property in the hands of the contributing partner shall be its adjusted basis immediately before the contribution properly adjusted for gain or loss previously recognized under this paragraph.

"(iii) YEAR FOR WHICH AMOUNT TAKEN INTO ACCOUNT.—Any amount recognized under this subparagraph shall be taken into account for the partner's taxable year in which or with which ends the partnership taxable year of the deduction or disposition.

"(D) TRANSACTIONS AT PARTNER LEVEL.—

"(i) IN GENERAL.—If the contributing partner makes a disposition of any portion of his interest in the partnership, a corresponding

portion of any precontribution gain or loss which was not previously taken into account under this paragraph shall be recognized for the partner's taxable year in which the disposition occurs. The preceding sentence shall not apply to a disposition at death.

"(ii) TREATMENT OF CERTAIN DISTRIBUTIONS.—If—

"(I) the amount of cash and the fair market value of property distributed to a partner, exceeds

"(II) the adjusted basis of such partner's interest in the partnership immediately before the distribution (determined without regard to any adjustment under subparagraph (A)(ii) resulting from such distribution), the contributing partner shall recognize so much of any precontribution gain as does not exceed such excess.

"(iii) SPECIAL RULE.—Except as provided in clause (ii)(II), any basis adjustment under subparagraph (A)(ii) resulting from any gain or loss recognized under this subparagraph shall be treated as occurring immediately before the disposition or distribution involved.

"(E) SECTION 267 AND 707(b) PRINCIPLES TO APPLY.—No loss shall be recognized under subparagraph (C)(ii) or (D) by reason of any disposition (directly or indirectly) to a person related (within the meaning of section 267(b) or 707(b)(1)) to the contributing partner.

"(F) TREATMENT OF CERTAIN NONTAXABLE EXCHANGES.—

"(i) SECTION 1031 AND 1033 TRANSACTIONS.—If the disposition referred to in subclause (I) of subparagraph (C)(ii) is an exchange described in section 1031 or a compulsory or involuntary conversion within the meaning of section 1033—

"(I) the amount of gain or loss recognized by the contributing partner under such subclause (I) shall not exceed the gain or loss recognized by the partnership on the disposition, and

"(II) the replacement property shall be treated as the contributed property for purposes of this paragraph.

For purposes of the preceding sentence, the term 'replacement property' means the property the basis of which is determined under section 1031(d) or 1033(b), whichever is applicable.

"(ii) CONTRIBUTIONS TO CONTROLLED PARTNERSHIP.—If the disposition referred to in subclause (I) of subparagraph (C)(ii) is a contribution of the property to another partnership which is a controlled partnership—

"(I) the rules of subclause (I) of clause (i) shall apply, and

"(II) the partnership shall be treated as continuing to hold the contributed property so long as the other partnership continues to be a controlled partnership and continues to hold such property.

For purposes of the preceding sentence, the term 'controlled partnership' means any partnership in which the partnership making the disposition owns more than 50 percent of the capital interest or profits interest.

"(3) PRECONTRIBUTION GAIN OR LOSS.—For purposes of this subsection—

"(A) PRECONTRIBUTION GAIN.—The term 'precontribution gain' means the excess (if any) of—

"(i) the fair market value of the contributed property as of the time of the contribution, over

"(ii) the adjusted basis of such property immediately before such contribution.

"(B) PRECONTRIBUTION LOSS.—The term 'precontribution loss' means the excess (if any) of the amount referred to in clause (ii) of subparagraph (A) over the amount referred to in clause (i) of subparagraph (A).

"(4) CONTRIBUTIONS TO WHICH SUBSECTION APPLIES.—This subsection shall apply to any contribution of property (other than cash) which is made by any partner to a partnership if—

"(A) as of the time of such contribution, such partnership is a large partnership, or

"(B) such contribution is to a partnership reasonably expected to become a large partnership.

This subsection shall not apply to any contribution made before the date of the enactment of this part.

"(c) CREDIT RECAPTURE DETERMINED AT PARTNERSHIP LEVEL.—

"(1) IN GENERAL.—In the case of a large partnership—

"(A) any credit recapture shall be taken into account by the partnership, and

"(B) the amount of such recapture shall be determined as if the credit with respect to which the recapture is made had been fully utilized to reduce tax.

"(2) METHOD OF TAKING RECAPTURE INTO ACCOUNT.—A large partnership shall take into account a credit recapture by reducing the amount of the appropriate current year credit to the extent thereof, and if such recapture exceeds the amount of such current year credit, the partnership shall be liable to pay such excess.

"(3) DISPOSITIONS NOT TO TRIGGER RECAPTURE.—No credit recapture shall be required by reason of any transfer of an interest in a large partnership.

"(4) CREDIT RECAPTURE.—For purposes of this subsection, the term 'credit recapture' means any increase in tax under section 42(j) or 50(a).

"(d) PARTNERSHIP NOT TERMINATED BY REASON OF CHANGE IN OWNERSHIP.—Subparagraph (B) of section 708(b)(1) shall not apply to a large partnership.

"(e) PARTNERSHIP ENTITLED TO CERTAIN CREDITS.—The following shall be allowed to a large partnership and shall not be taken into account by the partners of such partnership:

"(1) The credit provided by section 34.

"(2) Any credit or refund under section 852(b)(3)(D).

"(f) TREATMENT OF REMIC RESIDUALS.—For purposes of applying section 860E(e)(6) to any large partnership—

"(1) all interests in such partnership shall be treated as held by disqualified organizations.

"(2) in lieu of applying subparagraph (C) of section 860E(e)(6), the amount subject to tax under section 860E(e)(6) shall be excluded from the gross income of such partnership, and

"(3) subparagraph (D) of section 860E(e)(6) shall not apply.

"(g) SPECIAL RULES FOR APPLYING CERTAIN INSTALLMENT SALE RULES.—In the case of a large partnership—

"(1) the provisions of sections 453(l)(3) and 453A shall be applied at the partnership level, and

"(2) in determining the amount of interest payable under such sections, such partnership shall be treated as subject to tax under this chapter at the highest rate of tax in effect under section 1 or 11.

"SEC. 775. LARGE PARTNERSHIP.

"(a) GENERAL RULE.—For purposes of this part—

"(1) IN GENERAL.—Except as otherwise provided in this section or section 776, the term 'large partnership' means, with respect to any partnership taxable year, any partnership if the number of persons who were partners in such partnership in such taxable year or any preceding partnership taxable year beginning after December 31, 1992, equaled or exceeded 250. To the extent provided in regulations, a partnership shall cease to be treated as a large partnership for any partnership taxable year if in such taxable year fewer than 100 persons were partners in such partnership.

"(2) ELECTION FOR PARTNERSHIPS WITH AT LEAST 100 PARTNERS.—If a partnership makes an election under this paragraph, paragraph (1) shall be applied by substituting '100' for '250'. Such an election shall apply to the taxable year for which made and all subsequent taxable years unless revoked with the consent of the Secretary.

"(b) SPECIAL RULES FOR CERTAIN SERVICE PARTNERSHIPS.—

"(1) CERTAIN PARTNERS NOT COUNTED.—For purposes of this section, the term 'partner' does not include any individual performing substantial services in connection with the activities of the partnership and holding an interest in such partnership, or an individual who formerly performed substantial services in connection with such activities and who held an interest in such partnership at the time the individual performed such services.

"(2) EXCLUSION.—For purposes of this part, the term 'large partnership' does not include any partnership if substantially all the partners of such partnership—

"(A) are individuals performing substantial services in connection with the activities of such partnership or are personal service corporations (as defined in section 269A(b)) the owner-employees (as defined in section 269A(b)) of which perform such substantial services,

"(B) are retired partners who had performed such substantial services, or

"(C) are spouses of partners who are performing (or had previously performed) such substantial services.

"(3) SPECIAL RULE FOR LOWER TIER PARTNERSHIPS.—For purposes of this subsection, the activities of a partnership shall include the activities of any other partnership in which the partnership owns directly an interest in the capital and profits of at least 80 percent.

"(c) EXCLUSION OF COMMODITY POOLS.—For purposes of this part, the term 'large partnership' does not include any partnership the principal activity of which is the buying and selling of commodities (not described in section 1221(1)), or options, futures, or forwards with respect to such commodities.

"(d) SECRETARY MAY RELY ON TREATMENT ON RETURN.—If, on the partnership return of any partnership, such partnership is treated as a large partnership, such treatment shall be binding on such partnership and all partners of such partnership but not on the Secretary.

"SEC. 776. SPECIAL RULES FOR PARTNERSHIPS HOLDING OIL AND GAS PROPERTIES.

"(a) EXCEPTION FOR PARTNERSHIPS HOLDING SIGNIFICANT OIL AND GAS PROPERTIES.—

"(1) IN GENERAL.—For purposes of this part, the term 'large partnership' shall not include any partnership if the average percentage of assets (by value) held by such partnership during the taxable year which are oil or gas properties is at least 25 percent. For purposes of the preceding sentence, any interest held by a partnership in another partnership shall be disregarded, except that the partnership shall be treated as holding its proportionate share of the assets of such other partnership.

"(2) ELECTION TO WAIVE EXCEPTION.—Any partnership may elect to have paragraph (1)

not apply. Such an election shall apply to the partnership taxable year for which made and all subsequent partnership taxable years unless revoked with the consent of the Secretary.

"(b) SPECIAL RULES WHERE PART APPLIES.—

"(1) COMPUTATION OF PERCENTAGE DEPLETION.—In the case of a large partnership, except as provided in paragraph (2)—

"(A) the allowance for depletion under section 611 with respect to any partnership oil or gas property shall be computed at the partnership level without regard to any provision of section 613A requiring such allowance to be computed separately by each partner,

"(B) such allowance shall be determined without regard to the provisions of section 613A(c) limiting the amount of production for which percentage depletion is allowable and without respect to paragraph (1) of section 613A(d), and

"(C) paragraph (3) of section 705(a) shall not apply.

"(2) TREATMENT OF CERTAIN PARTNERS.—

"(A) IN GENERAL.—In the case of a disqualified person, the treatment under this chapter of such person's distributive share of any item of income, gain, loss, deduction, or credit attributable to any partnership oil or gas property shall be determined without regard to this part. Such person's distributive share of any such items shall be excluded for purposes of making determinations under sections 772 and 773.

"(B) DISQUALIFIED PERSON.—For purposes of subparagraph (A), the term 'disqualified person' means, with respect to any partnership taxable year—

"(i) any person referred to in paragraph (2) or (4) of section 613A(d) for such person's taxable year in which such partnership taxable year ends, and

"(ii) any other person if such person's average daily production of domestic crude oil and natural gas for such person's taxable year in which such partnership taxable year ends exceeds 500 barrels.

"(C) AVERAGE DAILY PRODUCTION.—For purposes of subparagraph (B), a person's average daily production of domestic crude oil and natural gas for any taxable year shall be computed as provided in section 613A(c)(2)—

"(i) by taking into account all production of domestic crude oil and natural gas (including such person's proportionate share of any production of a partnership),

"(ii) by treating 6,000 cubic feet of natural gas as a barrel of crude oil, and

"(iii) by treating as 1 person all persons treated as 1 taxpayer under section 613A(c)(8) or among whom allocations are required under such section.

"SEC. 777. REGULATIONS.

"The Secretary shall prescribe such regulations as may be appropriate to carry out the purposes of this part."

(b) CLERICAL AMENDMENT.—The table of parts for subchapter K of chapter 1 is amended by adding at the end thereof the following new item:

"Part IV. Special rules for large partnerships."

SEC. 4302. SIMPLIFIED AUDIT PROCEDURES FOR LARGE PARTNERSHIPS.

(a) GENERAL RULE.—Chapter 63 is amended by adding at the end thereof the following new subchapter:

"SUBCHAPTER D—TREATMENT OF LARGE PARTNERSHIPS

"Part I. Treatment of partnership items and adjustments.

"Part II. Partnership level adjustments.

"Part III. Definitions and special rules.

"PART I—TREATMENT OF PARTNERSHIP ITEMS AND ADJUSTMENTS

"Sec. 6240. Application of subchapter.

"Sec. 6241. Partner's return must be consistent with partnership return.

"Sec. 6242. Procedures for taking partnership adjustments into account.

"SEC. 6240. APPLICATION OF SUBCHAPTER.

"(a) GENERAL RULE.—This subchapter shall only apply to large partnerships and partners in such partnerships.

"(b) COORDINATION WITH OTHER PARTNERSHIP AUDIT PROCEDURES.—

"(1) IN GENERAL.—Subchapter C of this chapter shall not apply to any large partnership other than in its capacity as a partner in another partnership which is not a large partnership.

"(2) TREATMENT WHERE PARTNER IN OTHER PARTNERSHIP.—If a large partnership is a partner in another partnership which is not a large partnership—

"(A) subchapter C of this chapter shall apply to items of such large partnership which are partnership items with respect to such other partnership, but

"(B) any adjustment under such subchapter C shall be taken into account in the manner provided by section 6242.

"SEC. 6241. PARTNER'S RETURN MUST BE CONSISTENT WITH PARTNERSHIP RETURN.

"(a) GENERAL RULE.—A partner of any large partnership shall, on the partner's return, treat each partnership item attributable to such partnership in a manner which is consistent with the treatment of such partnership item on the partnership return.

"(b) UNDERPAYMENT DUE TO INCONSISTENT TREATMENT ASSESSED AS MATH ERROR.—Any underpayment of tax by a partner by reason of failing to comply with the requirements of subsection (a) shall be assessed and collected in the same manner as if such underpayment were on account of a mathematical or clerical error appearing on the partner's return. Paragraph (2) of section 6213(b) shall not apply to any assessment of an underpayment referred to in the preceding sentence.

"(c) ADJUSTMENTS NOT TO AFFECT PRIOR YEAR OF PARTNERS.—

"(1) IN GENERAL.—Except as provided in paragraph (2), subsections (a) and (b) shall apply without regard to any adjustment to the partnership item under part II.

"(2) CERTAIN CHANGES IN DISTRIBUTIVE SHARE TAKEN INTO ACCOUNT BY PARTNER.—

"(A) IN GENERAL.—To the extent that any adjustment under part II involves a change under section 704 in a partner's distributive share of the amount of any partnership item shown on the partnership return, such adjustment shall be taken into account in applying this title to such partner for the partner's taxable year for which such item was required to be taken into account.

"(B) COORDINATION WITH DEFICIENCY PROCEDURES.—

"(i) IN GENERAL.—Subchapter B shall not apply to the assessment or collection of any underpayment of tax attributable to an adjustment referred to in subparagraph (A).

"(ii) ADJUSTMENT NOT PRECLUDED.—Notwithstanding any other law or rule of law, nothing in subchapter B (or in any proceeding under subchapter B) shall preclude the assessment or collection of any underpayment of tax (or the allowance of any credit or refund of any overpayment of tax) attributable to an adjustment referred to in subparagraph (A) and such assessment or collection or allowance (or any notice thereof) shall not preclude any notice, proceeding, or determination under subchapter B.

"(C) PERIOD OF LIMITATIONS.—The period for—

"(i) assessing any underpayment of tax, or

"(ii) filing a claim for credit or refund of any overpayment of tax,

attributable to an adjustment referred to in subparagraph (A) shall not expire before the close of the period prescribed by section 6248 for making adjustments with respect to the partnership taxable year involved.

"(D) TIERED STRUCTURES.—If the partner referred to in subparagraph (A) is another partnership or an S corporation, the rules of this paragraph shall also apply to persons holding interests in such partnership or S corporation (as the case may be); except that, if such partner is a large partnership, the adjustment referred to in subparagraph (A) shall be taken into account in the manner provided by section 6242.

"(d) ADDITION TO TAX FOR FAILURE TO COMPLY WITH SECTION.—

"For addition to tax in case of partner's disregard of requirements of this section, see part II of subchapter A of chapter 68.

"SEC. 6242. PROCEDURES FOR TAKING PARTNERSHIP ADJUSTMENTS INTO ACCOUNT.

"(a) ADJUSTMENTS FLOW THROUGH TO PARTNERS FOR YEAR IN WHICH ADJUSTMENT TAKES EFFECT.—

"(1) IN GENERAL.—If any partnership adjustment with respect to any partnership item takes effect (within the meaning of subsection (d)(2)) during any partnership taxable year and if an election under paragraph (2) does not apply to such adjustment, such adjustment shall be taken into account in determining the amount of such item for the partnership taxable year in which such adjustment takes effect. In applying this title to any person who is (directly or indirectly) a partner in such partnership during such partnership taxable year, such adjustment shall be treated as an item actually arising during such taxable year.

"(2) PARTNERSHIP LIABLE IN CERTAIN CASES.—If—

"(A) a partnership elects under this paragraph to not take an adjustment into account under paragraph (1),

"(B) a partnership does not make such an election but in filing its return for any partnership taxable year fails to take fully into account any partnership adjustment as required under paragraph (1), or

"(C) any partnership adjustment involves a reduction in a credit which exceeds the amount of such credit determined for the partnership taxable year in which the adjustment takes effect,

the partnership shall pay to the Secretary an amount determined by applying the rules of subsection (b)(4) to the adjustments not so taken into account and any excess referred to in subparagraph (C).

"(3) OFFSETTING ADJUSTMENTS TAKEN INTO ACCOUNT.—If a partnership adjustment requires another adjustment in a taxable year after the adjusted year and before the partnership taxable year in which such partnership adjustment takes effect, such other adjustment shall be taken into account under this subsection for the partnership taxable year in which such partnership adjustment takes effect.

"(4) COORDINATION WITH PART II.—Amounts taken into account under this subsection for any partnership taxable year shall continue to be treated as adjustments for the adjusted

year for purposes of determining whether such amounts may be readjusted under part II.

"(b) PARTNERSHIP LIABLE FOR INTEREST AND PENALTIES.—

"(1) IN GENERAL.—If a partnership adjustment takes effect during any partnership taxable year and such adjustment results in an imputed underpayment for the adjusted year, the partnership—

"(A) shall pay to the Secretary interest computed under paragraph (2), and

"(B) shall be liable for any penalty, addition to tax, or additional amount as provided in paragraph (3).

"(2) DETERMINATION OF AMOUNT OF INTEREST.—The interest computed under this paragraph with respect to any partnership adjustment is the interest which would be determined under chapter 67—

"(A) on the imputed underpayment determined under paragraph (4) with respect to such adjustment,

"(B) for the period beginning on the day after the return due date for the adjusted year and ending on the return due date for the partnership taxable year in which such adjustment takes effect (or, if earlier, in the case of any adjustment to which subsection (a)(2) applies, the date on which the payment under subsection (a)(2) is made).

Proper adjustments in the amount determined under the preceding sentence shall be made for adjustments required for partnership taxable years after the adjusted year and before the year in which the partnership adjustment takes effect by reason of such partnership adjustment.

"(3) PENALTIES.—A partnership shall be liable for any penalty, addition to tax, or additional amount for which it would have been liable if such partnership had been an individual subject to tax under chapter 1 for the adjusted year and the imputed underpayment determined under paragraph (4) were an actual underpayment (or understatement) for such year.

"(4) IMPUTED UNDERPAYMENT.—For purposes of this subsection, the imputed underpayment determined under this paragraph with respect to any partnership adjustment is the underpayment (if any) which would result—

"(A) by netting all adjustments to items of income, gain, loss, or deduction and—

"(i) if such netting results in a net increase in income, by treating such net increase as an underpayment equal to the amount of such net increase multiplied by the highest rate of tax in effect under section 1 or 11 for the adjusted year, or

"(ii) if such netting results in a net decrease in income, by treating such net decrease as an overpayment equal to such net decrease multiplied by such highest rate, and

"(B) by taking adjustments to credits into account as increases or decreases (whichever is appropriate) in the amount of tax.

For purposes of the preceding sentence, any net decrease in a loss shall be treated as an increase in income and a similar rule shall apply to a net increase in a loss.

"(c) ADMINISTRATIVE PROVISIONS.—

"(1) IN GENERAL.—Any payment required by subsection (a)(2) or (b)(1)(A)—

"(A) shall be assessed and collected in the same manner as if it were a tax imposed by subtitle C, and

"(B) shall be paid on or before the return due date for the partnership taxable year in which the partnership adjustment takes effect.

"(2) INTEREST.—For purposes of determining interest, any payment required by subsection (a)(2) or (b)(1)(A) shall be treated as an underpayment of tax.

"(3) PENALTIES.—

"(A) IN GENERAL.—In the case of any failure by any partnership to pay on the date prescribed therefor any amount required by subsection (a)(2) or (b)(1)(A), there is hereby imposed on such partnership a penalty of 10 percent of the underpayment. For purposes of the preceding sentence, the term 'underpayment' means the excess of any payment required under this section over the amount (if any) paid on or before the date prescribed therefor.

"(B) ACCURACY-RELATED AND FRAUD PENALTIES MADE APPLICABLE.—For purposes of part II of subchapter A of chapter 68, any payment required by subsection (a)(2) shall be treated as an underpayment of tax.

"(d) DEFINITIONS AND SPECIAL RULES.—For purposes of this section—

"(1) PARTNERSHIP ADJUSTMENT.—The term 'partnership adjustment' means any adjustment in the amount of any partnership item of a large partnership.

"(2) WHEN ADJUSTMENT TAKES EFFECT.—A partnership adjustment takes effect—

"(A) in the case of an adjustment pursuant to the decision of a court in a proceeding brought under part II, when such decision becomes final,

"(B) in the case of an adjustment pursuant to any administrative adjustment request under section 6251, when such adjustment is allowed by the Secretary, or

"(C) in any other case, when such adjustment is made.

"(3) ADJUSTED YEAR.—The term 'adjusted year' means the partnership taxable year to which the item being adjusted relates.

"(4) RETURN DUE DATE.—The term 'return due date' means, with respect to any taxable year, the date prescribed for filing the partnership return for such taxable year (determined without regard to extensions).

"(5) ADJUSTMENTS INVOLVING CHANGES IN CHARACTER.—Under regulations, appropriate adjustments in the application of this section shall be made for purposes of taking into account partnership adjustments which involve a change in the character of any item of income, gain, loss, or deduction.

"(e) PAYMENTS NONDEDUCTIBLE.—No deduction shall be allowed under subtitle A for any payment required to be made by a large partnership under this section.

"PART II—PARTNERSHIP LEVEL ADJUSTMENTS

"Subpart A. Adjustments by Secretary.

"Subpart B. Claims for adjustments by partnership.

"Subpart A—Adjustments by Secretary

"Sec. 6245. Secretarial authority.

"Sec. 6246. Restrictions on partnership adjustments.

"Sec. 6247. Judicial review of partnership adjustment.

"Sec. 6248. Period of limitations for making adjustments.

"SEC. 6245. SECRETARIAL AUTHORITY.

"(a) GENERAL RULE.—The Secretary is authorized and directed to make adjustments at the partnership level in any partnership item to the extent necessary to have such item be treated in the manner required.

"(b) NOTICE OF PARTNERSHIP ADJUSTMENT.—

"(1) IN GENERAL.—If the Secretary determines that a partnership adjustment is required, the Secretary is authorized to send notice of such adjustment to the partnership by certified mail or registered mail. Such notice shall be sufficient if mailed to the partnership at its last known address even if the partnership has terminated its existence.

"(2) FURTHER NOTICES RESTRICTED.—If the Secretary mails a notice of a partnership adjustment to any partnership for any partnership taxable year and the partnership files a petition under section 6247 with respect to such notice, in the absence of a showing of fraud, malfeasance, or misrepresentation of a material fact, the Secretary shall not mail another such notice to such partnership with respect to such taxable year.

"(3) AUTHORITY TO RESCIND NOTICE WITH PARTNERSHIP CONSENT.—The Secretary may, with the consent of the partnership, rescind any notice of a partnership adjustment mailed to such partnership. Any notice so rescinded shall not be treated as a notice of a partnership adjustment, for purposes of this section, section 6246, and section 6247, and the taxpayer shall have no right to bring a proceeding under section 6247 with respect to such notice. Nothing in this subsection shall affect any suspension of the running of any period of limitations during any period during which the rescinded notice was outstanding.

"SEC. 6246. RESTRICTIONS ON PARTNERSHIP ADJUSTMENTS.

"(a) GENERAL RULE.—Except as otherwise provided in this chapter, no adjustment to any partnership item may be made (and no levy or proceeding in any court for the collection of any amount resulting from such adjustment may be made, begun or prosecuted) before—

"(1) the close of the 90th day after the day on which a notice of a partnership adjustment was mailed to the partnership, and

"(2) if a petition is filed under section 6247 with respect to such notice, the decision of the court has become final.

"(b) PREMATURE ACTION MAY BE ENJOINED.—Notwithstanding section 7421(a), any action which violates subsection (a) may be enjoined in the proper court, including the Tax Court. The Tax Court shall have no jurisdiction to enjoin any action under this subsection unless a timely petition has been filed under section 6247 and then only in respect of the adjustments that are the subject of such petition.

"(c) EXCEPTIONS TO RESTRICTIONS ON ADJUSTMENTS.—

"(1) ADJUSTMENTS ARISING OUT OF MATH OR CLERICAL ERRORS.—

"(A) IN GENERAL.—If the partnership is notified that, on account of a mathematical or clerical error appearing on the partnership return, an adjustment to a partnership item is required, rules similar to the rules of paragraphs (1) and (2) of section 6213(b) shall apply to such adjustment.

"(B) SPECIAL RULE.—If a large partnership is a partner in another large partnership, any adjustment on account of such partnership's failure to comply with the requirements of section 6241(a) with respect to its interest in such other partnership shall be treated as an adjustment referred to in subparagraph (A), except that paragraph (2) of section 6213(b) shall not apply to such adjustment.

"(2) PARTNERSHIP MAY WAIVE RESTRICTIONS.—The partnership shall at any time (whether or not a notice of partnership adjustment has been issued) have the right, by a signed notice in writing filed with the Secretary, to waive the restrictions provided in subsection (a) on the making of any partnership adjustment.

"(d) LIMIT WHERE NO PROCEEDING BEGUN.—If no proceeding under section 6247 is begun

with respect to any notice of a partnership adjustment during the 90-day period described in subsection (a), the amount for which the partnership is liable under section 6242 (and any increase in any partner's liability for tax under chapter 1 by reason of any adjustment under section 6242(a)) shall not exceed the amount determined in accordance with such notice.

"SEC. 6247. JUDICIAL REVIEW OF PARTNERSHIP ADJUSTMENT.

"(a) GENERAL RULE.—Within 90 days after the date on which a notice of a partnership adjustment is mailed to the partnership with respect to any partnership taxable year, the partnership may file a petition for a readjustment of the partnership items for such taxable year with—

"(1) the Tax Court,

"(2) the district court of the United States for the district in which the partnership's principal place of business is located, or

"(3) the Claims Court.

"(b) JURISDICTIONAL REQUIREMENT FOR BRINGING ACTION IN DISTRICT COURT OR CLAIMS COURT.—

"(1) IN GENERAL.—A readjustment petition under this section may be filed in a district court of the United States or the Claims Court only if the partnership filing the petition deposits with the Secretary, on or before the date the petition is filed, the amount for which the partnership would be liable under section 6242(b) (as of the date of the filing of the petition) if the partnership items were adjusted as provided by the notice of partnership adjustment. The court may by order provide that the jurisdictional requirements of this paragraph are satisfied where there has been a good faith attempt to satisfy such requirement and any shortfall of the amount required to be deposited is timely corrected.

"(2) INTEREST PAYABLE.—Any amount deposited under paragraph (1), while deposited, shall not be treated as a payment of tax for purposes of this title (other than chapter 67).

"(c) SCOPE OF JUDICIAL REVIEW.—A court with which a petition is filed in accordance with this section shall have jurisdiction to determine all partnership items of the partnership for the partnership taxable year to which the notice of partnership adjustment relates and the proper allocation of such items among the partners (and the applicability of any penalty, addition to tax, or additional amount for which the partnership may be liable under section 6242(b)).

"(d) DETERMINATION OF COURT REVIEWABLE.—Any determination by a court under this section shall have the force and effect of a decision of the Tax Court or a final judgment or decree of the district court or the Claims Court, as the case may be, and shall be reviewable as such. The date of any such determination shall be treated as being the date of the court's order entering the decision.

"(e) EFFECT OF DECISION DISMISSING ACTION.—If an action brought under this section is dismissed other than by reason of a rescission under section 6245(b)(3), the decision of the court dismissing the action shall be considered as its decision that the notice of partnership adjustment is correct, and an appropriate order shall be entered in the records of the court.

"SEC. 6248. PERIOD OF LIMITATIONS FOR MAKING ADJUSTMENTS.

"(a) GENERAL RULE.—Except as otherwise provided in this section, no adjustment under this subpart to any partnership item for any partnership taxable year may be made after the date which is 3 years after the later of—

"(1) the date on which the partnership return for such taxable year was filed, or

"(2) the last day for filing such return for such year (determined without regard to extensions).

"(b) EXTENSION BY AGREEMENT.—The period described in subsection (a) (including an extension period under this subsection) may be extended by an agreement entered into by the Secretary and the partnership before the expiration of such period.

"(c) SPECIAL RULE IN CASE OF FRAUD, ETC.—

"(1) FALSE RETURN.—In the case of a false or fraudulent partnership return with intent to evade tax, the adjustment may be made at any time.

"(2) SUBSTANTIAL OMISSION OF INCOME.—If any partnership omits from gross income an amount properly includible therein which is in excess of 25 percent of the amount of gross income stated in its return, subsection (a) shall be applied by substituting '6 years' for '3 years'.

"(3) NO RETURN.—In the case of a failure by a partnership to file a return for any taxable year, the adjustment may be made at any time.

"(4) RETURN FILED BY SECRETARY.—For purposes of this section, a return executed by the Secretary under subsection (b) of section 6020 on behalf of the partnership shall not be treated as a return of the partnership.

"(d) SUSPENSION WHEN SECRETARY MAILS NOTICE OF ADJUSTMENT.—If notice of a partnership adjustment with respect to any taxable year is mailed to the partnership, the running of the period specified in subsection (a) (as modified by the other provisions of this section) shall be suspended—

"(1) for the period during which an action may be brought under section 6247 (and, if a petition is filed under section 6247 with respect to such notice, until the decision of the court becomes final), and

"(2) for 1 year thereafter.

"Subpart B—Claims for Adjustments by Partnership

"Sec. 6251. Administrative adjustment requests.

"Sec. 6252. Judicial review where administrative adjustment request is not allowed in full.

"SEC. 6251. ADMINISTRATIVE ADJUSTMENT REQUESTS.

"(a) GENERAL RULE.—A partnership may file a request for an administrative adjustment of partnership items for any partnership taxable year at any time which is—

"(1) within 3 years after the later of—

"(A) the date on which the partnership return for such year is filed, or

"(B) the last day for filing the partnership return for such year (determined without regard to extensions), and

"(2) before the mailing to the partnership of a notice of a partnership adjustment with respect to such taxable year.

"(b) SECRETARIAL ACTION.—If a partnership files an administrative adjustment request under subsection (a), the Secretary may allow any part of the requested adjustments.

"(c) SPECIAL RULE IN CASE OF EXTENSION UNDER SECTION 6248.—If the period described in section 6248(a) is extended pursuant to an agreement under section 6248(b), the period prescribed by subsection (a)(1) shall not expire before the date 6 months after the expiration of the extension under section 6248(b).

"SEC. 6252. JUDICIAL REVIEW WHERE ADMINISTRATIVE ADJUSTMENT REQUEST IS NOT ALLOWED IN FULL.

"(a) IN GENERAL.—If any part of an administrative adjustment request filed under section 6251 is not allowed by the Secretary, the partnership may file a petition for an adjustment with respect to the partnership items to which such part of the request relates with—

"(1) the Tax Court,

"(2) the district court of the United States for the district in which the principal place of business of the partnership is located, or

"(3) the Claims Court.

"(b) PERIOD FOR FILING PETITION.—A petition may be filed under subsection (a) with respect to partnership items for a partnership taxable year only—

"(1) after the expiration of 6 months from the date of filing of the request under section 6251, and

"(2) before the date which is 2 years after the date of such request.

The 2-year period set forth in paragraph (2) shall be extended for such period as may be agreed upon in writing by the partnership and the Secretary.

"(c) COORDINATION WITH SUBPART A.—

"(1) NOTICE OF PARTNERSHIP ADJUSTMENT BEFORE FILING OF PETITION.—No petition may be filed under this section after the Secretary mails to the partnership a notice of a partnership adjustment for the partnership taxable year to which the request under section 6251 relates.

"(2) NOTICE OF PARTNERSHIP ADJUSTMENT AFTER FILING BUT BEFORE HEARING OF PETITION.—If the Secretary mails to the partnership a notice of a partnership adjustment for the partnership taxable year to which the request under section 6251 relates after the filing of a petition under this subsection but before the hearing of such petition, such petition shall be treated as an action brought under section 6247 with respect to such notice, except that subsection (b) of section 6247 shall not apply.

"(3) NOTICE MUST BE BEFORE EXPIRATION OF STATUTE OF LIMITATIONS.—A notice of a partnership adjustment for the partnership taxable year shall be taken into account under paragraphs (1) and (2) only if such notice is mailed before the expiration of the period prescribed by section 6248 for making adjustments to partnership items for such taxable year.

"(d) SCOPE OF JUDICIAL REVIEW.—Except in the case described in paragraph (2) of subsection (c), a court with which a petition is filed in accordance with this section shall have jurisdiction to determine only those partnership items to which the part of the request under section 6251 not allowed by the Secretary relates and those items with respect to which the Secretary asserts adjustments as offsets to the adjustments requested by the partnership.

"(e) DETERMINATION OF COURT REVIEWABLE.—Any determination by a court under this subsection shall have the force and effect of a decision of the Tax Court or a final judgment or decree of the district court or the Claims Court, as the case may be, and shall be reviewable as such. The date of any such determination shall be treated as being the date of the court's order entering the decision.

"PART III—DEFINITIONS AND SPECIAL RULES.

"Sec. 6255. Definitions and special rules.

"SEC. 6255. DEFINITIONS AND SPECIAL RULES.

"(a) DEFINITIONS.—For purposes of this subchapter—

"(1) LARGE PARTNERSHIP.—The term 'large partnership' has the meaning given to such term by section 775 without regard to section 776(a).

"(2) PARTNERSHIP ITEM.—The term 'partnership item' has the meaning given to such term by section 6231(a)(3).

"(b) PARTNERS BOUND BY ACTIONS OF PARTNERSHIP, ETC.—

"(1) DESIGNATION OF PARTNER.—Each large partnership shall designate (in the manner prescribed by the Secretary) a partner (or other person) who shall have the sole authority to act on behalf of such partnership under this subchapter. In any case in which such a designation is not in effect, the Secretary may select any partner as the partner with such authority.

"(2) BINDING EFFECT.—A large partnership and all partners of such partnership shall be bound—

"(A) by actions taken under this subchapter by the partnership, and

"(B) by any decision in a proceeding brought under this subchapter.

"(c) PARTNERSHIPS HAVING PRINCIPAL PLACE OF BUSINESS OUTSIDE THE UNITED STATES.—For purposes of sections 6247 and 6252, a principal place of business located outside the United States shall be treated as located in the District of Columbia.

"(d) TREATMENT WHERE PARTNERSHIP CEASES TO EXIST.—If a partnership ceases to exist before a partnership adjustment under this subchapter takes effect, such adjustment shall be taken into account by the former partners of such partnership under regulations prescribed by the Secretary.

"(e) DATE DECISION BECOMES FINAL.—For purposes of this subchapter, the principles of section 7481(a) shall be applied in determining the date on which a decision of a district court or the Claims Court becomes final.

"(f) PARTNERSHIPS IN CASES UNDER TITLE 11 OF THE UNITED STATES CODE.—The running of any period of limitations provided in this subchapter on making a partnership adjustment (or provided by section 6501 or 6502 on the assessment or collection of any amount required to be paid under section 6242) shall, in a case under title 11 of the United States Code, be suspended during the period during which the Secretary is prohibited by reason of such case from making the adjustment (or assessment or collection) and—

"(1) for adjustment or assessment, 60 days thereafter, and

"(2) for collection, 6 months thereafter.

"(g) REGULATIONS.—The Secretary shall prescribe such regulations as may be necessary to carry out the provisions of this subchapter, including regulations—

"(1) to prevent abuse through manipulation of the provisions of this subchapter, and

"(2) providing that this subchapter shall not apply to any case described in section 6231(c)(1) (or the regulations prescribed thereunder) where the application of this subchapter to such a case would interfere with the effective and efficient enforcement of this title. In any case to which this subchapter does not apply by reason of paragraph (2), rules similar to the rules of sections 6229(f) and 6255(f) shall apply."

(b) CLERICAL AMENDMENT.—The table of subchapters for chapter 63 is amended by adding at the end thereof the following new item:

"SUBCHAPTER D. Treatment of large partnerships."

SEC. 4303. DUE DATE FOR FURNISHING INFORMATION TO PARTNERS OF LARGE PARTNERSHIPS.

(a) GENERAL RULE.—Subsection (b) of section 6031 (relating to copies to partners) is amended by adding at the end thereof the following new sentence: "In the case of a large partnership (as defined in sections 775 and 776(a)), such information shall be furnished on or before the first March 15 following the close of such taxable year."

(b) TREATMENT AS INFORMATION RETURN.—Section 6724 is amended by adding at the end thereof the following new subsection:

"(e) SPECIAL RULE FOR CERTAIN PARTNERSHIP RETURNS.—If any partnership return under section 6031(a) is required under section 6011(e) to be filed on magnetic media or in other machine-readable form, for purposes of this part, each schedule required to be included with such return with respect to each partner shall be treated as a separate information return."

SEC. 4304. RETURNS MAY BE REQUIRED ON MAGNETIC MEDIA.

Paragraph (2) of section 6011(e) (relating to returns on magnetic media) is amended by adding at the end thereof the following new sentence:

"The preceding sentence shall not apply in the case of the partnership return of a large partnership (as defined in sections 775 and 776(a)) or any other partnership with 250 or more partners."

SEC. 4305. EFFECTIVE DATE.

(a) GENERAL RULE.—Except as provided in subsection (b), the amendments made by this part shall apply to partnership taxable years ending on or after December 31, 1992.

(b) SPECIAL RULE FOR SECTION 4304.—In the case of a partnership which is not a large partnership (as defined in sections 775 and 776(a) of the Internal Revenue Code of 1986, as added by this part), the amendment made by section 4304 shall only apply to partnership taxable years ending on or after December 31, 1998.

PART II—PROVISIONS RELATED TO TEFRA PARTNERSHIP PROCEEDINGS

SEC. 4311. TREATMENT OF PARTNERSHIP ITEMS IN DEFICIENCY PROCEEDINGS.

(a) IN GENERAL.—Subchapter C of chapter 63 is amended by adding at the end thereof the following new section:

"SEC. 6234. DECLARATORY JUDGMENT RELATING TO TREATMENT OF ITEMS OTHER THAN PARTNERSHIP ITEMS WITH RESPECT TO AN OVERSHELTERED RETURN.

"(a) GENERAL RULE.—If—

"(1) a taxpayer files an oversheltered return for a taxable year,

"(2) the Secretary makes a determination with respect to the treatment of items (other than partnership items) of such taxpayer for such taxable year, and

"(3) the adjustments resulting from such determination do not give rise to a deficiency (as defined in section 6211) but would give rise to a deficiency if there were no net loss from partnership items,

the Secretary is authorized to send a notice of adjustment reflecting such determination to the taxpayer by certified or registered mail.

"(b) OVERSHELTERED RETURN.—For purposes of this section, the term 'oversheltered return' means an income tax return which—

"(1) shows no taxable income for the taxable year, and

"(2) shows a net loss from partnership items.

"(c) JUDICIAL REVIEW IN THE TAX COURT.—Within 90 days, or 150 days if the notice is addressed to a person outside the United States, after the day on which the notice of adjustment authorized in subsection (a) is mailed to the taxpayer, the taxpayer may file a petition with the Tax Court for redetermination of the adjustments. Upon the filing of such a petition, the Tax Court shall have jurisdiction to make a declaration with respect to all items (other than partnership items and affected items which require partner level determinations as described in section 6230(a)(2)(A)(i)) for the taxable year to which the notice of adjustment relates, in accordance with the principles of section 6214(a). Any such declaration shall have the force and effect of a decision of the Tax Court and shall be reviewable as such.

"(d) FAILURE TO FILE PETITION.—

"(1) IN GENERAL.—Except as provided in paragraph (2), if the taxpayer does not file a petition with the Tax Court within the time prescribed in subsection (c), the determination of the Secretary set forth in the notice of adjustment that was mailed to the taxpayer shall be deemed to be correct.

"(2) EXCEPTION.—Paragraph (1) shall not apply after the date that the taxpayer—

"(A) files a petition with the Tax Court within the time prescribed in subsection (c) with respect to a subsequent notice of adjustment relating to the same taxable year, or

"(B) files a claim for refund of an overpayment of tax under section 6511 for the taxable year involved.

If a claim for refund is filed by the taxpayer, then solely for purposes of determining (for the taxable year involved) the amount of any computational adjustment in connection with a partnership proceeding under this subchapter (other than under this section) or the amount of any deficiency attributable to affected items in a proceeding under section 6230(a)(2), the items that are the subject of the notice of adjustment shall be presumed to have been correctly reported on the taxpayer's return during the pendency of the refund claim (and, if within the time prescribed by section 6532 the taxpayer commences a civil action for refund under section 7422, until the decision in the refund action becomes final).

"(e) LIMITATIONS PERIOD.—

"(1) IN GENERAL.—Any notice to a taxpayer under subsection (a) shall be mailed before the expiration of the period prescribed by section 6501 (relating to the period of limitations on assessment).

"(2) SUSPENSION WHEN SECRETARY MAILS NOTICE OF ADJUSTMENT.—If the Secretary mails a notice of adjustment to the taxpayer for a taxable year, the period of limitations on the making of assessments shall be suspended for the period during which the Secretary is prohibited from making the assessment (and, in any event, if a proceeding in respect of the notice of adjustment is placed on the docket of the Tax Court, until the decision of the Tax Court becomes final), and for 60 days thereafter.

"(3) RESTRICTIONS ON ASSESSMENT.—Except as otherwise provided in section 6851, 6852, or 6861, no assessment of a deficiency with respect to any tax imposed by subtitle A attributable to any item (other than a partnership item or any item affected by a partnership item) shall be made—

"(A) until the expiration of the applicable 90-day or 150-day period set forth in subsection (c) for filing a petition with the Tax Court, or

"(B) if a petition has been filed with the Tax Court, until the decision of the Tax Court has become final.

"(f) FURTHER NOTICES OF ADJUSTMENT RESTRICTED.—If the Secretary mails a notice of adjustment to the taxpayer for a taxable year and the taxpayer files a petition with the Tax Court within the time prescribed in subsection (c), the Secretary may not mail another such notice to the taxpayer with re-

spect to the same taxable year in the absence of a showing of fraud, malfeasance, or misrepresentation of a material fact.

"(g) COORDINATION WITH OTHER PROCEEDINGS UNDER THIS SUBCHAPTER.—

"(1) IN GENERAL.—The treatment of any item that has been determined pursuant to subsection (c) or (d) shall be taken into account in determining the amount of any computational adjustment that is made in connection with a partnership proceeding under this subchapter (other than under this section), or the amount of any deficiency attributable to affected items in a proceeding under section 6230(a)(2), for the taxable year involved. Notwithstanding any other law or rule of law pertaining to the period of limitations on the making of assessments, for purposes of the preceding sentence, any adjustment made in accordance with this section shall be taken into account regardless of whether any assessment has been made with respect to such adjustment.

"(2) SPECIAL RULE IN CASE OF COMPUTATIONAL ADJUSTMENT.—In the case of a computational adjustment that is made in connection with a partnership proceeding under this subchapter (other than under this section), the provisions of paragraph (1) shall apply only if the computational adjustment is made within the period prescribed by section 6229 for assessing any tax under subtitle A which is attributable to any partnership item or affected item for the taxable year involved.

"(3) CONVERSION TO DEFICIENCY PROCEEDING.—If—

"(A) after the notice referred to in subsection (a) is mailed to a taxpayer for a taxable year but before the expiration of the period for filing a petition with the Tax Court under subsection (c) (or, if a petition is filed with the Tax Court, before the Tax Court makes a declaration for that taxable year), the treatment of any partnership item for the taxable year is finally determined, or any such item ceases to be a partnership item pursuant to section 6231(b), and

"(B) as a result of that final determination or cessation, a deficiency can be determined with respect to the items that are the subject of the notice of adjustment,

the notice of adjustment shall be treated as a notice of deficiency under section 6212 and any petition filed in respect of the notice shall be treated as an action brought under section 6213.

"(4) FINALLY DETERMINED.—For purposes of this subsection, the treatment of partnership items shall be treated as finally determined if—

"(A) the Secretary enters into a settlement agreement (within the meaning of section 6224) with the taxpayer regarding such items,

"(B) a notice of final partnership administrative adjustment has been issued and—

"(i) no petition has been filed under section 6226 and the time for doing so has expired, or

"(ii) a petition has been filed under section 6226 and the decision of the court has become final, or

"(C) the period within which any tax attributable to such items may be assessed against the taxpayer has expired.

"(h) SPECIAL RULES IF SECRETARY INCORRECTLY DETERMINES APPLICABLE PROCEDURE.—

"(1) SPECIAL RULE IF SECRETARY ERRONEOUSLY MAILS NOTICE OF ADJUSTMENT.—If the Secretary erroneously determines that subchapter B does not apply to a taxable year of a taxpayer and consistent with that determination timely mails a notice of adjustment to the taxpayer pursuant to subsection (a) of this section, the notice of adjustment shall be treated as a notice of deficiency under section 6212 and any petition that is filed in respect of the notice shall be treated as an action brought under section 6213.

"(2) SPECIAL RULE IF SECRETARY ERRONEOUSLY MAILS NOTICE OF DEFICIENCY.—If the Secretary erroneously determines that subchapter B applies to a taxable year of a taxpayer and consistent with that determination timely mails a notice of deficiency to the taxpayer pursuant to section 6212, the notice of deficiency shall be treated as a notice of adjustment under subsection (a) and any petition that is filed in respect of the notice shall be treated as an action brought under subsection (c)."

(b) TREATMENT OF PARTNERSHIP ITEMS IN DEFICIENCY PROCEEDINGS.—Section 6211 (defining deficiency) is amended by adding at the end thereof the following new subsection:

"(c) COORDINATION WITH SUBCHAPTER C.—In determining the amount of any deficiency for purposes of this subchapter, adjustments to partnership items shall be made only as provided in subchapter C."

(c) CLERICAL AMENDMENT.—The table of sections for subchapter C of chapter 63 is amended by adding at the end thereof the following new item:

"Sec. 6234. Declaratory judgment relating to treatment of items other than partnership items with respect to an oversheltered return.".

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

SEC. 4312. PARTNERSHIP RETURN TO BE DETERMINATIVE OF AUDIT PROCEDURES TO BE FOLLOWED.

(a) IN GENERAL.—Section 6231 (relating to definitions and special rules) is amended by adding at the end thereof the following new subsection:

"(g) PARTNERSHIP RETURN TO BE DETERMINATIVE OF WHETHER SUBCHAPTER APPLIES.—

"(1) DETERMINATION THAT SUBCHAPTER APPLIES.—If, on the basis of a partnership return for a taxable year, the Secretary reasonably determines that this subchapter applies to such partnership for such year but such determination is erroneous, then the provisions of this subchapter are hereby extended to such partnership (and its items) for such taxable year and to partners of such partnership.

"(2) DETERMINATION THAT SUBCHAPTER DOES NOT APPLY.—If, on the basis of a partnership return for a taxable year, the Secretary reasonably determines that this subchapter does not apply to such partnership for such year but such determination is erroneous, then the provisions of this subchapter shall not apply to such partnership (and its items) for such taxable year or to partners of such partnership."

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

SEC. 4313. PROVISIONS RELATING TO STATUTE OF LIMITATIONS.

(a) SUSPENSION OF STATUTE WHERE UNTIMELY PETITION FILED.—Paragraph (1) of section 6229(d) (relating to suspension where Secretary makes administrative adjustment) is amended by striking all that follows "section 6226" and inserting the following: "(and, if a petition is filed under section 6226 with respect to such administrative adjustment, until the decision of the court becomes final), and".

(b) SUSPENSION OF STATUTE DURING BANKRUPTCY PROCEEDING.—Section 6229 is amended by adding at the end thereof the following new subsection:

"(h) SUSPENSION DURING PENDENCY OF BANKRUPTCY PROCEEDING.—If a petition is filed naming a partner as a debtor in a bankruptcy proceeding under title 11 of the United States Code, the running of the period of limitations provided in this section with respect to such partner shall be suspended—

"(1) for the period during which the Secretary is prohibited by reason of such bankruptcy proceeding from making an assessment, and

"(2) for 60 days thereafter."

(c) TAX MATTERS PARTNER IN BANKRUPTCY.—Section 6229(b) is amended by redesignating paragraph (2) as paragraph (3) and by inserting after paragraph (1) the following new paragraph:

"(2) SPECIAL RULE WITH RESPECT TO DEBTORS IN TITLE 11 CASES.—Notwithstanding any other law or rule of law, if an agreement is entered into under paragraph (1)(B) and the agreement is signed by a person who would be the tax matters partner but for the fact that, at the time that the agreement is executed, the person is a debtor in a bankruptcy proceeding under title 11 of the United States Code, such agreement shall be binding on all partners in the partnership unless the Secretary has been notified of the bankruptcy proceeding in accordance with regulations prescribed by the Secretary."

(d) EFFECTIVE DATES.—

(1) SUBSECTIONS (a) AND (b).—The amendments made by subsections (a) and (b) shall apply to partnership taxable years with respect to which the period under section 6229 of the Internal Revenue Code of 1986 for assessing tax has not expired on or before the date of the enactment of this Act.

(2) SUBSECTION (c).—The amendment made by subsection (c) shall apply to agreements entered into after the date of the enactment of this Act.

SEC. 4314. EXPANSION OF SMALL PARTNERSHIP EXCEPTION.

(a) IN GENERAL.—Clause (i) of section 6231(a)(1)(B) (relating to exception for small partnerships) is amended to read as follows:

"(i) IN GENERAL.—The term 'partnership' shall not include any partnership having 10 or fewer partners each of whom is an individual (other than a nonresident alien), a C corporation, or an estate of a deceased partner. For purposes of the preceding sentence, a husband and wife (and their estates) shall be treated as 1 partner."

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

SEC. 4315. EXCLUSION OF PARTIAL SETTLEMENTS FROM 1 YEAR LIMITATION ON ASSESSMENT.

(a) IN GENERAL.—Subsection (f) of section 6229 (relating to items becoming nonpartnership items) is amended—

(1) by striking "(f) ITEMS BECOMING NONPARTNERSHIP ITEMS.—If" and inserting the following:

"(f) SPECIAL RULES.—

"(1) ITEMS BECOMING NONPARTNERSHIP ITEMS.—If",

(2) by moving the text of such subsection 2 ems to the right, and

(3) by adding at the end thereof the following new paragraph:

"(2) SPECIAL RULE FOR PARTIAL SETTLEMENT AGREEMENTS.—If a partner enters into a set-

tlement agreement with the Secretary with respect to the treatment of some of the partnership items in dispute for a partnership taxable year but other partnership items for such year remain in dispute, the period of limitations for assessing any tax attributable to the settled items shall be determined as if such agreement had not been entered into."

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

SEC. 4316. EXTENSION OF TIME FOR FILING A REQUEST FOR ADMINISTRATIVE ADJUSTMENT.

(a) IN GENERAL.—Section 6227 (relating to administrative adjustment requests) is amended by redesignating subsections (b) and (c) as subsections (c) and (d), respectively, and by inserting after subsection (a) the following new subsection:

"(b) SPECIAL RULE IN CASE OF EXTENSION OF PERIOD OF LIMITATIONS UNDER SECTION 6229.—The period prescribed by subsection (a)(1) for filing of a request for an administrative adjustment shall be extended—

"(1) for the period within which an assessment may be made pursuant to an agreement (or any extension thereof) under section 6229(b), and

"(2) for 6 months thereafter."

(b) EFFECTIVE DATE.—The amendment made by this section shall take effect as if included in the amendments made by section 402 of the Tax Equity and Fiscal Responsibility Act of 1982.

SEC. 4317. AVAILABILITY OF INNOCENT SPOUSE RELIEF IN CONTEXT OF PARTNERSHIP PROCEEDINGS.

(a) IN GENERAL.—Subsection (a) of section 6230 is amended by adding at the end thereof the following new paragraph:

"(3) SPECIAL RULE IN CASE OF ASSERTION BY PARTNER'S SPOUSE OF INNOCENT SPOUSE RELIEF.—

"(A) Notwithstanding section 6404(b), if the spouse of a partner asserts that section 6013(e) applies with respect to a liability that is attributable to any adjustment to a partnership item, then such spouse may file with the Secretary within 60 days after the notice and demand (or notice of computational adjustment) is mailed to the spouse a request for abatement of the assessment specified in such notice. Upon receipt of such request, the Secretary shall abate the assessment. Any reassessment of the tax with respect to which an abatement is made under this subparagraph shall be subject to the deficiency procedures prescribed by subchapter B. The period for making any such reassessment shall not expire before the expiration of 60 days after the date of such abatement.

"(B) If the spouse files a petition with the Tax Court pursuant to section 6213 with respect to the request for abatement described in subparagraph (A), the Tax Court shall only have jurisdiction pursuant to this section to determine whether the requirements of section 6013(e) have been satisfied. For purposes of such determination, the treatment of partnership items under the settlement, the final partnership administrative adjustment, or the decision of the court (whichever is appropriate) that gave rise to the liability in question shall be conclusive.

"(C) Rules similar to the rules contained in subparagraphs (B) and (C) of paragraph (2) shall apply for purposes of this paragraph."

(b) CLAIMS FOR REFUND.—Subsection (c) of section 6230 is amended by adding at the end thereof the following new paragraph:

"(5) RULES FOR SEEKING INNOCENT SPOUSE RELIEF.—

"(A) IN GENERAL.—The spouse of a partner may file a claim for refund on the ground that the Secretary failed to relieve the spouse under section 6013(e) from a liability that is attributable to an adjustment to a partnership item.

"(B) TIME FOR FILING CLAIM.—Any claim under subparagraph (A) shall be filed within 6 months after the day on which the Secretary mails to the spouse the notice and demand (or notice of computational adjustment) referred to in subsection (a)(3)(A).

"(C) SUIT IF CLAIM NOT ALLOWED.—If the claim under subparagraph (B) is not allowed, the spouse may bring suit with respect to the claim within the period specified in paragraph (3).

"(D) PRIOR DETERMINATIONS ARE BINDING.—For purposes of any claim or suit under this paragraph, the treatment of partnership items under the settlement, the final partnership administrative adjustment, or the decision of the court (whichever is appropriate) that gave rise to the liability in question shall be conclusive."

(c) TECHNICAL AMENDMENTS.—

(1) Paragraph (1) of section 6230(a) is amended by striking "paragraph (2)" and inserting "paragraph (2) or (3)".

(2) Subsection (a) of section 6503 is amended by striking "section 6230(a)(2)(A)" and inserting "paragraph (2)(A) or (3) of section 6230(a)".

(d) EFFECTIVE DATE.—The amendments made by this section shall take effect as if included in the amendments made by section 402 of the Tax Equity and Fiscal Responsibility Act of 1982.

SEC. 4318. DETERMINATION OF PENALTIES AT PARTNERSHIP LEVEL.

(a) IN GENERAL.—Section 6221 (relating to tax treatment determined at partnership level) is amended by striking "item" and inserting "item (and the applicability of any penalty, addition to tax, or additional amount which relates to an adjustment to a partnership item)".

(b) CONFORMING AMENDMENTS.—

(1) Subsection (f) of section 6226 is amended—

(A) by striking "relates and" and inserting "relates,", and

(B) by inserting before the period ", and the applicability of any penalty, addition to tax, or additional amount which relates to an adjustment to a partnership item".

(2) Clause (i) of section 6230(a)(2)(A) is amended to read as follows:

"(i) affected items which require partner level determinations (other than penalties, additions to tax, and additional amounts that relate to adjustments to partnership items), or".

(3)(A) Subparagraph (A) of section 6230(a)(3), as added by section 3317, is amended by inserting "(including any liability for any penalty, addition to tax, or additional amount relating to such adjustment)" after "partnership item".

(B) Subparagraph (B) of such section is amended by inserting "(and the applicability of any penalties, additions to tax, or additional amounts)" after "partnership items".

(C) Subparagraph (A) of section 6230(c)(5), as added by section 3317, is amended by inserting before the period "(including any liability for any penalties, additions to tax, or additional amounts relating to such adjustment)".

(D) Subparagraph (D) of section 6230(c)(5), as added by section 3317, is amended by inserting "(and the applicability of any penalties, additions to tax, or additional amounts)" after "partnership items".

(4) Paragraph (1) of section 6230(c) is amended by striking "or" at the end of subparagraph (A), by striking the period at the end of subparagraph (B) and inserting ", or", and by adding at the end thereof the following new subparagraph:

"(C) the Secretary erroneously imposed any penalty, addition to tax, or additional amount which relates to an adjustment to a partnership item."

(5) So much of subparagraph (A) of section 6230(c)(2) as precedes "shall be filed" is amended to read as follows:

"(A) UNDER PARAGRAPH (1)(A) or (C).—Any claim under subparagraph (A) or (C) of paragraph (1)".

(6) Paragraph (4) of section 6230(c) is amended by adding at the end thereof the following: "In addition, the determination under the final partnership administrative adjustment or under the decision of the court (whichever is appropriate) concerning the applicability of any penalty, addition to tax, or additional amount which relates to an adjustment to a partnership item shall also be conclusive.

Notwithstanding the preceding sentence, the partner shall be allowed to assert any partner level defenses that may apply or to challenge the amount of the computational adjustment."

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

SEC. 4319. PROVISIONS RELATING TO COURT JURISDICTION, ETC.

(a) TAX COURT JURISDICTION TO ENJOIN PREMATURE ASSESSMENTS OF DEFICIENCIES ATTRIBUTABLE TO PARTNERSHIP ITEMS.—Subsection (b) of section 6225 is amended by striking "the proper court," and inserting "the proper court, including the Tax Court. The Tax Court shall have no jurisdiction to enjoin any action or proceeding under this subsection unless a timely petition for a readjustment of the partnership items for the taxable year has been filed and then only in respect of the adjustments that are the subject of such petition."

(b) JURISDICTION TO CONSIDER STATUTE OF LIMITATIONS WITH RESPECT TO PARTNERS.—Paragraph (1) of section 6226(d) is amended by adding at the end thereof the following new sentence:

"Notwithstanding subparagraph (B), any person treated under subsection (c) as a party to an action shall be permitted to participate in such action (or file a readjustment petition under subsection (b) or paragraph (2) of this subsection) solely for the purpose of asserting that the period of limitations for assessing any tax attributable to partnership items has expired with respect to such person, and the court having jurisdiction of such action shall have jurisdiction to consider such assertion."

(c) TAX COURT JURISDICTION TO DETERMINE OVERPAYMENTS ATTRIBUTABLE TO AFFECTED ITEMS.—

(1) Paragraph (6) of section 6230(d) is amended by striking "(or an affected item)".

(2) Paragraph (3) of section 6512(b) is amended by adding at the end thereof the following new sentence:

"In the case of a credit or refund relating to an affected item (within the meaning of section 6229), the preceding sentence shall be applied by substituting the periods under sections 6229 and 6230(d) for the periods under section 6511(b)(2), (c), and (d)."

(d) VENUE ON APPEAL.—

(1) Paragraph (1) of section 7482(b) is amended by striking "or" at the end of sub-

paragraph (D), by striking the period at the end of subparagraph (E) and inserting ", or", and by inserting after subparagraph (E) the following new subparagraph:

"(F) in the case of a petition under section 6234(c)—

"(i) the legal residence of the petitioner if the petitioner is not a corporation, and

"(ii) the place or office applicable under subparagraph (B) if the petitioner is a corporation."

(2) The last sentence of section 7482(b) is amended by striking "or 6228(a)" and inserting ", 6228(a), or 6234(c)".

(e) OTHER PROVISIONS.—

(1) Subsection (c) of section 7459 is amended by striking "or section 6228(a)" and inserting ", 6228(a), or 6234(c)".

(2) Subsection (o) of section 6501 is amended by adding at the end thereof the following new paragraph:

"(3) For declaratory judgment relating to treatment of items other than partnership items with respect to an oversheltered return, see section 6234."

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

SEC. 4320. TREATMENT OF PREMATURE PETITIONS FILED BY NOTICE PARTNERS OR 5-PERCENT GROUPS.

(a) IN GENERAL.—Subsection (b) of section 6226 (relating to judicial review of final partnership administrative adjustments) is amended by redesignating paragraph (5) as paragraph (6) and by inserting after paragraph (4) the following new paragraph:

"(5) TREATMENT OF PREMATURE PETITIONS.—If—

"(A) a petition for a readjustment of partnership items for the taxable year involved is filed by a notice partner (or a 5-percent group) during the 90-day period described in subsection (a), and

"(B) no action is brought under paragraph (1) during the 60-day period described therein with respect to such taxable year which is not dismissed,

such petition shall be treated for purposes of paragraph (1) as filed on the last day of such 60-day period."

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

SEC. 4321. BONDS IN CASE OF APPEALS FROM TEFRA PROCEEDING.

(a) IN GENERAL.—Subsection (b) of section 7485 (relating to bonds to stay assessment of collection) is amended—

(1) by inserting "penalties," after "any interest,", and

(2) by striking "aggregate of such deficiencies" and inserting "aggregate liability of the parties to the action".

(b) EFFECTIVE DATE.—The amendment made by this section shall take effect as if included in the amendments made by section 402 of the Tax Equity and Fiscal Responsibility Act of 1982.

SEC. 4322. SUSPENSION OF INTEREST WHERE DELAY IN COMPUTATIONAL ADJUSTMENT RESULTING FROM TEFRA SETTLEMENTS.

(a) IN GENERAL.—Subsection (c) of section 6601 (relating to interest on underpayment, nonpayment, or extension of time for payment, of tax) is amended by adding at the end thereof the following new sentence: "In the case of a settlement under section 6224(c) which results in the conversion of partnership items to nonpartnership items pursuant to section 6231(b)(1)(C), the preceding sentence shall apply to a computational adjustment resulting from such settlement in the same manner as if such adjustment were a deficiency and such settlement were a waiver referred to in the preceding sentence."

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

Subtitle D—Foreign Provisions

PART I—SIMPLIFICATION OF TREATMENT OF PASSIVE FOREIGN CORPORATIONS

SEC. 4401. REPEAL OF FOREIGN PERSONAL HOLDING COMPANY RULES AND FOREIGN INVESTMENT COMPANY RULES.

(a) GENERAL RULE.—The following provisions are hereby repealed:

(1) Part III of subchapter G of chapter 1 (relating to foreign personal holding companies).

(2) Section 1246 (relating to gain on foreign investment company stock).

(3) Section 1247 (relating to election by foreign investment companies to distribute income currently).

(b) EXEMPTION OF FOREIGN CORPORATIONS FROM ACCUMULATED EARNINGS TAX AND PERSONAL HOLDING COMPANY RULES.—

(1) ACCUMULATED EARNINGS TAX.—Subsection (b) of section 532 (relating to exceptions) is amended—

(A) by striking paragraph (2) and inserting the following:

"(2) a foreign corporation, or",

(B) by striking ", or" at the end of paragraph (3) and inserting a period, and

(C) by striking paragraph (4).

(2) PERSONAL HOLDING COMPANY RULES.—Subsection (c) of section 542 (relating to exceptions) is amended—

(A) by striking paragraph (5) and inserting the following:

"(5) a foreign corporation,",

(B) by striking paragraphs (7) and (10) and by redesignating paragraphs (8) and (9) as paragraphs (7) and (8), respectively,

(C) by inserting "and" at the end of paragraph (7) (as so redesignated), and

(D) by striking "; and" at the end of paragraph (8) (as so redesignated) and inserting a period.

(c) TREATMENT OF CERTAIN SERVICE CONTRACTS UNDER SUBPART F.—

(1) Paragraph (1) of section 954(c) (defining foreign personal holding company income) is amended by adding at the end thereof the following new subparagraph:

"(F) PERSONAL SERVICE CONTRACTS.—

"(i) Amounts received under a contract under which the corporation is to furnish personal services, if some person other than the corporation has the right to designate (by name or by description) the individual who is to perform the services, or if the individual who is to perform the services is designated (by name or by description) in the contract.

"(ii) Amounts received from the sale or other disposition of such contract.

This subparagraph shall apply with respect to amounts received for services under a particular contract only if at some time during the taxable year 25 percent or more in value of the outstanding stock of the corporation is owned, directly or indirectly, by or for the individual who has performed, is to perform, or may be designated (by name or by description) as the one to perform, such services. For purposes of the preceding sentence, the attribution rules of section 544 shall apply, determined as if any reference to section 543(a)(7) were a reference to this subparagraph."

(2) Clause (iii) of section 904(d)(2)(A) is amended by striking "and" at the end of subclause (III), by striking the period at the end of subclause (IV) and inserting ", and", and by adding at the end thereof the following new subclause:

"(V) any income described in section 954(c)(1)(F) (relating to personal service contracts)."

SEC. 4402. REPLACEMENT FOR PASSIVE FOREIGN INVESTMENT COMPANY RULES.

(a) GENERAL RULE.—Part VI of subchapter P of chapter 1 (relating to treatment of certain passive foreign investment companies) is amended to read as follows:

"PART VI—TREATMENT OF PASSIVE FOREIGN CORPORATIONS

"Subpart A. Current taxation rules.

"Subpart B. Interest on holdings to which subpart A does not apply.

"Subpart C. General provisions.

"Subpart A—Current Taxation Rules

"Sec. 1291. Stock in certain passive foreign corporations marked to market.

"Sec. 1292. Inclusion of income of certain passive foreign corporations.

"SEC. 1291. STOCK IN CERTAIN PASSIVE FOREIGN CORPORATIONS MARKED TO MARKET.

"(a) GENERAL RULE.—In the case of marketable stock in a passive foreign corporation which is owned (or treated under subsection (g) as owned) by a United States person at the close of any taxable year of such person—

"(1) If the fair market value of such stock as of the close of such taxable year exceeds its adjusted basis, such United States person shall include in gross income for such taxable year an amount equal to the amount of such excess.

"(2) If the adjusted basis of such stock exceeds the fair market value of such stock as of the close of such taxable year, such United States person shall be allowed a deduction for such taxable year equal to the lesser of—

"(A) the amount of such excess, or

"(B) the unreversed inclusions with respect to such stock.

"(b) BASIS ADJUSTMENTS.—

"(1) IN GENERAL.—The adjusted basis of stock in a passive foreign corporation—

"(A) shall be increased by the amount included in the gross income of the United States person under subsection (a)(1) with respect to such stock, and

"(B) shall be decreased by the amount allowed as a deduction to the United States person under subsection (a)(2) with respect to such stock.

"(2) SPECIAL RULE FOR STOCK CONSTRUCTIVELY OWNED.—In the case of stock in a passive foreign corporation which the United States person is treated as owning under subsection (g)—

"(A) the adjustments under paragraph (1) shall apply to such stock in the hands of the person actually holding such stock but only for purposes of determining the subsequent treatment under this chapter of the United States person with respect to such stock, and

"(B) similar adjustments shall be made to the adjusted basis of the property by reason of which the United States person is treated as owning such stock.

"(c) CHARACTER AND SOURCE RULES.—

"(1) ORDINARY TREATMENT.—

"(A) GAIN.—Any amount included in gross income under subsection (a)(1), and any gain on the sale or other disposition of marketable stock in a passive foreign corporation, shall be treated as ordinary income.

"(B) LOSS.—Any—

"(i) amount allowed as a deduction under subsection (a)(2), and

"(ii) loss on the sale or other disposition of marketable stock in a passive foreign corporation to the extent that the amount of such loss does not exceed the unreversed inclusions with respect to such stock,

shall be treated as an ordinary loss. The amount so treated shall be treated as a deduction allowable in computing adjusted gross income.

"(2) SOURCE.—The source of any amount included in gross income under subsection (a)(1) (or allowed as a deduction under subsection (a)(2)) shall be determined in the same manner as if such amount were gain or loss (as the case may be) from the sale of stock in the passive foreign corporation.

"(d) UNREVERSED INCLUSIONS.—For purposes of this section, the term 'unreversed inclusions' means, with respect to any stock in a passive foreign corporation, the excess (if any) of—

"(1) the amount included in gross income of the taxpayer under subsection (a)(1) with respect to such stock for prior taxable years, over

"(2) the amount allowed as a deduction under subsection (a)(2) with respect to such stock for prior taxable years.

The amount referred to in paragraph (1) shall include any amount which would have been included in gross income under subsection (a)(1) with respect to such stock for any prior taxable year but for section 1293.

"(e) COORDINATION WITH SECTION 1292.—This section shall not apply with respect to any stock in a passive foreign corporation—

"(1) which is U.S. controlled,

"(2) which is a qualified electing fund with respect to the United States person for the taxable year, or

"(3) in which the United States person is a 25-percent shareholder.

"(f) TREATMENT OF CONTROLLED FOREIGN CORPORATIONS WHICH ARE SHAREHOLDERS IN PASSIVE FOREIGN CORPORATIONS.—In the case of a foreign corporation which is a controlled foreign corporation (or is treated as a controlled foreign corporation under section 1292) and which owns (or is treated under subsection (g) as owning) stock in a passive foreign corporation—

"(1) this section (other than subsection (c)(2) thereof) shall apply to such foreign corporation in the same manner as if such corporation were a United States person, and

"(2) for purposes of subpart F of part III of subchapter N—

"(A) any amount included in gross income under subsection (a)(1) shall be treated as foreign personal holding company income described in section 954(c)(1)(A), and

"(B) any amount allowed as a deduction under subsection (a)(2) shall be treated as a deduction allocable to foreign personal holding company income so described.

"(g) STOCK OWNED THROUGH CERTAIN FOREIGN ENTITIES.—Except as provided in regulations—

"(1) IN GENERAL.—For purposes of this section, stock owned, directly or indirectly, by or for a foreign partnership or foreign trust or foreign estate shall be considered as being owned proportionately by its partners or beneficiaries. Stock considered to be owned by a person by reason of the application of the preceding sentence shall, for purposes of applying such sentence, be treated as actually owned by such person.

"(2) TREATMENT OF CERTAIN DISPOSITIONS.—In any case in which a United States person is treated as owning stock in a passive foreign corporation by reason of paragraph (1)—

"(A) any disposition by the United States person or by any other person which results in the United States person being treated as no longer owning such stock, and

"(B) any disposition by the person owning such stock,

shall be treated as a disposition by the United States person of the stock in the passive foreign corporation.

"(h) COORDINATION WITH SECTION 851(b).—For purposes of paragraphs (2) and (3) of section 851(b), any amount included in gross income under subsection (a) shall be treated as a dividend.

"(i) TRANSITION RULES.—

"(1) INDIVIDUALS BECOMING SUBJECT TO U.S. TAX.—If any individual becomes a United States person in a taxable year beginning after December 31, 1992, solely for purposes of this section, the adjusted basis (before adjustments under subsection (b)) of any marketable stock in a passive foreign corporation owned (or treated as owned under subsection (g)) by such individual on the first day of such taxable year shall be treated as being the greater of its fair market value on such first day or its adjusted basis on such first day.

"(2) MARKETABLE STOCK HELD BEFORE EFFECTIVE DATE.—

"(A) IN GENERAL.—If any marketable stock in a passive foreign corporation is owned (or treated under subsection (g) as owned) by a United States person on the first day of such person's first taxable year, beginning after December 31, 1992—

"(i) paragraph (2) of section 1294(a) shall apply to such stock as if it became marketable during such first taxable year; except that—

"(I) section 1293 shall not apply to the amount included in gross income under subsection (a) to the extent such amount is attributable to increases in fair market value during such first taxable year, and

"(II) the taxpayer's holding period shall be treated as having ended on the last day of the preceding taxable year for purposes of allocating amounts under section 1293(a)(1)(A), and

"(ii) such person may elect to extend the time for the payment of the applicable section 1293 deferred tax as provided in subparagraph (B).

"(B) ELECTION TO EXTEND TIME FOR PAYMENT.—

"(i) IN GENERAL.—At the election of the taxpayer, the time for the payment of the applicable section 1293 deferred tax shall be extended to the extent and subject to the limitations provided in this subparagraph.

"(ii) TERMINATION OF EXTENSION.—

"(I) DISTRIBUTIONS.—If any distribution is received with respect to any stock to which an extension under clause (i) relates and such distribution would be an excess distribution within the meaning of section 1293 if such section applied to such stock, then the extension under clause (i) for the appropriate portion (as determined under regulations) of the applicable section 1293 deferred tax shall expire on the last day prescribed by law (determined without regard to extensions) for filing the return of tax for the taxable year in which the distribution is received.

"(II) REVERSAL OF INCLUSION.—If an amount is allowable as a deduction under subsection (a)(2) with respect to any stock to which an extension under clause (i) relates and the amount so allowable is allocable to the amount which gave rise to the applicable section 1293 deferred tax, then the extension under clause (i) for the appropriate portion (as determined under regulations) of the applicable section 1293 deferred tax shall expire on the last day prescribed by law (determined without regard to extensions) for filing the return of the tax for the taxable year for which such deduction is allowed.

"(III) DISPOSITIONS, ETC.—If stock in a passive foreign corporation is disposed of during the taxable year, all extensions under clause (i) for payment of the applicable section 1293 deferred tax attributable to such stock which have not expired before the date of such disposition shall expire on the last date prescribed by law (determined without regard to extensions) for filing the return of tax for the taxable year in which such disposition occurs. To the extent provided in regulations, the preceding sentence shall not apply in the case of a disposition in a transaction with respect to which gain or loss is not recognized (in whole or in part), and the person acquiring such stock in such transaction shall succeed to the treatment under this section of the person making such disposition.

"(iii) OTHER RULES.—

"(I) ELECTION.—The election under clause (i) shall be made not later than the time prescribed by law (including extensions) for filing the return of tax imposed by this chapter for the first taxable year referred to in subparagraph (A).

"(II) TREATMENT OF LOANS TO SHAREHOLDER.—For purposes of this subparagraph, any loan by a passive foreign corporation (directly or indirectly) to a shareholder of such corporation shall be treated as a distribution to such shareholder.

"(C) CROSS REFERENCE.—

"For provisions providing for interest for the period of the extension under this paragraph, see section 6601.

"(D) APPLICABLE SECTION 1293 DEFERRED TAX.—For purposes of this paragraph, the term 'applicable section 1293 deferred tax' means the deferred tax amount determined under section 1293 with respect to the amount which, but for section 1293, would have been included in gross income for the first taxable year referred to in subparagraph (A). Such term also includes the tax imposed by this chapter for such first taxable year to the extent attributable to the amounts allocated under section 1293(a)(1)(A) to a period described in section 1293(a)(1)(B)(ii).

"(3) SPECIAL RULES FOR REGULATED INVESTMENT COMPANIES.—

"(A) IN GENERAL.—If any marketable stock in a passive foreign corporation is owned (or treated under subsection (g) as owned) by a regulated investment company on the first day of such company's first taxable year beginning after December 31, 1992—

"(i) section 1293 shall not apply to such stock with respect to any distribution or disposition during, or amount included in gross income under this section for, such first taxable year, but

"(ii) such company's tax under this chapter for such first taxable year shall be increased by the aggregate amount of interest which would have been determined under section 1293(c)(3) if section 1293 were applied without regard to this subparagraph.

"(B) DISALLOWANCE OF DEDUCTION.—No deduction shall be allowed to any regulated investment company for the increase in tax under subparagraph (A)(ii).

"SEC. 1292. CURRENT INCLUSION OF INCOME OF CERTAIN PASSIVE FOREIGN CORPORATIONS.

"(a) PASSIVE FOREIGN CORPORATIONS WHICH ARE U.S. CONTROLLED.—

"(1) TREATMENT UNDER SUBPART F.—

"(A) IN GENERAL.—If a passive foreign corporation is United States controlled, then for purposes of subpart F of part III of subchapter N—

"(i) such corporation, if not otherwise a controlled foreign corporation, shall be treated as a controlled foreign corporation,

"(ii) the term 'United States shareholder' means, with respect to such corporation, any United States person who owns (within the meaning of section 958(a)) any stock in such corporation,

"(iii) the entire gross income of such corporation shall, after being reduced under the principles of paragraph (5) of section 954(b), be treated as foreign base company income, and

"(iv) sections 970 and 971 shall not apply.

Except as provided in regulations, the preceding sentence shall also apply for purposes of section 904(d).

"(B) SPECIAL RULES.—If any taxpayer is treated as being a United States shareholder in a controlled foreign corporation solely by reason of this section—

"(i) section 954(b)(4) (relating to exception for certain income subject to high foreign taxes) shall not apply for purposes of determining the amount included in the gross income of such taxpayer under section 951 by reason of being so treated with respect to such corporation, and

"(ii) the amount so included in the gross income of such taxpayer under section 951 with respect to such corporation shall be treated as long-term capital gain to the extent attributable to the net capital gain of such corporation.

"(2) U.S. CONTROLLED.—For purposes of this subpart, a passive foreign corporation is United States controlled if—

"(A) such corporation is a controlled foreign corporation determined without regard to this subsection, or

"(B) at any time during the taxable year more than 50 percent of—

"(i) the total combined voting power of all classes of stock of such corporation entitled to vote, or

"(ii) the total value of the stock of such corporation,

is owned directly or indirectly by 5 or fewer United States persons.

"(3) CONSTRUCTIVE OWNERSHIP RULES FOR PURPOSES OF PARAGRAPH (2)(B).—For purposes of paragraph (2)(B), the attribution rules provided in section 544 shall apply, determined as if any reference to a personal holding company were a reference to a corporation described in paragraph (2)(B) (and any reference to the stock ownership requirement provided in section 542(a)(2) were a reference to the requirement of paragraph (2)(B)); except that—

"(A) subsection (a)(4) of such section shall be applied by substituting 'Paragraphs (1), (2), and (3)' for 'Paragraphs (2) and (3)',

"(B) stock owned by a nonresident alien individual shall not be considered by reason of attribution through family membership as owned by a citizen or resident alien individual who is not the spouse of the nonresident alien individual and who does not otherwise own stock in the foreign corporation (determined after the application of such attribution rules other than attribution through family membership), and

"(C) stock of a corporation owned by any foreign person shall not be considered by reason of attribution through partners as owned by a citizen or resident of the United States who does not otherwise own stock in the foreign corporation (determined after the application of such attribution rules and subparagraph (A), other than attribution through partners).

"(b) TAXPAYERS ELECTING CURRENT INCLUSION AND 25-PERCENT SHAREHOLDERS.—

"(1) IN GENERAL.—If a passive foreign corporation which is not United States controlled is a qualified electing fund with respect to any taxpayer or the taxpayer is a 25-percent shareholder in such corporation, then for purposes of subpart F of part III of subchapter N—

"(A) such passive foreign corporation shall be treated as a controlled foreign corporation with respect to such taxpayer,

"(B) such taxpayer shall be treated as a United States shareholder in such corporation, and

"(C) the modifications of clauses (iii) and (iv) of subsection (a)(1)(A) and of subparagraph (B) of subsection (a)(1) shall apply in determining the amount included under such subpart F in the gross income of such taxpayer (and the character of the amount so included).

For purposes of section 904(d), any amount included in the gross income of the taxpayer under the preceding sentence shall be treated as a dividend from a foreign corporation which is not a controlled foreign corporation.

"(2) QUALIFIED ELECTING FUND.—For purposes of this subpart, the term 'qualified electing fund' means any passive foreign corporation if—

"(A) an election by the taxpayer under paragraph (3) applies to such corporation for the taxable year of the taxpayer, and

"(B) such corporation complies with such requirements as the Secretary may prescribe for purposes of carrying out the purposes of this subpart.

"(3) ELECTION.—

"(A) IN GENERAL.—A taxpayer may make an election under this paragraph with respect to any passive foreign corporation for any taxable year of the taxpayer. Such an election, once made with respect to any corporation, shall apply to all subsequent taxable years of the taxpayer with respect to such corporation unless revoked by the taxpayer with the consent of the Secretary.

"(B) WHEN MADE.—An election under this subsection may be made for any taxable year of the taxpayer at any time on or before the due date (determined with regard to extensions) for filing the return of the tax imposed by this chapter for such taxable year. To the extent provided in regulations, such an election may be made later than as required in the preceding sentence where the taxpayer fails to make a timely election because the taxpayer reasonably believes that the corporation was not a passive foreign corporation.

"(4) 25-PERCENT SHAREHOLDER.—For purposes of this subpart, the term '25-percent shareholder' means, with respect to any passive foreign corporation, any United States person who owns (within the meaning of section 958(a)), or is considered as owning by applying the rules of section 958(b), 25 percent or more (by vote or value) of the stock of such corporation.

"SUBPART B—INTEREST ON HOLDINGS TO WHICH SUBPART A DOES NOT APPLY

"Sec. 1293. Interest on tax deferral.

"Sec. 1294. Definitions and special rules.

"SEC. 1293. INTEREST ON TAX DEFERRAL.

"(a) TREATMENT OF DISTRIBUTIONS AND STOCK DISPOSITIONS.—

"(1) DISTRIBUTIONS.—If a United States person receives an excess distribution in respect of stock to which this section applies, then—

"(A) the amount of the excess distribution shall be allocated ratably to each day in the taxpayer's holding period for the stock,

"(B) with respect to such excess distribution, the taxpayer's gross income for the current year shall include (as ordinary income) only the amounts allocated under subparagraph (A) to—

"(i) the current year, or

"(ii) any period in the taxpayer's holding period before the first day of the first taxable year of the corporation which begins after December 31, 1986, and for which it was a passive foreign corporation, and

"(C) the tax imposed by this chapter for the current year shall be increased by the deferred tax amount (determined under subsection (c)).

"(2) DISPOSITIONS.—If the taxpayer disposes of stock to which this section applies, then the rules of paragraph (1) shall apply to any gain recognized on such disposition in the same manner as if such gain were an excess distribution.

"(3) DEFINITIONS.—For purposes of this subpart—

"(A) HOLDING PERIOD.—The taxpayer's holding period shall be determined under section 1223; except that—

"(i) for purposes of applying this section to an excess distribution, such holding period shall be treated as ending on the date of such distribution, and

"(ii) if section 1291 applied to such stock with respect to the taxpayer for any prior taxable year, such holding period shall be treated as beginning on the first day of the first taxable year beginning after the last taxable year for which section 1291 so applied.

"(B) CURRENT YEAR.—The term 'current year' means the taxable year in which the excess distribution or disposition occurs.

"(b) EXCESS DISTRIBUTION.—

"(1) IN GENERAL.—For purposes of this section, the term 'excess distribution' means any distribution in respect of stock received during any taxable year to the extent such distribution does not exceed its ratable portion of the total excess distribution (if any) for such taxable year.

"(2) TOTAL EXCESS DISTRIBUTION.—For purposes of this subsection—

"(A) IN GENERAL.—The term 'total excess distribution' means the excess (if any) of—

"(i) the amount of the distributions in respect of the stock received by the taxpayer during the taxable year, over

"(ii) 125 percent of the average amount received in respect of such stock by the taxpayer during the 3 preceding taxable years (or, if shorter, the portion of the taxpayer's holding period before the taxable year).

For purposes of clause (ii), any excess distribution received during such 3-year period shall be taken into account only to the extent it was included in gross income under subsection (a)(1)(B).

"(B) NO EXCESS FOR FIRST YEAR.—The total excess distributions with respect to any stock shall be zero for the taxable year in which the taxpayer's holding period in such stock begins.

"(3) ADJUSTMENTS.—Under regulations prescribed by the Secretary—

"(A) determinations under this subsection shall be made on a share-by-share basis, except that shares with the same holding period may be aggregated,

"(B) proper adjustments shall be made for stock splits and stock dividends,

"(C) if the taxpayer does not hold the stock during the entire taxable year, dis-

tributions received during such year shall be annualized,

"(D) if the taxpayer's holding period includes periods during which the stock was held by another person, distributions received by such other person shall be taken into account as if received by the taxpayer,

"(E) if the distributions are received in a foreign currency, determinations under this subsection shall be made in such currency and the amount of any excess distribution determined in such currency shall be translated into dollars,

"(F) proper adjustment shall be made for amounts not includible in gross income by reason of section 959(a) or for which a deduction is allowable under section 245(c), and

"(G) if a charitable deduction was allowable under section 642(c) to a trust for any distribution of its income, proper adjustments shall be made for the deduction so allowable to the extent allocable to distributions or gain in respect of stock in a passive foreign corporation.

For purposes of subparagraph (F), any amount not includible in gross income by reason of section 551(d) (as in effect on January 1, 1992) or 1293(c) (as so in effect) shall be treated as an amount not includible in gross income by reason of section 959(a).

"(c) DEFERRED TAX AMOUNT.—For purposes of this section—

"(1) IN GENERAL.—The term 'deferred tax amount' means, with respect to any distribution or disposition to which subsection (a) applies, an amount equal to the sum of—

"(A) the aggregate increases in taxes described in paragraph (2), plus

"(B) the aggregate amount of interest (determined in the manner provided under paragraph (3)) on such increases in tax.

Any increase in the tax imposed by this chapter for the current year under subsection (a) to the extent attributable to the amount referred to in subparagraph (B) shall be treated as interest paid under section 6601 on the due date for the current year.

"(2) AGGREGATE INCREASES IN TAXES.—For purposes of paragraph (1)(A), the aggregate increases in taxes shall be determined by multiplying each amount allocated under subsection (a)(1)(A) to any taxable year (other than the current year) by the highest rate of tax in effect for such taxable year under section 1 or 11, whichever applies.

"(3) COMPUTATION OF INTEREST.—

"(A) IN GENERAL.—The amount of interest referred to in paragraph (1)(B) on any increase determined under paragraph (2) for any taxable year shall be determined for the period—

"(i) beginning on the due date for such taxable year, and

"(ii) ending on the due date for the taxable year with or within which the distribution or disposition occurs,

by using the rates and method applicable under section 6621 for underpayments of tax for such period.

"(B) DUE DATE.—For purposes of this subsection, the term 'due date' means the date prescribed by law (determined without regard to extensions) for filing the return of the tax imposed by this chapter for the taxable year.

"(C) SPECIAL RULE.—For purposes of determining the amount of interest referred to in paragraph (1)(B), the amount of any increase in tax determined under paragraph (2) shall be determined without regard to any reduction under section 1294(d) for a tax described in paragraph (2)(A)(ii) thereof.

"SEC. 1294. DEFINITIONS AND SPECIAL RULES.

"(a) STOCK TO WHICH SECTION 1293 APPLIES.—

"(1) IN GENERAL.—Except as otherwise provided in this paragraph, section 1293 shall apply to any stock in a passive foreign corporation unless—

"(A) such stock is marketable stock as of the time of the distribution or disposition involved, or

"(B)(i) with respect to each of such corporation's taxable years which begin after December 31, 1992, and include any portion of the taxpayer's holding period in such stock—

"(I) such corporation was U.S. controlled (within the meaning of section 1292(a)(2)), or

"(II) such corporation was treated as a controlled foreign corporation under section 1292(b) with respect to the taxpayer, and

"(ii) with respect to each of such corporation's taxable years which begin after December 31, 1986, and before January 1, 1993, and include any portion of the taxpayer's holding period in such stock, such corporation was treated as a qualified electing fund under this part (as in effect on January 1, 1992) with respect to the taxpayer.

"(2) TREATMENT WHERE STOCK BECOMES MARKETABLE.—If any stock in a passive foreign corporation becomes marketable stock after the beginning of the taxpayer's holding period in such stock, section 1293 shall apply to—

"(A) any distributions with respect to, or disposition of, such stock in the taxable year of the taxpayer in which it becomes so marketable, and

"(B) any amount which, but for section 1293, would have been included in gross income under section 1291(a) with respect to such stock for such taxable year in the same manner as if such amount were gain on the disposition of such stock.

"(3) ELECTION TO RECOGNIZE GAIN WHERE COMPANY BECOMES SUBJECT TO CURRENT INCLUSIONS.—

"(A) IN GENERAL.—If—

"(i) a passive foreign corporation first meets the requirements of clause (i) of paragraph (1)(B) with respect to the taxpayer for a taxable year of such taxpayer which begins after December 31, 1992,

"(ii) the taxpayer holds stock in such company on the first day of such taxable year, and

"(iii) the taxpayer establishes to the satisfaction of the Secretary the fair market value of such stock on such first day,

the taxpayer may elect to recognize gain as if he sold such stock on such first day for such fair market value.

"(B) ADDITIONAL ELECTION FOR SHAREHOLDER OF CONTROLLED FOREIGN CORPORATIONS.—

"(i) IN GENERAL.—If—

"(I) a passive foreign corporation first meets the requirements of subclause (I) of paragraph (1)(B)(i) with respect to the taxpayer for a taxable year of such taxpayer which begins after December 31, 1992,

"(II) the taxpayer holds stock in such corporation on the first day of such taxable year, and

"(III) such corporation is a controlled foreign corporation without regard to this part,

the taxpayer may elect to be treated as receiving a dividend on such first day in an amount equal to the portion of the post-1986 earnings and profits of such corporation attributable (under regulations prescribed by the Secretary) to the stock in such corporation held by the taxpayer on such first day. The amount treated as a dividend under the preceding sentence shall be treated as an excess distribution and shall be allocated under section 1293(a)(1)(A) only two days during periods taken into account in determining the post-1986 earnings and profits so attributable.

"(ii) POST 1986 EARNINGS AND PROFITS.—For purposes of clause (i), the term 'post-1986 earnings and profits' means earnings and profits which were accumulated in taxable years of the corporation beginning after December 31, 1986, and during the period or periods the stock was held by the taxpayer while the corporation was a passive foreign corporation.

"(iii) COORDINATION WITH SECTION 959(e).—For purposes of section 959(e), any amount treated as a dividend under this subparagraph shall be treated as included in gross income under section 1248(a).

"(C) ADJUSTMENTS.—In the case of any stock to which subparagraph (A) or (B) applies—

"(i) the adjusted basis of such stock shall be increased by the gain recognized under subparagraph (A) or the amount treated as a dividend under subparagraph (B), as the case may be, and

"(ii) the taxpayer's holding period in such stock shall be treated as beginning on the first day referred to in such subparagraph.

"(b) RULES RELATING TO STOCK ACQUIRED FROM A DECEDENT.—

"(1) BASIS.—In the case of stock of a passive foreign corporation acquired by bequest, devise, or inheritance (or by the decedent's estate), notwithstanding section 1014, the basis of such stock in the hands of the person so acquiring it shall be the adjusted basis of such stock in the hands of the decedent immediately before his death (or, if lesser, the basis which would have been determined under section 1014 without regard to this paragraph).

"(2) DEDUCTION FOR ESTATE TAX.—If stock in a passive foreign corporation is acquired from a decedent, the taxpayer shall, under regulations prescribed by the Secretary, be allowed (for the taxable year of the sale or exchange) a deduction from gross income equal to that portion of the decedent's estate tax deemed paid which is attributable to the excess of (A) the value at which such stock was taken into account for purposes of determining the value of the decedent's gross estate, over (B) the basis determined under paragraph (1).

"(3) EXCEPTIONS.—This subsection shall not apply to any stock in a passive foreign corporation if—

"(A) section 1293 would not have applied to a disposition of such stock by the decedent immediately before his death, or

"(B) the decedent was a nonresident alien at all times during his holding period in such stock.

"(c) RECOGNITION OF GAIN.—Except as otherwise provided in regulations, in the case of any transfer of stock in a passive foreign company to which section 1293 applies, where (but for this subsection) there is not full recognition of gain, the excess (if any) of—

"(1) the fair market value of such stock, over

"(2) its adjusted basis,

shall be treated as gain from the sale or exchange of such stock and shall be recognized notwithstanding any provision of law. Proper adjustment shall be made to the basis of property for gain recognized under the preceding sentence.

"(d) COORDINATION WITH FOREIGN TAX CREDIT RULES.—

"(1) IN GENERAL.—If there are creditable foreign taxes with respect to any distribution in respect of stock in a passive foreign corporation—

"(A) the amount of such distribution shall be determined for purposes of section 1293 with regard to section 78,

"(B) the excess distribution taxes shall be allocated ratably to each day in the taxpayer's holding period for the stock, and

"(C) to the extent—

"(i) that such excess distribution taxes are allocated to a taxable year referred to in section 1293(a)(1)(B), such taxes shall be taken into account under section 901 for the current year, and

"(ii) that such excess distribution taxes are allocated to any other taxable year, such taxes shall reduce (subject to the principles of section 904 and not below zero) the increase in tax determined under section 1293(c)(2) for such taxable year by reason of such distribution (but such taxes shall not be taken into account under section 901).

"(2) DEFINITIONS.—For purposes of this subsection—

"(A) CREDITABLE FOREIGN TAXES.—The term 'creditable foreign taxes' means, with respect to any distribution—

"(i) any foreign taxes deemed paid under section 902 with respect to such distribution, and

"(ii) any withholding tax imposed with respect to such distribution,

but only if the taxpayer chooses the benefits of section 901 and such taxes are creditable under section 901 (determined without regard to paragraph (1)(C)(ii)).

"(B) EXCESS DISTRIBUTION TAXES.—The term 'excess distribution taxes' means, with respect to any distribution, the portion of the creditable foreign taxes with respect to such distribution which is attributable (on a pro rata basis) to the portion of such distribution which is an excess distribution.

"(C) SECTION 1248 GAIN.—The rules of this subsection also shall apply in the case of any gain which but for this section would be includible in gross income as a dividend under section 1248.

"(e) ATTRIBUTION OF OWNERSHIP.—For purposes of this subpart—

"(1) ATTRIBUTION TO UNITED STATES PERSONS.—This subsection—

"(A) shall apply to the extent that the effect is to treat stock of a passive foreign corporation as owned by a United States person, and

"(B) except as provided in paragraph (3) or in regulations, shall not apply to treat stock owned (or treated as owned under this subsection) by a United States person as owned by any other person.

"(2) CORPORATIONS.—

"(A) IN GENERAL.—If 50 percent or more in value of the stock of a corporation (other than an S corporation) is owned, directly or indirectly, by or for any person, such person shall be considered as owning the stock owned directly or indirectly by or for such corporation in that proportion which the value of the stock which such person so owns bears to the value of all stock in the corporation.

"(B) 50-PERCENT LIMITATION NOT TO APPLY IN CERTAIN CASES.—For purposes of determining whether a shareholder of a passive foreign corporation (or whether a United States shareholder of a controlled foreign corporation which is not a passive foreign corporation) is treated as owning stock owned directly or indirectly by or for such corporation, subparagraph (A) shall be applied without regard to the 50-percent limitation contained therein.

"(C) FAMILY AND PARTNER ATTRIBUTION FOR 50-PERCENT LIMITATION.—For purposes of determining whether the 50-percent limitation of subparagraph (A) is met, the constructive ownership rules of section 544(a)(2) shall apply in addition to the other rules of this subsection.

"(3) PARTNERSHIPS, ETC.—Except as provided in regulations, stock owned, directly or indirectly, by or for a partnership, S corporation, estate, or trust shall be considered as being owned proportionately by its partners, shareholders, or beneficiaries (as the case may be).

"(4) OPTIONS.—To the extent provided in regulations, if any person has an option to acquire stock, such stock shall be considered as owned by such person. For purposes of this paragraph, an option to acquire such an option, and each one of a series of such options, shall be considered as an option to acquire such stock.

"(5) SUCCESSIVE APPLICATION.—Stock considered to be owned by a person by reason of the application of paragraph (2), (3), or (4) shall, for purposes of applying such paragraphs, be considered as actually owned by such person.

"(f) OTHER SPECIAL RULES.—For purposes of this subpart—

"(1) TIME FOR DETERMINATION.—Stock held by a taxpayer shall be treated as stock in a passive foreign corporation if, at any time during the holding period of the taxpayer with respect to such stock, such corporation (or any predecessor) was a passive foreign corporation. The preceding sentence shall not apply if the taxpayer elects to recognize gain (as of the last day of the last taxable year for which the company was a passive foreign corporation) under rules similar to the rules of subsection (a)(3)(A).

"(2) APPLICATION OF SUBPART WHERE STOCK HELD BY OTHER ENTITY.—Under regulations—

"(A) IN GENERAL.—In any case in which a United States person is treated as owning stock in a passive foreign corporation by reason of subsection (e)—

"(i) any transaction which results in the United States person being treated as no longer owning such stock,

"(ii) any disposition of such stock by the person owning such stock, and

"(iii) any distribution of property in respect of such stock to the person holding such stock,

shall be treated as a disposition by, or distribution to, the United States person with respect to the stock in the passive foreign corporation.

"(B) AMOUNT TREATED IN SAME MANNER AS PREVIOUSLY TAXED INCOME.—Rules similar to the rules of section 959(b) shall apply to any amount described in subparagraph (A) in respect of stock which the taxpayer is treated as owning under subsection (e).

"(C) COORDINATION WITH SECTION 951.—If, but for this subparagraph, an amount would be taken into account under section 1293 by reason of subparagraph (A) and such amount would also be included in the gross income of the taxpayer under section 951, such amount shall only be taken into account under section 1293.

"(3) DISPOSITIONS.—Except as provided in regulations, if a taxpayer uses any stock in a passive foreign corporation as security for a loan, the taxpayer shall be treated as having disposed of such stock.

"SUBPART C—GENERAL PROVISIONS

"Sec. 1296. Passive foreign corporation.

"Sec. 1297. Special rules.

"SEC. 1296. PASSIVE FOREIGN CORPORATION.

"(a) IN GENERAL.—For purposes of this part, except as otherwise provided in this subpart, the term 'passive foreign corporation' means any foreign corporation if—

"(1) 60 percent or more of the gross income of such corporation for the taxable year is passive income,

"(2) the average percentage of assets (by value) held by such corporation during the taxable year which produce passive income or which are held for the production of passive income is at least 50 percent, or

"(3) such corporation is registered under the Investment Company Act of 1940, as amended (15 U.S.C. 80a-1 to 80b-2), either as a management company or as a unit investment trust.

A foreign corporation may elect to have the determination under paragraph (2) based on the adjusted bases of its assets in lieu of their value. Such an election, once made, may be revoked only with the consent of the Secretary.

"(b) PASSIVE INCOME.—For purposes of this section—

"(1) IN GENERAL.—Except as otherwise provided in this subsection, the term 'passive income' means any income which is of a kind which would be foreign personal holding company income as defined in section 954(c) without regard to paragraph (3) thereof.

"(2) EXCEPTIONS.—Except as provided in regulations, the term 'passive income' does not include any income—

"(A) derived in the active conduct of a banking business by an institution licensed to do business as a bank in the United States (or, to the extent provided in regulations, by any other corporation),

"(B) derived in the active conduct of an insurance business by a corporation which is predominantly engaged in an insurance business and which would be subject to tax under subchapter L if it were a domestic corporation,

"(C) which is interest, a dividend, or a rent or royalty, which is received or accrued from a related person (within the meaning of section 954(d)(3)) to the extent such amount is properly allocable (under regulations prescribed by the Secretary) to income of such related person which is not passive income, or

"(D) any foreign trade income of a FSC.

For purposes of subparagraph (C), the term 'related person' has the meaning given such term by section 954(d)(3) determined by substituting 'foreign corporation' for 'controlled foreign corporation' each place it appears in section 954(d)(3).

"(3) TREATMENT OF INCOME FROM CERTAIN ASSETS.—To the extent that any asset is properly treated as not held for the production of passive income for purposes of subsection (a)(2), all income from such asset shall be treated as income which is not passive income.

"(c) LOOK-THROUGH IN CASE OF 25-PERCENT OWNED CORPORATION.—If a foreign corporation owns (directly or indirectly) at least 25 percent (by value) of the stock of another corporation, for purposes of determining whether such foreign corporation is a passive foreign corporation, such foreign corporation shall be treated as if it—

"(1) held its proportionate share of the assets of such other corporation, and

"(2) received directly its proportionate share of the income of such other corporation.

"SEC. 1297. SPECIAL RULES.

"(a) UNITED STATES PERSON.—For purposes of this part, the term 'United States person' has the meaning given to such term by section 7701(a)(30).

"(b) CONTROLLED FOREIGN CORPORATION.—For purposes of this part, the term 'controlled foreign corporation' has the meaning given such term by section 957(a).

"(c) MARKETABLE STOCK.—For purposes of this part—

"(1) IN GENERAL.—The term 'marketable stock' means—

"(A) any stock which is regularly traded on—

"(i) a national securities exchange which is registered with the Securities and Exchange Commission or the national market system established pursuant to section 11A of the Securities and Exchange Act of 1934, or

"(ii) any exchange or other market which the Secretary determines has rules adequate to carry out the purposes of this part, and

"(B) to the extent provided in regulations, stock in any foreign corporation which is comparable to a regulated investment company and which offers for sale or has outstanding any stock of which it is the issuer and which is redeemable at its net asset value.

"(2) SPECIAL RULE FOR REGULATED INVESTMENT COMPANIES.—In the case of any regulated investment company which is offering for sale or has outstanding any stock of which it is the issuer and which is redeemable at its net asset value, all stock in a passive foreign corporation which it owns (or is treated under section 1291(g) as owning) shall be treated as marketable stock for purposes of this part. Except as provided in regulations, a similar rule shall apply in the case of any other regulated investment company.

"(d) OTHER SPECIAL RULES.—For purposes of this part—

"(1) CERTAIN CORPORATIONS NOT TREATED AS PASSIVE.—A corporation shall not be treated as a passive foreign corporation for the 1st taxable year such corporation has gross income (hereinafter in this paragraph referred to as the 'start-up year') if—

"(A) no predecessor of such corporation was a passive foreign corporation,

"(B) it is established to the satisfaction of the Secretary that such corporation will not be a passive foreign corporation for either of the 1st 2 taxable years following the start-up year, and

"(C) such corporation is not a passive foreign corporation for either of the 1st 2 taxable years following the start-up year.

"(2) CERTAIN CORPORATIONS CHANGING BUSINESSES.—A corporation shall not be treated as a passive foreign corporation for any taxable year if—

"(A) neither such corporation (nor any predecessor) was a passive foreign corporation for any prior taxable year,

"(B) it is established to the satisfaction of the Secretary that—

"(i) substantially all of the passive income of the corporation for the taxable year is attributable to proceeds from the disposition of 1 or more active trades or businesses, and

"(ii) such corporation will not be a passive foreign corporation for either of the 1st 2 taxable years following the taxable year, and

"(C) such corporation is not a passive foreign corporation for either of such 2 taxable years.

For purposes of section 1296(c), any passive income referred to in subparagraph (B)(i) shall be treated as income which is not passive income and any assets which produce income so described shall be treated as assets producing income other than passive income.

"(3) TREATMENT OF CERTAIN FOREIGN CORPORATIONS OWNING STOCK IN 25-PERCENT OWNED DOMESTIC CORPORATION.—

"(A) IN GENERAL.—If a foreign corporation owns at least 25 percent (by value) of the stock of a domestic corporation, for purposes of determining whether such foreign corporation is a passive foreign corporation, any qualified stock held by such domestic corporation shall be treated as an asset which does not produce passive income (and is not held for the production of passive income) and any amount included in gross income with respect to such stock shall not be treated as passive income.

"(B) QUALIFIED STOCK.—For purposes of subparagraph (A), the term 'qualified stock' means any stock in a C corporation which is a domestic corporation and which is not a regulated investment company or real estate investment trust.

"(4) TREATMENT OF CORPORATION WHICH WAS A PFIC.—A corporation shall be treated as a passive foreign corporation for any taxable year beginning before January 1, 1993, if, and only if, such corporation was a passive foreign investment company under this part as in effect for such taxable year.

"(5) SEPARATE INTERESTS TREATED AS SEPARATE CORPORATIONS.—Under regulations prescribed by the Secretary, where necessary to carry out the purposes of this part, separate classes of stock (or other interests) in a corporation shall be treated as interests in separate corporations.

"(e) TREATMENT OF CERTAIN LEASED PROPERTY.—For purposes of section 1296(a)(2)—

"(1) IN GENERAL.—Any tangible personal property with respect to which the foreign corporation is the lessee under a lease with a term of at least 12 months shall be treated as an asset actually held by such corporation.

"(2) DETERMINATION OF VALUE.—

"(A) IN GENERAL.—The value of any asset to which paragraph (1) applies shall be the lesser of—

"(i) the fair market value of such property, or

"(ii) the unamortized portion (as determined under regulations prescribed by the Secretary) of the present value of the payments under the lease for the use of such property.

"(B) PRESENT VALUE.—For purposes of subparagraph (A), the present value of payments described in subparagraph (A)(ii) shall be determined in the manner provided in regulations prescribed by the Secretary—

"(i) as of the beginning of the lease term, and

"(ii) except as provided in such regulations, by using a discount rate equal to the applicable Federal rate determined under section 1274(d)—

"(I) by substituting the lease term for the term of the debt instrument, and

"(II) without regard to paragraph (2) or (3) thereof.

"(3) EXCEPTIONS.—This subsection shall not apply in any case where—

"(A) the lessor is a related person (as defined in the last sentence of section 1296(b)(2)) with respect to the foreign corporation, or

"(B) a principal purpose of leasing the property was to avoid the provisions of this part.

"(f) ELECTION BY CERTAIN PASSIVE FOREIGN CORPORATIONS TO BE TREATED AS A DOMESTIC CORPORATION.—

"(1) IN GENERAL.—For purposes of this title, if—

"(A) a passive foreign corporation would qualify as a regulated investment company under part I of subchapter M if such passive foreign corporation were a domestic corporation,

"(B) such passive foreign corporation meets such requirements as the Secretary shall prescribe to ensure that the taxes imposed by this title on such passive foreign corporation are paid, and

"(C) such passive foreign corporation makes an election to have this paragraph apply and waives all benefits which are granted by the United States under any treaty and to which such corporation would otherwise be entitled by reason of being a resident of another country,

such corporation shall be treated as a domestic corporation.

"(2) CERTAIN RULES MADE APPLICABLE.—Rules similar to the rules of paragraphs (2), (3), (4)(A), and (5) of section 953(d) shall apply with respect to any corporation making an election under paragraph (1).

"(g) SPECIAL RULES FOR CERTAIN TAXPAYERS.—

"(1) TAX-EXEMPT ORGANIZATIONS.—In the case of any organization exempt from tax under section 501—

"(A) this part shall apply to any stock in a passive foreign corporation owned (or treated as owned under section 1294(e)) by such organization only to the extent that a dividend on such stock would be taken into account in determining the unrelated business taxable income of such organization, and

"(B) to the extent that this part applies to any such stock, this part shall be applied in the same manner as if such organization were not exempt from tax under section 501(a).

"(2) TREATMENT OF STOCK HELD BY POOLED INCOME FUND.—If stock in a passive foreign corporation is owned (or treated as owned under section 1294(e)) by a pooled income fund (as defined in section 642(c)(5)) and no portion of any gain from a disposition of such stock may be allocated to income under the terms of the governing instrument of such fund—

"(A) section 1293 shall not apply to any gain on a disposition of such stock by such fund if (without regard to section 1293) a deduction would be allowable with respect to such gain under section 642(c)(3),

"(B) subpart A shall not apply with respect to such stock, and

"(C) in determining whether section 1293 applies to any distribution in respect of such stock, such stock shall be treated as failing to qualify for the exceptions under section 1294(a)(1).

"(h) INFORMATION FROM SHAREHOLDERS.—Every United States person who owns stock in any passive foreign corporation shall furnish with respect to such corporation such information as the Secretary may prescribe.

"(i) REGULATIONS.—The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of this part, including regulations—

"(1) providing that gross income shall be determined without regard to section 1293 for such purposes as may be specified in such regulations, and

"(2) to prevent avoidance of the provisions of this part through changes in citizenship or residence status."

(b) INSTALLMENT SALES TREATMENT NOT AVAILABLE.—Paragraph (2) of section 453(k) is amended by striking "or" at the end of subparagraph (A), by inserting "or" at the end of subparagraph (B), and by adding at the end thereof the following new subparagraph:

"(C) stock in a passive foreign corporation (as defined in section 1296) if section 1293 applies to such sale,".

(c) TREATMENT OF MARK-TO-MARKET GAIN UNDER SECTION 4982.—

(1) Subsection (e) of section 4982 is amended by adding at the end thereof the following new paragraph:

"(6) TREATMENT OF GAIN RECOGNIZED UNDER SECTION 1291.—For purposes of determining a regulated investment company's ordinary income—

"(A) notwithstanding paragraph (1)(C), section 1291 shall be applied as if such company's taxable year ended on October 31, and

"(B) any ordinary gain or loss from an actual disposition of stock in a passive foreign corporation during the portion of the calendar year after October 31 shall be taken into account in determining such company's ordinary income for the following calendar year.

In the case of a company making an election under paragraph (4), the preceding sentence shall be applied by substituting the last day of the company's taxable year for October 31."

(2) Subsection (b) of section 852 is amended by adding at the end thereof the following new paragraph:

"(10) SPECIAL RULE FOR CERTAIN LOSSES ON STOCK IN PASSIVE FOREIGN CORPORATIONS.—To the extent provided in regulations, the taxable income of a regulated investment company (other than a company to which an election under section 4982(e)(4) applies) shall be computed without regard to any net reduction in the value of any stock of a passive foreign corporation to which section 1291 applies occurring after October 31 of the taxable year, and any such reduction shall be treated as occurring on the first day of the following taxable year."

(3) Subsection (c) of section 852 is amended by inserting after "October 31 of such year" the following: ", without regard to any net reduction in the value of any stock of a passive foreign corporation to which section 1291 applies occurring after December 31 of such year,".

(d) TREATMENT OF CERTAIN PREVIOUSLY TAXED AMOUNTS.—Subsection (e) of section 959 is amended—

(1) by adding at the end thereof the following new sentence: "A similar rule shall apply in the case of amounts included in gross income under section 1293 (as in effect on January 1, 1992).", and

(2) by striking "AMOUNTS PREVIOUSLY TAXED UNDER SECTION 1248" in the subsection heading and inserting "CERTAIN PREVIOUSLY TAXED AMOUNTS".

SEC. 4403. TECHNICAL AND CONFORMING AMENDMENTS.

(a) GENERAL RULE.—

(1) Paragraph (2) of section 171(c) is amended—

(A) by striking ", or by a foreign personal holding company, as defined in section 552", and

(B) by striking ", or a foreign personal holding company".

(2) Section 312 is amended by striking subsection (j).

(3) Subsection (m) of section 312 is amended by striking ", a foreign investment company (within the meaning of section 1246(b)), or a foreign personal holding company (within the meaning of section 552)" and inserting "or a passive foreign corporation (as defined in section 1296)".

(4) Subsection (e) of section 443 is amended by striking paragraph (3) and by redesignating paragraphs (4) and (5) as paragraphs (3) and (4), respectively.

(5) Clause (ii) of section 465(c)(7)(B) is amended to read as follows:

"(ii) a passive foreign corporation with respect to which the stock ownership requirements of section 1292(a)(2)(B) are met, or".

(6) Subsection (b) of section 535 is amended by striking paragraph (9).

(7) Subsection (d) of section 535 is hereby repealed.

(8) Paragraph (1) of section 543(b) is amended by inserting "and" at the end of subparagraph (A), by striking ", and" at the end of subparagraph (B) and inserting a period, and by striking subparagraph (C).

(9) Paragraph (1) of section 562(b) is amended by striking "or a foreign personal holding company described in section 552".

(10) Section 563 is amended—

(A) by striking subsection (c),

(B) by redesignating subsection (d) as subsection (c), and

(C) by striking "subsection (a), (b), or (c)" in subsection (c) (as so redesignated) and inserting "subsection (a) or (b)".

(11) Paragraph (2) of section 751(d) is amended by striking "subsection (a) of section 1246 (relating to gain on foreign investment company stock)" and inserting "section 1291 (relating to stock in certain passive foreign corporations marked to market)".

(12) Subsection (b) of section 851 is amended by striking the sentence following paragraph (4)(B) which contains a reference to section 1293(a).

(13) Subsection (d) of section 904 is amended by striking paragraphs (2)(A)(ii), (2)(E)(iii), and (3)(I).

(14)(A) Subparagraph (A) of section 904(g)(1) is amended to read as follows:

"(A) Any amount included in gross income under section 951(a) (relating to amounts included in gross income of United States shareholders)."

(B) The paragraph heading of paragraph (2) of section 904(g) is amended by striking "AND FOREIGN PERSONAL HOLDING OR PASSIVE FOREIGN INVESTMENT COMPANY".

(15) Section 951 is amended by striking subsections (c), (d), and (f), and by redesignating subsection (e) as subsection (c).

(16) Paragraph (1) of section 986(c) is amended by striking "or 1293(c)".

(17) Paragraph (3) of section 989(b) is amended by striking ", 551(a), or 1293(a)".

(18) Paragraph (5) of section 1014(b) is hereby repealed.

(19) Subsection (a) of section 1016 is amended by striking paragraph (13) and by redesignating the following paragraphs accordingly.

(20) Paragraph (3) of section 1212(a) is amended—

(A) by striking subparagraph (A),

(B) by redesignating subparagraphs (B) and (C) as subparagraphs (A) and (B), respectively, and

(C) by amending subparagraph (D) to read as follows:

"(C) for which it is a passive foreign corporation."

(21) Section 1223 is amended by striking paragraph (10) and by redesignating the following paragraphs accordingly.

(22) Subsection (d) of section 1248 is amended by striking paragraphs (5) and (7).

(23)(A) Subsection (a) of section 6035 is amended by striking "foreign personal holding company (as defined in section 552)" and inserting "passive foreign corporation with respect to which the stock ownership requirements of section 1292(a)(2)(B) are met".

(B) The section heading for section 6035 is amended by striking "foreign personal holding companies" and inserting "closely held passive foreign corporations",.

(C) The table of sections for subpart A of part III of subchapter A of chapter 61 is amended by striking "foreign personal holding companies" in the item relating to section 6035 and inserting 'closely-held passive foreign corporations".

(24) Subparagraph (D) of section 6103(e)(1) is amended by striking clause (iv) and redesignating clauses (v) and (vi) as clauses (iv) and (v), respectively.

(25) Subparagraph (B) of section 6501(e)(1) is amended to read as follows:

"(B) CONSTRUCTIVE DIVIDENDS.—If the taxpayer omits from gross income an amount properly includible therein under section 951(a), the tax may be assessed, or a proceeding in court for the collection of such tax may be done without assessing, at any time within 6 years after the return was filed."

(26) Section 4947 and section 4948(c)(4) are each amended by striking "556(b)(2)," each place it appears.

(b) CLERICAL AMENDMENTS.—

(1) The table of parts for subchapter G of chapter 1 is amended by striking the item relating to part III.

(2) The table of sections for part IV of subchapter P of chapter 1 is amended by striking the items relating to sections 1246 and 1247.

(3) The table of parts for subchapter P of chapter 1 is amended by striking the item relating to part VI and inserting the following:

"Part VI. Treatment of passive foreign corporations."

SEC. 4404. EFFECTIVE DATE.

(a) GENERAL RULE.—Except as otherwise provided in this section, the amendments made by this part shall apply to—

(1) taxable years of United States persons beginning after December 31, 1992, and

(2) taxable years of foreign corporations ending with or within such taxable years of United States persons.

(b) DENIAL OF INSTALLMENT SALES TREATMENT.—The amendment made by section 3402(b) shall apply to dispositions after December 31, 1992.

(c) BASIS RULE.—The amendments made by this part shall not affect the determination of the basis of any stock acquired from a decedent in a taxable year beginning before January 1, 1993.

PART II—TREATMENT OF CONTROLLED FOREIGN CORPORATIONS

SEC. 4411. GAIN ON CERTAIN STOCK SALES BY CONTROLLED FOREIGN CORPORATIONS TREATED AS DIVIDENDS.

(a) GENERAL RULE.—Section 964 (relating to miscellaneous provisions) is amended by adding at the end thereof the following new subsection:

"(f) GAIN ON CERTAIN STOCK SALES BY CONTROLLED FOREIGN CORPORATIONS TREATED AS DIVIDENDS.—

"(1) IN GENERAL.—If a controlled foreign corporation sells or exchanges stock in any other foreign corporation, gain recognized on such sale or exchange shall be included in the gross income of such controlled foreign corporation as a dividend to the same extent that it would have been so included under section 1248(a) if such controlled foreign corporation were a United States person. For purposes of determining the amount which would have been so includible, the determination of whether such other foreign corporation was a controlled foreign corporation shall be made without regard to the preceding sentence.

"(2) SAME COUNTRY EXCEPTION NOT APPLICABLE.—Clause (i) of section 954(c)(3)(A) shall not apply to any amount treated as a dividend by reason of paragraph (1).

"(3) CLARIFICATION OF DEEMED SALES.—For purposes of this subsection, a controlled foreign corporation shall be treated as having sold or exchanged any stock if, under any provision of this subtitle, such controlled foreign corporation is treated as having gain from the sale or exchange of such stock.".

(b) AMENDMENT OF SECTION 904(d).—Clause (i) of section 904(d)(2)(E) is amended by striking "and except as provided in regulations, the taxpayer was a United States shareholder in such corporation".

(c) EFFECTIVE DATES.—

(1) The amendment made by subsection (a) shall apply to gain recognition on transactions occurring after the date of the enactment of this Act.

(2) The amendment made by subsection (b) shall apply to distributions after the date of the enactment of this Act.

SEC. 4412. AUTHORITY TO PRESCRIBE SIMPLIFIED METHOD FOR APPLYING SECTION 960(b)(2).

(a) GENERAL RULE.—Paragraph (2) of section 960(b) is amended by adding at the end thereof the following new sentence: "The Secretary may prescribe regulations requiring the use of simplified methods set forth in such regulations for determining the amount of the increase referred to in the preceding sentence."

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

SEC. 4413. MISCELLANEOUS MODIFICATIONS TO SUBPART F.

(a) SECTION 1248 GAIN TAKEN INTO ACCOUNT IN DETERMINING PRO RATA SHARE.—

(1) IN GENERAL.—Paragraph (2) of section 951(a) (defining pro rata share of subpart F income) is amended by adding at the end thereof the following new sentence: "For purposes of subparagraph (B), any gain included in the gross income of any person as a dividend under section 1248 shall be treated as a distribution received by such person with respect to the stock involved."

(2) EFFECTIVE DATE.—The amendment made by paragraph (1) shall apply to dispositions after the date of the enactment of this Act.

(b) BASIS ADJUSTMENTS IN STOCK HELD BY FOREIGN CORPORATION.—

(1) IN GENERAL.—Section 961 (relating to adjustments to basis of stock in controlled foreign corporations and of other property) is amended by adding at the end thereof the following new subsection:

"(c) BASIS ADJUSTMENTS IN STOCK HELD BY FOREIGN CORPORATION.—Under regulations prescribed by the Secretary, if a United States shareholder is treated under section 958(a)(2) as owning any stock in a controlled foreign corporation which is actually owned by another controlled foreign corporation, adjustments similar to the adjustments provided by subsections (a) and (b) shall be made to the basis of such stock in the hands of such other controlled foreign corporation, but only for the purposes of determining the amount included under section 951 in the gross income of such United States shareholder (or any other United States shareholder who acquires from any person any portion of the interest of such United States shareholder by reason of which such shareholder was treated as owning such stock, but only to the extent of such portion, and subject to such proof of identity of such interest as the Secretary may prescribe by regulations)."

(2) EFFECTIVE DATE.—The amendment made by paragraph (1) shall apply for purposes of determining inclusions for taxable years of United States shareholders beginning after December 31, 1992.

(c) DETERMINATION OF PREVIOUSLY TAXED INCOME IN SECTION 304 DISTRIBUTIONS, ETC.—

(1) IN GENERAL.—Section 959 (relating to exclusion from gross income of previously taxed earnings and profits) is amended by adding at the end thereof the following new subsection:

"(f) ADJUSTMENTS FOR CERTAIN TRANSACTIONS.—If by reason of—

"(1) a transaction to which section 304 applies,

"(2) the structure of a United States shareholder's holdings in controlled foreign corporations, or

"(3) other circumstances,

there would be a multiple inclusion of any item in income (or an inclusion or exclusion without an appropriate basis adjustment) by reason of this subpart, the Secretary may prescribe regulations providing such modifications in the application of this subpart as may be necessary to eliminate such multiple inclusion or provide such basis adjustment, as the case may be."

(2) EFFECTIVE DATE.—The amendment made by paragraph (1) shall take effect on the date of the enactment of this Act.

(d) CLARIFICATION OF TREATMENT OF BRANCH TAX EXEMPTIONS OR REDUCTIONS.—

(1) IN GENERAL.—Subsection (b) of section 952 is amended by adding at the end thereof the following new sentence: "For purposes of this subsection, any exemption (or reduction) with respect to the tax imposed by section 884 shall not be taken into account."

(2) EFFECTIVE DATE.—The amendment made by paragraph (1) shall apply to taxable years beginning after December 31, 1986.

PART III—OTHER PROVISIONS

SEC. 4421. EXCHANGE RATE USED IN TRANSLATING FOREIGN TAXES.

(a) ACCRUED TAXES TRANSLATED BY USING AVERAGE RATE FOR YEAR TO WHICH TAXES RELATE.—

(1) IN GENERAL.—Subsection (a) of section 986 (relating to translation of foreign taxes) is amended to read as follows:

"(a) FOREIGN INCOME TAXES.—

"(1) TRANSLATION OF ACCRUED TAXES.—

"(A) IN GENERAL.—For purposes of determining the amount of the foreign tax credit, in the case of a taxpayer who takes foreign income taxes into account when accrued, the amount of any foreign income taxes (and any adjustment thereto) shall be translated into dollars by using the average exchange rate for the taxable year to which such taxes relate.

"(B) EXCEPTION FOR TAXES NOT PAID WITHIN FOLLOWING 2 YEARS.—

"(i) Subparagraph (A) shall not apply to any foreign income taxes paid after the date 2 years after the close of the taxable year to which such taxes relate.

"(ii) Subparagraph (A) shall not apply to taxes paid before the beginning of the taxable year to which such taxes relate.

"(C) EXCEPTION FOR INFLATIONARY CURRENCIES.—To the extent provided in regulations, subparagraph (A) shall not apply to any foreign income taxes the liability for which is denominated in any currency determined to be an inflationary currency under such regulations.

"(D) CROSS REFERENCE.—

"For adjustments where tax is not paid within 2 years, see section 905(c).

"(2) TRANSLATION OF TAXES TO WHICH PARAGRAPH (1) DOES NOT APPLY.—For purposes of determining the amount of the foreign tax credit, in the case of any foreign income taxes to which subparagraph (A) of paragraph (1) does not apply—

"(A) such taxes shall be translated into dollars using the exchange rates as of the time such taxes were paid to the foreign country or possession of the United States, and

"(B) any adjustment to the amount of such taxes shall be translated into dollars using—

"(i) except as provided in clause (ii), the exchange rate as of the time when such adjustment is paid to the foreign country or possession, or

"(ii) in the case of any refund or credit of foreign income taxes, using the exchange rate as of the time of the original payment of such foreign income taxes.

"(3) FOREIGN INCOME TAXES.—For purposes of this subsection, the term 'foreign income taxes' means any income, war profits, or excess profits taxes paid or accrued to any foreign country or to any possession of the United States."

(2) ADJUSTMENT WHEN NOT PAID WITHIN 2 YEARS AFTER YEAR TO WHICH TAXES RELATE.—Subsection (c) of section 905 is amended to read as follows:

"(c) ADJUSTMENTS TO ACCRUED TAXES.—

"(1) IN GENERAL.—If—

"(A) accrued taxes when paid differ from the amounts claimed as credits by the taxpayer,

"(B) accrued taxes are not paid before the date 2 years after the close of the taxable year to which such taxes relate, or

"(C) any tax paid is refunded in whole or in part,

the taxpayer shall notify the Secretary, who shall redetermine the amount of the tax for the year or years affected.

"(2) SPECIAL RULE FOR TAXES NOT PAID WITHIN 2 YEARS.—In making the redetermination under paragraph (1), no credit shall be allowed for accrued taxes not paid before the date referred to in subparagraph (B) of paragraph (1). Any such taxes if subsequently paid shall be taken into account for the taxable year in which paid and no redetermination under this section shall be made on account of such payment.

"(3) ADJUSTMENTS.—The amount of tax due on any redetermination under paragraph (1) (if any) shall be paid by the taxpayer on notice and demand by the Secretary, and the amount of tax overpaid (if any) shall be credited or refunded to the taxpayer in accordance with subchapter B of chapter 66 (section 6511 et seq.).

"(4) BOND REQUIREMENTS.—In the case of any tax accrued but not paid, the Secretary, as a condition precedent to the allowance of the credit provided in this subpart, may require the taxpayer to give a bond, with sureties satisfactory to and approved by the Secretary, in such sum as the Secretary may require, conditioned on the payment by the taxpayer of any amount of tax found due on any such redetermination. Any such bond shall contain such further conditions as the Secretary may require.

"(5) OTHER SPECIAL RULES.—In any redetermination under paragraph (1) by the Secretary of the amount of tax due from the taxpayer for the year or years affected by a refund, the amount of the taxes refunded for which credit has been allowed under this section shall be reduced by the amount of any tax described in section 901 imposed by the foreign country or possession of the United States with respect to such refund; but no credit under this subpart, or deduction under section 164, shall be allowed for any taxable year with respect to any such tax imposed on the refund. No interest shall be assessed or collected on any amount of tax due on any redetermination by the Secretary, resulting from a refund to the taxpayer, for any period before the receipt of such refund, except to the extent interest was paid by the foreign country or possession of the United States on such refund for such period."

(b) AUTHORITY TO USE AVERAGE RATES.—

(1) IN GENERAL.—Subsection (a) of section 986 (relating to foreign taxes) is amended by adding at the end thereof the following new paragraph:

"(3) AUTHORITY TO PERMIT USE OF AVERAGE RATES.—To the extent prescribed in regulations, the average exchange rate for the period (specified in such regulations) during which the taxes or adjustment is paid may be used instead of the exchange rate as of the time of such payment."

(2) DETERMINATION OF AVERAGE RATES.—Subsection (c) of section 989 is amended by striking "and" at the end of paragraph (4), by striking the period at the end of paragraph (5) and inserting ", and", and by adding at the end thereof the following new paragraph:

"(6) setting forth procedures for determining the average exchange rate for any period."

(3) CONFORMING AMENDMENTS.—Subsection (b) of section 989 is amended by striking "weighted" each place it appears.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxes paid or accrued in taxable years beginning after December 31, 1991.

SEC. 4422. ELECTION TO USE SIMPLIFIED SECTION 904 LIMITATION FOR ALTERNATIVE MINIMUM TAX.

(a) GENERAL RULE.—Subsection (a) of section 59 (relating to alternative minimum tax foreign tax credit) is amended by adding at the end thereof the following new paragraph:

"(3) ELECTION TO USE SIMPLIFIED SECTION 904 LIMITATION.—

"(A) IN GENERAL.—In determining the alternative minimum tax foreign tax credit for any taxable year to which an election under this paragraph applies—

"(i) subparagraph (B) of paragraph (1) shall not apply, and

"(ii) the limitation of section 904 shall be based on the proportion which—

"(I) the taxpayer's taxable income (as determined for purposes of the regular tax) from sources without the United States (but not in excess of the taxpayer's entire alternative minimum taxable income), bears to

"(II) the taxpayer's entire alternative minimum taxable income for the taxable year.

"(B) ELECTION.—

"(i) IN GENERAL.—An election under this paragraph may be made only for the taxpayer's first taxable year which begins after December 31, 1992, and for which the taxpayer claims an alternative minimum tax foreign tax credit.

"(ii) ELECTION REVOCABLE ONLY WITH CONSENT.—An election under this paragraph, once made, shall apply to the taxable year for which made and all subsequent taxable years unless revoked with the consent of the Secretary."

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 1992.

SEC. 4423. MODIFICATION OF SECTION 1491.

(a) GENERAL RULE.—So much of chapter 5 (relating to tax on transfers to avoid income tax) as precedes section 1492 is amended to read as follows:

"CHAPTER 5—TREATMENT OF TRANSFERS TO AVOID INCOME TAX

"Sec. 1491. Recognition of gain.

"Sec. 1492. Exceptions.

"SEC. 1491. RECOGNITION OF GAIN.

"In the case of any transfer of property by a United States person to a foreign corporation as paid-in surplus or as a contribution to capital, to a foreign estate or trust, or to a foreign partnership, for purposes of this subtitle, such transfer shall be treated as a sale or exchange for an amount equal to the fair market value of the property transferred, and the transferor shall recognize as gain the excess of—

"(1) the fair market value of the property so transferred, over

"(2) the adjusted basis (for purposes of determining gain) of such property in the hands of the transferor."

(b) CONFORMING AMENDMENTS.—

(1) Section 1057 is hereby repealed.

(2) Section 1492 is amended to read as follows:

"SEC. 1492. EXCEPTIONS.

"The provisions of section 1491 shall not apply—

"(1) If the transferee is an organization exempt from income tax under part I of subchapter F of chapter 1 (other than an organization described in section 401(a)),

"(2) To a transfer described in section 367, or

"(3) To any other transfer, to the extent provided in regulations in accordance with principles similar to the principles of section 367 or otherwise consistent with the purpose of section 1491."

(3) Section 1494 is hereby repealed.

(4) The table of sections for part IV of subchapter O of chapter 1 is amended by striking the item relating to section 1057.

(5) The table of chapters for subtitle A is amended by striking "Tax on" in the item relating to chapter 5 and inserting "Treatment of".

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

SEC. 4424. MODIFICATION OF SECTION 367(b).

(a) GENERAL RULE.—Paragraph (1) of section 367(b) is amended to read as follows:

"(1) IN GENERAL.—In the case of any transaction described in section 332, 351, 354, 355, 356, or 361 in which the status of a foreign corporation as a corporation is a general condition for nonrecognition by 1 or more of the parties to the transaction, income shall be required to be recognized to the extent provided in regulations prescribed by the Secretary which are necessary or appropriate to prevent the avoidance of Federal income taxes. This subsection shall not apply to a transaction in which the foreign corporation is not treated as a corporation under subsection (a)(1)."

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to transfers after December 31, 1993.

Subtitle E—Other Income Tax Provisions

PART I—PROVISIONS RELATING TO SUBCHAPTER S CORPORATIONS

SEC. 4501. DETERMINATION OF WHETHER CORPORATION HAS 1 CLASS OF STOCK.

(a) GENERAL RULE.—Paragraph (4) of section 1361(c) is amended to read as follows:

"(4) DETERMINATION OF WHETHER CORPORATION HAS 1 CLASS OF STOCK.—For purposes of subsection (b)(1)(D), a corporation shall be treated as having 1 class of stock if all outstanding shares of stock of the corporation confer identical rights to distributions and liquidation proceeds. The preceding sentence shall apply whether or not there are differences in voting rights among such shares."

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to taxable years beginning after December 31, 1982.

SEC. 4502. AUTHORITY TO VALIDATE CERTAIN INVALID ELECTIONS.

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

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

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

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

"(B) was terminated under paragraph (2) or (3) of subsection (d),

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

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

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

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

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

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

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

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

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

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

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

(c) EFFECTIVE DATE.—The amendments made by this section shall apply with respect to elections for taxable years beginning after December 31, 1982.

SEC. 4503. TREATMENT OF DISTRIBUTIONS DURING LOSS YEARS.

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

(1) Subparagraph (A) of section 1366(d)(1) is amended by striking "paragraph (1)" and inserting "paragraphs (1) and (2)(A)".

(2) Subsection (d) of section 1368 is amended by adding at the end thereof the following new sentence:

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

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

"(C) NET LOSS FOR YEAR DISREGARDED.—

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

"(ii) NET NEGATIVE ADJUSTMENT.—For purposes of clause (i), the term 'net negative ad-

justment' means, with respect to any taxable year, the excess (if any) of—

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

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

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

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

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

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to distributions in taxable years beginning after December 31, 1991.

SEC. 4504. OTHER MODIFICATIONS.

(a) TREATMENT OF S CORPORATIONS UNDER SUBCHAPTER C.—Subsection (a) of section 1371 (relating to application of subchapter C rules) is amended to read as follows:

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

(b) S CORPORATIONS PERMITTED TO HOLD SUBSIDIARIES.—

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

(2) CONFORMING AMENDMENTS.—

(A) Subsection (c) of section 1361 is amended by striking paragraph (6).

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

"(8) An S corporation."

(c) ELIMINATION OF PRE-1983 EARNINGS AND PROFITS.—

(1) IN GENERAL.—If—

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

(B) such corporation is an S corporation under subchapter S of chapter 1 of such Code for its first taxable year beginning after December 31, 1991,

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

(2) CONFORMING AMENDMENTS.—

(A) Paragraph (3) of section 1362(d) is amended—

(i) by striking "subchapter C" in the paragraph heading and inserting "accumulated",

(ii) by striking "subchapter C" in subparagraph (A)(i)(I) and inserting "accumulated", and

(iii) by striking subparagraph (B) and redesignating the following subparagraphs accordingly.

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

(ii) Paragraph (3) of section 1375(b) is amended to read as follows:

"(3) PASSIVE INVESTMENT INCOME, ETC.—The terms 'passive investment income' and 'gross receipts' have the same respective meanings as when used in paragraph (3) of section 1362(d)."

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

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

(C) Clause (i) of section 1042(c)(4)(A) is amended by striking "section 1362(d)(3)(D)" and inserting "section 1362(d)(3)(C)".

(d) ADJUSTMENTS TO BASIS OF INHERITED S STOCK TO REFLECT CERTAIN ITEMS OF INCOME.—Subsection (b) of section 1367 (relating to adjustments to basis of stock of shareholders, etc.) is amended by adding at the end thereof the following new paragraph:

"(4) ADJUSTMENTS IN CASE OF INHERITED STOCK.—

"(A) IN GENERAL.—If any person acquires stock in an S corporation by reason of the death of a decedent or by bequest, devise, or inheritance, section 691 shall be applied with respect to any item of income of the S corporation in the same manner as if the decedent had held directly his pro rata share of such item.

"(B) ADJUSTMENTS TO BASIS.—The basis determined under section 1014 of any stock in an S corporation shall be reduced by the portion of the value of the stock which is attributable to items constituting income in respect of the decedent."

(e) EFFECTIVE DATES.—

(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section shall apply to taxable years beginning after December 31, 1991.

(2) SUBSECTION (d).—The amendment made by subsection (d) shall apply in the case of decedents dying after the date of the enactment of this Act.

PART II—ACCOUNTING PROVISIONS

SEC. 4511. MODIFICATIONS TO LOOK-BACK METHOD FOR LONG-TERM CONTRACTS.

(a) LOOK-BACK METHOD NOT TO APPLY IN CERTAIN CASES.—Subsection (b) of section 460 (relating to percentage of completion method) is amended by adding at the end thereof the following new paragraph:

"(6) ELECTION TO HAVE LOOK-BACK METHOD NOT APPLY IN DE MINIMIS CASES.—

"(A) AMOUNTS TAKEN INTO ACCOUNT AFTER COMPLETION OF CONTRACT.—Paragraph (1)(B) shall not apply with respect to any taxable year (beginning after the taxable year in which the contract is completed) if—

"(i) the cumulative taxable income (or loss) under the contract as of the close of such taxable year, is within

"(ii) 10 percent of the cumulative look-back taxable income (or loss) under the contract as of the close of the most recent taxable year to which paragraph (1)(B) applied (or would have applied but for subparagraph (B)).

"(B) DE MINIMIS DISCREPANCIES.—Paragraph (1)(B) shall not apply in any case to which it would otherwise apply if—

"(i) the cumulative taxable income (or loss) under the contract as of the close of each prior contract year, is within

"(ii) 10 percent of the cumulative look-back income (or loss) under the contract as of the close of such prior contract year.

"(C) DEFINITIONS.—For purposes of this paragraph—

"(i) CONTRACT YEAR.—The term 'contract year' means any taxable year for which income is taken into account under the contract.

"(ii) LOOK-BACK INCOME OR LOSS.—The look-back income (or loss) is the amount which would be the taxable income (or loss) under the contract if the allocation method set forth in paragraph (2)(A) were used in determining taxable income.

"(iii) DISCOUNTING NOT APPLICABLE.—The amounts taken into account after the completion of the contract shall be determined without regard to any discounting under the 2nd sentence of paragraph (2).

"(D) CONTRACTS TO WHICH PARAGRAPH APPLIES.—This paragraph shall only apply if the taxpayer makes an election under this subparagraph. Unless revoked with the consent of the Secretary, such an election shall apply to all long-term contracts completed during the taxable year for which such election is made or during any subsequent taxable year."

(b) MODIFICATION OF INTEREST RATE.—

(1) IN GENERAL.—Subparagraph (C) of section 460(b)(2) is amended by striking "the overpayment rate established by section 6621" and inserting "the adjusted overpayment rate (as defined in paragraph (7))".

(2) ADJUSTED OVERPAYMENT RATE.—Subsection (b) of section 460 is amended by adding at the end thereof the following new paragraph:

"(7) ADJUSTED OVERPAYMENT RATE.—

"(A) IN GENERAL.—The adjusted overpayment rate for any interest accrual period is the overpayment rate in effect under section 6621 for the calendar quarter in which such interest accrual period begins.

"(B) INTEREST ACCRUAL PERIOD.—For purposes of subparagraph (A), the term 'interest accrual period' means the period—

"(i) beginning on the day after the return due date for any taxable year of the taxpayer, and

"(ii) ending on the return due date for the following taxable year.

For purposes of the preceding sentence, the term 'return due date' means the date prescribed for filing the return of the tax imposed by this chapter (determined without regard to extensions)."

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

SEC. 4512. SIMPLIFIED METHOD FOR CAPITALIZING CERTAIN INDIRECT COSTS.

(a) GENERAL RULE.—Subsection (i) of section 263A (relating to regulations) is amended by striking "and" at the end of paragraph (1), by striking the period at the end of paragraph (2) and inserting ", and", and by adding at the end thereof the following:

"(3) regulations providing that allocations of costs of any administrative, service, or support function or department may be made on the basis of the base period percentage of the current costs of such function or department.

For purposes of paragraph (3), the term 'base period percentage' means, with respect to any function or department, the percentage of the costs of such function or department during a base period specified in regulations which were allocable to property to which this section applies."

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

PART III—TAX-EXEMPT BOND PROVISIONS

SEC. 4521. REPEAL OF $100,000 LIMITATION ON UNSPENT PROCEEDS UNDER 1-YEAR EXCEPTION FROM REBATE.

Subclause (I) of section 148(f)(4)(B)(ii) (relating to additional period for certain bonds) is amended by striking "the lesser of 5 per-

cent of the proceeds of the issue or $100,000" and inserting "5 percent of the proceeds of the issue".

SEC. 4522. EXCEPTION FROM REBATE FOR EARNINGS ON BONA FIDE DEBT SERVICE FUND UNDER CONSTRUCTION BOND RULES.

Subparagraph (C) of section 148(f)(4) is amended by adding at the end thereof the following new clause:

"(xvii) TREATMENT OF BONA FIDE DEBT SERVICE FUNDS.—If the spending requirements of clause (ii) are met with respect to the available construction proceeds of a construction issue, then paragraph (2) shall not apply to earnings on a bona fide debt service fund for such issue."

SEC. 4523. AUTOMATIC EXTENSION OF INITIAL TEMPORARY PERIOD FOR CONSTRUCTION ISSUES.

Subsection (c) of section 148 (relating to temporary period exception) is amended by adding at the end thereof the following new paragraph:

"(3) EXTENSION OF INITIAL TEMPORARY PERIOD FOR CONSTRUCTION ISSUES.—If—

"(A) at least 85 percent of the available construction proceeds (as defined in subsection (f)(4)(C)) of a construction issue (as defined in such subsection) are spent as of the close of the initial temporary period (determined without regard to this paragraph), and

"(B) the issuer reasonably expects (as of the close of such period) that the remaining available construction proceeds of such issue will be spent within 1 year after the close of such period,

then such initial temporary period shall be extended 1 year."

SEC. 4524. AGGREGATION OF ISSUES RULES NOT TO APPLY TO TAX OR REVENUE ANTICIPATION BONDS.

Section 150 (relating to definitions and special rules) is amended by adding at the end thereof the following new subsection:

"(f) TAX OR REVENUE ANTICIPATION BONDS TREATED AS SEPARATE ISSUES.—For purposes of this part, if—

"(1) all of the bonds which are part of an issue are qualified 501(c)(3) bonds or bonds which are not private activity bonds, and

"(2) any portion of such issue consists of tax or revenue anticipation bonds which are reasonably expected to meet the requirements of section 148(f)(4)(B)(iii), then such portion shall, subject to appropriate allocations specified in regulations prescribed by the Secretary, be treated as a separate issue."

SEC. 4525. ALLOCATION OF INTEREST EXPENSE OF FINANCIAL INSTITUTIONS TO TAX-EXEMPT INTEREST.

(a) EXCEPTION FROM PRO RATA ALLOCATION OF INTEREST EXPENSE OF FINANCIAL INSTITUTIONS TO TAX-EXEMPT INTEREST FOR SMALL ISSUERS INCREASED TO $25,000,000.—

(1) IN GENERAL.—Subparagraphs (C) and (D) of section 265(b)(3) (relating to exception for certain tax-exempt obligations) are each amended by striking "$10,000,000" each place it appears and inserting "$25,000,000".

(2) EFFECTIVE DATE.—The amendments made by paragraph (1) shall apply to obligations issued in calendar years beginning after December 31, 1992.

(b) DEDUCTIBILITY AVAILABLE TO PARTICIPANTS IN POOLED ISSUES.—

(1) IN GENERAL.—Subparagraph (A) of section 265(b)(3) is amended by inserting "and any qualified tax-exempt pooled obligation acquired after December 31, 1992," after "after August 7, 1986,".

(2) QUALIFIED TAX-EXEMPT POOLED OBLIGATION DEFINED.—Section 265(b)(3) is amended by adding at the end thereof the following new subparagraph:

"(G) QUALIFIED TAX-EXEMPT POOLED OBLIGATION.—For purposes of subparagraph (A), the term 'qualified tax-exempt pooled obligation' means a tax-exempt obligation—

"(i) which is issued after December 31, 1992,

"(ii) which is not a private activity bond (as defined in section 141),

"(iii) which is designated by the issuer for purposes of this paragraph, and

"(iv) the proceeds of which are used exclusively (other than to pay the issuance costs of such obligation) to acquire from the issuer obligations—

"(I) which satisfy the requirements of this paragraph but are not designated for purposes of this paragraph, and

"(II) the weighted average maturity of which equals or exceeds the weighted average maturity of such obligation."

SEC. 4526. TAX TREATMENT OF 501(c)(3) BONDS SIMILAR TO GOVERNMENTAL BONDS.

(a) IN GENERAL.—Subsection (a) of section 150 (relating to definitions and special rules) is amended by striking paragraphs (2) and (4), by redesignating paragraphs (5) and (6) as paragraphs (4) and (5), respectively, and by inserting after paragraph (1) the following new paragraph:

"(2) EXEMPT PERSON.—

"(A) IN GENERAL.—The term 'exempt person' means—

"(i) a governmental unit, or

"(ii) a 501(c)(3) organization, but only with respect to its activities which do not constitute unrelated trades or businesses as determined by applying section 513(a).

"(B) GOVERNMENTAL UNIT NOT TO INCLUDE FEDERAL GOVERNMENT.—The term 'governmental unit' does not include the United States or any agency or instrumentality thereof.

"(C) 501(c)(3) ORGANIZATION.—The term '501(c)(3) organization' means any organization described in section 501(c)(3) and exempt from tax under section 501(a)."

(b) REPEAL OF QUALIFIED 501(c)(3) BOND DESIGNATION.—Section 145 (relating to qualified 501(c)(3) bonds) is repealed.

(c) CONFORMING AMENDMENTS.—

(1) Paragraph (3) of section 141(b) is amended—

(A) by striking "government use" in subparagraph (A)(ii)(I) and subparagraph (B)(ii) and inserting "exempt person use",

(B) by striking "a government use" in subparagraph (B) and inserting "an exempt person use",

(C) by striking "related business use" in subparagraph (A)(ii)(II) and subparagraph (B) and inserting "related private business use",

(D) by striking "RELATED BUSINESS USE" in the heading of subparagraph (B) and inserting "RELATED PRIVATE BUSINESS USE", and

(E) by striking "GOVERNMENT USE" in the heading thereof and inserting "EXEMPT PERSON USE".

(2) Subparagraph (A) of section 141(b)(6) is amended by striking "a governmental unit" and inserting "an exempt person".

(3) Paragraph (7) of section 141(b) is amended—

(A) by striking "government use" and inserting "exempt person use", and

(B) by striking "GOVERNMENT USE" in the heading thereof and inserting "EXEMPT PERSON USE".

(4) Section 141(b) is amended by striking paragraph (9).

(5) Paragraph (1) of section 141(c) is amended by striking "governmental units" and inserting "exempt persons".

(6) Section 141 is amended by redesignating subsection (e) as subsection (f) and by inserting after subsection (d) the following new subsection:

"(e) CERTAIN ISSUES USED TO PROVIDE RESIDENTIAL RENTAL HOUSING FOR FAMILY UNITS.—

"(1) IN GENERAL.—Except as provided in paragraph (2), for purposes of this title, the term 'private activity bond' includes any bond issued as part of an issue if any portion of the net proceeds of the issue are to be used (directly or indirectly) by an exempt person described in section 150(a)(2)(A)(ii) to provide residential rental property for family units.

"(2) EXCEPTION FOR BONDS USED TO PROVIDE QUALIFIED RESIDENTIAL RENTAL PROJECTS.—Paragraph (1) shall not apply to any bond issued as part of an issue if the portion of such issue which is to be used as described in paragraph (1) is to be used to provide—

"(A) a residential rental property for family units if the first use of such property is pursuant to such issue,

"(B) qualified residential rental projects (as defined in section 142(d)), or

"(C) property which is to be substantially rehabilitated in a rehabilitation beginning within the 2-year period ending 1 year after the date of the acquisition of such property.

"(3) SUBSTANTIAL REHABILITATION.—

"(A) IN GENERAL.—Except as provided in subparagraph (B), rules similar to the rules of section 47(c)(1)(C) shall apply in determining for purposes of paragraph (2)(C) whether property is substantially rehabilitated.

"(B) EXCEPTION.—For purposes of subparagraph (A), clause (ii) of section 47(c)(1)(C) shall not apply, but the Secretary may extend the 24-month period in section 47(c)(1)(C)(i) where appropriate due to circumstances not within the control of the owner.

"(4) CERTAIN PROPERTY TREATED AS NEW PROPERTY.—Solely for purposes of determining under paragraph (2)(A) whether the 1st use of property is pursuant to tax-exempt financing—

"(A) IN GENERAL.—If—

"(i) the 1st use of property is pursuant to taxable financing,

"(ii) there was a reasonable expectation (at the time such taxable financing was provided) that such financing would be replaced by tax-exempt financing, and

"(iii) the taxable financing is in fact so replaced within a reasonable period after the taxable financing was provided,

then the 1st use of such property shall be treated as being pursuant to the tax-exempt financing.

"(B) SPECIAL RULE WHERE NO OPERATING STATE OR LOCAL PROGRAM FOR TAX-EXEMPT FINANCING.—If, at the time of the 1st use of property, there was no operating State or local program for tax-exempt financing of the property, the 1st use of the property shall be treated as pursuant to the 1st tax-exempt financing of the property.

"(C) DEFINITIONS.—For purposes of this paragraph—

"(i) TAX-EXEMPT FINANCING.—The term 'tax-exempt financing' means financing provided by tax-exempt bonds.

"(ii) TAXABLE FINANCING.—The term 'taxable financing' means financing which is not tax-exempt financing."

(7) Section 141(f), as redesignated by paragraph (6), is amended—

(A) by adding "or" at the end of subparagraph (E),

(B) by striking ", or" at the end of subparagraph (F), and inserting in lieu thereof a period, and

(C) by striking subparagraph (G).

(8) The last sentence of section 144(b)(1) is amended by striking "(determined" and all that follows to the period.

(9) Clause (ii) of section 144(c)(2)(C) is amended by striking "governmental unit" and inserting "exempt person".

(10) Section 146(g) is amended—

(A) by striking paragraph (2), and

(B) by redesignating the remaining paragraphs after paragraph (1) as paragraphs (2) and (3), respectively.

(11) The heading of section 146(k)(3) is amended by striking "GOVERNMENTAL" and inserting "EXEMPT PERSON".

(12) The heading of section 146(m) is amended by striking "GOVERNMENT" and inserting "EXEMPT PERSON".

(13) Subsection (h) of section 147 is amended to read as follows:

"(h) CERTAIN RULES NOT TO APPLY TO MORTGAGE REVENUE BONDS AND QUALIFIED STUDENT LOAN BONDS.—Subsections (a), (b), (c), and (d) shall not apply to any qualified mortgage bond, qualified veterans' mortgage bond, or qualified student loan bond."

(14) Section 147 is amended by striking paragraph (4) of subsection (b) and redesignating paragraph (5) of such subsection as paragraph (4).

(15) Subparagraph (F) of section 148(d)(3) is amended—

(A) by striking "or which is a qualified 501(c)(3) bond", and

(B) by striking "GOVERNMENTAL USE BONDS AND QUALIFIED 501(C)(3)" in the heading thereof and inserting "EXEMPT PERSON".

(16) Subclause (II) of section 148(f)(4)(B)(ii) is amended by striking "(other than a qualified 501(c)(3) bond)".

(17) Clause (iv) of section 148(f)(4)(C) is amended—

(A) by striking "a governmental unit or a 501(c)(3) organization" each place it appears and inserting "an exempt person", and

(B) by striking "qualified 501(c)(3) bonds,".

(18) Subparagraph (A) of section 148(f)(7) is amended by striking "(other than a qualified 501(c)(3) bond)".

(19) Paragraph (2) of section 149(d) is amended—

(A) by striking "(other than a qualified 501(c)(3) bond)", and

(B) by striking "CERTAIN PRIVATE" in the heading thereof and inserting in lieu thereof "PRIVATE".

(20) Section 149(e)(2) is amended—

(A) by striking "which is not a private activity bond" in the second sentence and inserting "which is a bond issued for an exempt person described in section 150(a)(2)(A)(i)", and

(B) by adding at the end thereof the following new sentence: "Subparagraph (D) shall not apply to any bond which is not a private activity bond but which would be such a bond if the 501(c)(3) organization using the proceeds thereof were not an exempt person."

(21) The heading of subsection (b) of section 150 is amended by striking "TAX-EXEMPT PRIVATE ACTIVITY BONDS" and inserting "CERTAIN TAX-EXEMPT BONDS".

(22) Paragraph (3) of section 150(b) is amended—

(A) by inserting "owned by a 501(c)(3) organization" after "any facility" in subparagraph (A),

(B) by striking "any private activity bond which, when issued, purported to be a tax-exempt qualified 501(c)(3) bond" in subparagraph (A) and inserting "any bond which, when issued, purported to be a tax-exempt bond, and which would be a private activity bond if the 501(c)(3) organization using the proceeds thereof were not an exempt person", and

(C) by striking the heading thereof and inserting "BONDS FOR EXEMPT PERSONS OTHER THAN GOVERNMENTAL UNITS.—".

(23) Paragraph (5) of section 150(b) is amended—

(A) by striking "private activity" in subparagraph (A),

(B) by inserting "and which would be a private activity bond if the 501(c)(3) organization using the proceeds thereof were not an exempt person" after "tax-exempt bond" in subparagraph (A),

(C) by striking subparagraph (B) and inserting the following new subparagraph:

"(B) such facility is required to be owned by an exempt person, and", and

(D) by striking "GOVERNMENTAL UNITS OR 501(C)(3) ORGANIZATIONS" in the heading thereof and inserting "EXEMPT PERSONS".

(24) Section 150, as amended by section 4525, is amended by adding at the end thereof the following new subsection:

"(g) CERTAIN RULES TO APPLY TO BONDS FOR EXEMPT PERSONS OTHER THAN GOVERNMENTAL UNITS.—

"(1) IN GENERAL.—Nothing in section 103(a) or any other provision of law shall be construed to provide an exemption from Federal income tax for interest on any bond which would be a private activity bond if the 501(c)(3) organization using the proceeds thereof were not an exempt person unless such bond satisfies the requirements of subsections (b) and (f) of section 147.

"(2) SPECIAL RULE FOR POOLED FINANCING OF 501(C)(3) ORGANIZATION.—

"(A) IN GENERAL.—At the election of the issuer, a bond described in paragraph (1) shall be treated as meeting the requirements of section 147(b) if such bond meets the requirements of subparagraph (B).

"(B) REQUIREMENTS.—A bond meets the requirements of this subparagraph if—

"(i) 95 percent or more of the net proceeds of the issue of which such bond is a part are to be used to make or finance loans to 2 or more 501(c)(3) organizations or governmental units for acquisition of property to be used by such organizations,

"(ii) each loan described in clause (i) satisfies the requirements of section 147(b) (determined by treating each loan as a separate issue),

"(iii) before such bond is issued, a demand survey was conducted which shows a demand for financing greater than an amount equal to 120 percent of the lendable proceeds of such issue, and

"(iv) 95 percent or more of the net proceeds of such issue are to be loaned to 501(c)(3) organizations or governmental units within 1 year of issuance and, to the extent there are any unspent proceeds after such 1-year period, bonds issued as part of such issue are to be redeemed as soon as possible thereafter (and in no event later than 18 months after issuance).

A bond shall not meet the requirements of this subparagraph if the maturity date of any bond issued as part of such issue is more than 30 years after the date on which the bond was issued (or, in the case of a refunding or series of refundings, the date on which the original bond was issued)."

(25) Section 1302 of the Tax Reform Act of 1986 is repealed.

(26) Subparagraph (C) of section 57(a)(5) is amended by striking clause (ii) and redesignating clauses (iii) and (iv) as clauses (ii) and (iii), respectively.

(27) Paragraph (3) of section 103(b) is amended by inserting "and section 150(f)" after "section 149".

(28) Paragraph (3) of section 265(b) is amended—

(A) by striking clause (ii) of subparagraph (B) and inserting the following:

"(ii) CERTAIN BONDS NOT TREATED AS PRIVATE ACTIVITY BONDS.—For purposes of clause (i)(II), there shall not be treated as a private activity bond any obligation issued to refund (or which is part of a series of obligations issued to refund) an obligation issued before August 8, 1986, which was not an industrial development bond (as defined in section 103(b)(2) as in effect on the day before the date of the enactment of the Tax Reform Act of 1986 (or a private loan bond (as defined in section 103(o)(2)(A), as so in effect, but without regard to any exemption from such definition other than section 103(o)(2)(A)))."; and

(B) by striking "(other than a qualified 501(c)(3) bond, as defined in section 145)" in subparagraph (C)(ii)(I).

(f) EFFECTIVE DATE; SPECIAL RULE.—The amendments made by this section shall apply to bonds issued after December 31, 1992.

(2) SPECIAL RULE FOR CERTAIN BONDS ISSUED AFTER DATE OF ENACTMENT.—

(A) IN GENERAL.—The amendments made by this section shall not apply to any bond which—

(i) is issued after the date of the enactment of this Act, and

(ii) is part of an issue which is subject to any transitional rule under subtitle B of title XIII of the Tax Reform Act of 1986.

(B) ELECTION OUT.—This paragraph shall not apply to any issue with respect to which the issuer elects not to have this paragraph apply.

SEC. 4527. AUTHORITY TO TERMINATE REQUIRED INCLUSION OF TAX-EXEMPT INTEREST ON RETURN.

Subsection (d) of section 6012 (relating to tax-exempt interest required to be shown on return) is amended by adding at the end thereof the following new sentence: "The Secretary may by regulations provide that the preceding sentence shall not apply in any case in which the Secretary determines that the disclosure of such interest is not useful for tax administration."

SEC. 4528. REPEAL OF EXPIRED PROVISIONS.

(a) Paragraph (2) of section 148(c) is amended by striking subparagraph (B) and by redesignating subparagraphs (C), (D), and (E) as subparagraph (B), (C), and (D), respectively.

(b) Paragraph (4) of section 148(f) is amended by striking subparagraph (E).

SEC. 4529. EFFECTIVE DATE.

Except as otherwise provided, the amendments made by this subtitle shall apply to bonds issued after the date of the enactment of this Act.

PART IV—ELECTION OF ALTERNATIVE TAXABLE YEARS

SEC. 4531. ELECTION OF TAXABLE YEAR OTHER THAN REQUIRED TAXABLE YEAR.

(a) LIMITATIONS ON TAXABLE YEARS WHICH MAY BE ELECTED.—Subsection (b) of section 444 (relating to limitations on taxable years which may be elected) is amended to read as follows:

"(b) TAXABLE YEAR MUST BE SAME AS REPORTING PERIOD.—If an entity has annual reports or statements—

"(1) which ascertain income, profit, or loss of the entity, and

"(2) which are—

"(A) provided to shareholders, partners, or other proprietors, or

"(B) used for credit purposes,

the entity may make an election under subsection (a) only if the taxable year elected covers the same period as such reports or statements."

(b) PERIOD OF ELECTION.—Section 444(d)(2) (relating to period of election) is amended to read as follows:

"(2) PERIOD OF ELECTION.—

"(A) IN GENERAL.—An election under subsection (a) shall remain in effect until the partnership, S corporation, or personal service corporation terminates the election and adopts the required taxable year.

"(B) CHANGE NOT TREATED AS TERMINATION.—For purposes of subparagraph (A), a change from a taxable year which is not a required taxable year to another such taxable year shall not be treated as a termination."

(c) EXCEPTION FOR TRUSTS.—Section 444(d)(3) (relating to tiered structures) is amended by adding at the end thereof the following new subparagraph:

"(C) EXCEPTION FOR CERTAIN STRUCTURES THAT INCLUDE TRUSTS.—An entity shall not be considered to be part of a tiered structure to which subparagraph (A) applies solely because a trust owning an interest in such entity is a trust all of the beneficiaries of which use a calendar year for their taxable year."

(d) REGULATIONS.—Subsection (g) of section 444 (relating to regulations) is amended to read as follows:

"(g) REGULATIONS.—The Secretary shall prescribe such regulations as may be necessary to carry out the provisions of this section, including regulations—

"(1) to prevent the avoidance of the provisions of this section through a change in entity or form of an entity,

"(2) to prevent the carryback to any preceding taxable year of a net operating loss (or similar item) arising in any short taxable year created pursuant to an election or termination of an election under this section, and

"(3) to provide for the termination of an election under subsection (a) if an entity does not continue to meet the requirements of subsection (b)."

SEC. 4532. REQUIRED PAYMENTS FOR ENTITIES ELECTING NOT TO HAVE REQUIRED TAXABLE YEAR.

(a) ADDITIONAL REQUIRED PAYMENT.—

(1) IN GENERAL.—Section 7519(b) (defining required payment) is amended to read as follows:

"(b) REQUIRED PAYMENT.—For purposes of this section—

"(1) IN GENERAL.—The term 'required payment' means, with respect to any applicable election year of a partnership or S corporation, an amount equal to the excess (if any) of—

"(A) the adjusted highest section 1 rate, multiplied by the net base year income of the entity, over

"(B) the net required payment balance.

For purposes of paragraph (1)(A), the term 'adjusted highest section 1 rate' means the highest rate of tax in effect under section 1 as of the close of the first required taxable year ending within such year, plus 2 percentage points.

"(2) ADDITIONAL PAYMENT FOR NEW APPLICABLE ELECTION YEARS.—

"(A) IN GENERAL.—In the case of a new applicable election year, the required payment shall include, in addition to any amount determined under paragraph (1), the amount determined under subparagraph (C).

"(B) NEW APPLICABLE ELECTION YEAR.—For purposes of this section, the term 'new applicable election year' means any applicable election year—

"(i) with respect to which the preceding taxable year was not an applicable election year, or

"(ii) which covers a different period than the preceding taxable year by reason of a change described in section 444(d)(2)(B).

If any year described in the preceding sentence is a short taxable year which does not include the last day of the required taxable year, the new applicable election year shall be the taxable year following the short taxable year.

"(C) ADDITIONAL AMOUNT.—For purposes of subparagraph (A), the amount determined under this subparagraph shall be—

"(i) in the case of a year described in subparagraph (B)(i), 75 percent of the required payment for the year, and

"(ii) in the case of a year described in subparagraph (B)(ii), 75 percent of the excess (if any) of—

"(I) the required payment for the year, over

"(II) the required payment for the year which would have been computed if the change described in subparagraph (B)(ii) had not occurred.

"(D) REQUIRED PAYMENT.—For purposes of this paragraph, the term 'required payment' means the payment required by this section (determined without regard to this paragraph)."

(2) DUE DATE.—Paragraph (2) of section 7519(f) (defining due date) is amended to read as follows:

"(2) DUE DATE.—

"(A) IN GENERAL.—Except as provided in subparagraph (B), the amount of any required payment for any applicable election year shall be paid on or before May 15 of the calendar year following the calendar year in which the applicable election year begins.

"(B) SPECIAL RULE WHERE NEW APPLICABLE ELECTION YEAR ADOPTED.—In the case of a new applicable election year, the portion of any required payment determined under subsection (b)(2) shall be paid on or before September 15 of the calendar year in which the applicable election year begins."

(3) PENALTIES.—

(A) IN GENERAL.—Section 7519(f)(4) (relating to penalties) is amended by adding at the end thereof the following new subparagraph:

"(D) FAILURE TO PAY ADDITIONAL AMOUNT.—In the case of any failure by any entity to pay on the date prescribed therefore the portion of any required payment described in subsection (b)(2) for any applicable election year—

"(i) subparagraph (A) shall not apply, but

"(ii) the entity shall, for purposes of this title, be treated as having terminated the election under section 444 for such year and changed to the required taxable year."

(B) CONFORMING AMENDMENT.—Section 7519(f)(4)(A) is amended by striking "In" and inserting "Except as provided in subparagraph (D), in".

(4) REFUNDS.—Section 7519(c)(2)(A) (relating to refund of payments) is amended to read as follows:

"(A) an election under section 444 is not in effect for any year but was in effect for the preceding year, or".

(5) CONFORMING AMENDMENTS.—

(A) Paragraph (1) of section 7519(c) is amended—

(i) by striking "subsection (b)(2)" and inserting "subsection (b)(1)(B)", and

(ii) by striking "subsection (b)(1)" and inserting "subsection (b)(1)(A)".

(B) Subsection (d) of section 7519 is amended by striking paragraph (4) and redesignating paragraph (5) as paragraph (4).

(b) OTHER DEFINITIONS AND SPECIAL RULES.—

(1) REFUND.—Paragraph (3) of section 7519(c) (relating to date on which refund payable) is amended in the matter preceding subparagraph (A) by striking "on the later of" and inserting "by the later of".

(2) DEFERRAL RATIO.—The last sentence of paragraph (1) of section 7519(d) is amended to read as follows: "Except as provided in regulations, the term 'deferral ratio' means the ratio which the number of months in the deferral period of the applicable election year bears to the number of months in the applicable election year."

(3) NET INCOME.—Paragraph (2) of section 7519(d) is amended by adding at the end the following new subparagraph:

"(D) EXCESS APPLICABLE PAYMENTS FOR BASE YEAR.—In the case of any new applicable election year, the net income for the base year shall be increased by the excess (if any) of—

"(i) the applicable payments taken into account in determining net income for the base year, over

"(ii) 120 percent of the average amount of applicable payments made during the first 3 taxable years preceding the base year."

(4) DEFERRAL PERIOD.—Paragraph (1) of section 7519(e) (defining deferral period) is amended to read as follows:

"(1) DEFERRAL PERIOD.—Except as provided in regulations, the term 'deferral period' means, with respect to any taxable year of the entity, the months between—

"(A) the beginning of such year, and

"(B) the close of the first required taxable year (as defined in section 444(e)) ending within such year."

(5) BASE YEAR.—

(A) IN GENERAL.—Paragraph (2)(A) of section 7519(e) (defining base year) is amended to read as follows:

"(A) BASE YEAR.—The term 'base year' means, with respect to any applicable election year, the first taxable year of 12 months (or 52–53 weeks) of the partnership or S corporation preceding such applicable election year."

(B) CONFORMING AMENDMENT.—Paragraph (2) of subsection (g) of section 7519 is amended to read as follows:

"(2) there is no base year described in subsection (e)(2)(A) or no preceding taxable year described in section 280H(c)(1)(A)(i)."

(c) INTEREST.—Section 7519(f)(3) (relating to interest) is amended to read as follows:

"(3) INTEREST.—For purposes of determining interest, any payment required by this section shall be treated as a tax, except that interest shall be allowed with respect to any refund of a payment under this section only for the period from the latest date specified in subsection (c)(3) for such refund to the actual date of payment of such refund."

SEC. 4533. LIMITATION ON CERTAIN AMOUNTS PAID TO EMPLOYEE-OWNERS OF PERSONAL SERVICE CORPORATIONS.

(a) CARRYOVER OF NONDEDUCTIBLE AMOUNTS.—Subsection (b) of section 280H (relating to carryover of nondeductible amounts) is amended to read as follows:

"(b) CARRYOVER OF NONDEDUCTIBLE AMOUNTS.—Any amount not allowed as a deduction for a taxable year pursuant to subsection (a) shall be allowed as a deduction in the succeeding taxable year."

(b) MINIMUM DISTRIBUTION REQUIREMENT.—Paragraph (1) of section 280H(c) is amended to read as follows:

"(1) IN GENERAL.—A personal service corporation meets the minimum distribution requirements of this subsection if the applicable amounts paid during the deferral period of the taxable year equal or exceed the lesser of—

"(A) 110 percent of the product of—

"(i) the applicable amounts paid during the first preceding taxable year of 12 months (or 52-53 weeks), divided by 12, and

"(ii) the number of months in the deferral period of the taxable year, or

"(B) 110 percent of the amount equal to the applicable percentage of the adjusted taxable income for the deferral period of the taxable year."

(c) DISALLOWANCE OF NOL CARRYBACKS.—Subsection (e) of section 280H (relating to disallowance of net operating loss carrybacks) is amended by striking "to (or from)" and inserting "from".

(d) CONFORMING AMENDMENT.—Subparagraph (A) of section 280H(f)(3) (relating to deferral period) is amended by striking "section 444(b)(4)" and inserting "section 7519(e)(1)".

SEC. 4534. EFFECTIVE DATE.

The amendments made by this Act shall apply to taxable years beginning after December 31, 1991.

PART V—COOPERATIVES

SEC. 4541. TREATMENT OF CERTAIN LOAN REQUIREMENTS.

(a) IN GENERAL.—Subparagraph (C) of section 501(c)(12) is amended by striking "or" at the end of clause (i), by striking the period at the end of clause (ii) and inserting ", or", and by adding at the end the following new clause:

"(i) from the prepayment of any loan under section 2387 of the Food, Agricultural, Conservation, and Trade Act of 1990 (as in effect on January 1, 1992)."

(b) 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.

SEC. 4542. COOPERATIVE SERVICE ORGANIZATIONS FOR CERTAIN FOUNDATIONS.

(a) IN GENERAL.—Section 501 (relating to exemption from tax on corporations, certain trusts, etc.), is amended by redesignating subsection (n) as subsection (o) and by inserting after subsection (m) the following new subsection:

"(n) COOPERATIVE SERVICE ORGANIZATIONS FOR CERTAIN FOUNDATIONS.—

"(1) IN GENERAL.—For purposes of this title, if an organization—

"(A) is organized and operated solely for purposes referred to in subsection (f)(1),

"(B) is comprised solely of members which are exempt from taxation under subsection (a) and are—

"(i) private foundations, or

"(ii) community foundations as to which section 170(b)(1)(A)(vi) applies,

"(C) has at least 20 members,

"(D) does not at any time after the second taxable year beginning after the date of its organization, or, if later, the date of the enactment of this subsection, have a member which holds more than 10 percent (by value) of the interests in the organization,

"(E) is not controlled by any one member and does not have a member which controls another member of the organization, and

"(F) permits members of the organization to require the dismissal of any of the organization's investment advisors, following reasonable notice, upon a vote of the members holding a majority of interest in the account managed by such advisor,

then such organization shall be treated as an organization organized and operated exclusively for charitable purposes.

"(2) TREATMENT OF INCOME OF MEMBERS.—If any member of an organization described in paragraph (1) is a private foundation (other than an exempt operating foundation, as defined in section 4940(d)), such private foundation's allocable share of the capital gain net income and gross investment income of the organization for any taxable year of the organization shall be treated, for purposes of section 4940, as capital gain net income and gross investment income of such private foundation (whether or not distributed to such foundation) for the taxable year of such private foundation with or within which the taxable year of the organization described in paragraph (1) ends.

"(3) APPLICABLE EXCISE TAXES.—Subchapter A of chapter 42 (other than sections 4940 and 4942) shall apply to any organization described in paragraph (1)."

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

SEC. 4543. TREATMENT OF CERTAIN AMOUNTS RECEIVED BY A COOPERATIVE TELEPHONE COMPANY.

(a) NONMEMBER INCOME.—

(1) IN GENERAL.—Paragraph (12) of section 501(c) (relating to list of exempt organizations) is amended by adding at the end thereof the following new subparagraph:

"(E) In the case of a mutual or cooperative telephone company (hereafter in this subparagraph referred to as the 'cooperative'), 50 percent of the income received or accrued directly or indirectly from a nonmember telephone company for the performance of communication services by the cooperative shall be treated for purposes of subparagraph (A) as collected from members of the cooperative for the sole purpose of meeting the losses and expenses of the cooperative."

(2) CERTAIN BILLING AND COLLECTION SERVICE FEES NOT TAKEN INTO ACCOUNT.—Subparagraph (B) of section 501(c)(12) is amended by striking "or" at the end of clause (iii), by striking the period at the end of clause (iv) and inserting ", or", and by adding at the end thereof the following new clause:

"(v) from billing and collection services performed for a nonmember telephone company.".

(3) CONFORMING AMENDMENT.—Clause (i) of section 501(c)(12)(B) is amended by inserting before the comma ", other than income described in subparagraph (E)".

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

(5) NO INFERENCE AS TO UNRELATED BUSINESS INCOME TREATMENT OF BILLING AND COLLECTION SERVICE FEES.—Nothing in the amendments made by this subsection shall be construed to indicate the proper treatment of billing and collection service fees under part III of subchapter F of chapter 1 of the Internal Revenue Code of 1986 (relating to taxation of business income of certain exempt organizations).

(b) TREATMENT OF CERTAIN INVESTMENT INCOME OF MUTUAL OR COOPERATIVE TELEPHONE COMPANIES.—

(1) IN GENERAL.—Paragraph (12) of section 501(c) (relating to list of exempt organizations) is amended by adding at the end thereof the following new subparagraph:

"(F) In the case of a mutual or cooperative telephone company, subparagraph (A) shall be applied without taking into account reserve income (as defined in section 512(d)(2)) if such income, when added to other income not collected from members for the sole purpose of meeting losses and expenses, does not exceed 35 percent of the company's total income."

(2) PORTION OF INVESTMENT INCOME SUBJECT TO UNRELATED BUSINESS INCOME TAX.—Section 512 is amended by adding at the end thereof the following new subsection:

"(d) INVESTMENT INCOME OF CERTAIN MUTUAL OR COOPERATIVE TELEPHONE COMPANIES.—

"(1) IN GENERAL.—In determining the unrelated business taxable income of a mutual or cooperative telephone company described in section 501(c)(12)—

"(A) there shall be included, as an item of gross income derived from an unrelated trade or business, reserve income to the extent such reserve income, when added to other income not collected from members for the sole purpose of meeting losses and expenses, exceeds 15 percent of the company's total income, and

"(B) there shall be allowed all deductions directly connected with the portion of the reserve income which is so included.

"(2) RESERVE INCOME.—For purposes of paragraph (1), the term 'reserve income' means income—

"(A) which would (but for this subsection) be excluded under subsection (b), and

"(B) which is derived from assets set aside for the repair or replacement of telephone system facilities of such company."

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

SEC. 4544. TAX TREATMENT OF COOPERATIVE HOUSING CORPORATIONS.

(a) SECTION 277 NOT TO APPLY TO COOPERATIVE HOUSING CORPORATIONS.—Section 277(b) (relating to exceptions) is amended by striking "or" at the end of paragraph (3), by striking the period at the end of paragraph (4) and inserting a comma and "or", and by adding at the end thereof the following new paragraph:

"(5) which for the taxable year is a cooperative housing corporation described in section 216(b)(1) (determined without regard to section 143(k)(9)(E))."

(b) APPLICATION OF RULES RELATING TO TAX TREATMENT OF COOPERATIVES.—

(1) PATRONAGE EARNINGS MAY BE OFFSET ONLY BY PATRONAGE LOSSES.—Section 1388(a) is amended by adding at the end the following new sentence: "In no event shall any patronage losses of an organization described in section 277(b)(5) be used to offset earnings which are not patronage earnings."

(2) PATRONAGE EARNINGS AND LOSSES OF COOPERATIVE HOUSING CORPORATIONS.—Section 1388 is amended by adding at the end the following new subsection:

"(k) PATRONAGE EARNINGS OR LOSSES DEFINED.—For purposes of this section—

"(1) IN GENERAL.—The terms 'patronage earnings' and 'patronage losses' mean earnings and losses, respectively, which are derived from business done with or for patrons of the organization.

"(2) SPECIAL RULES FOR COOPERATIVE HOUSING CORPORATION.—In the case of a cooperative housing corporation, the following earnings shall be treated as patronage earnings:

"(A) Interest on reasonable reserves established in connection with the corporation, including reserves required by a governmental agency or lender.

"(B) Income from laundry and parking facilities to the extent attributable to use of

the facilities by tenant-stockholders and their guests.

"(C) In the case of a limited equity cooperative housing corporation, rental income from other than tenant-stockholders to the extent attributable to any project operated by the corporation.

"(3) DEFINITIONS.—For purposes of paragraph (2)—

"(A) COOPERATIVE HOUSING CORPORATION.—The term 'cooperative housing corporation' has the meaning given such term by section 216(b)(1) (without regard to section 143(k)(9)(E)).

"(B) LIMITED EQUITY COOPERATIVE HOUSING CORPORATION.—The term 'limited equity cooperative housing corporation' means a cooperative housing corporation with respect to which the requirements of clause (i) of section 143(k)(9)(D) are met at all times during the taxable year.

"(C) TENANT-STOCKHOLDER.—The term 'tenant-stockholder' has the meaning given such term by section 216(b)(2)."

(3) CONFORMING AMENDMENT.—Section 1388(j) is amended by striking paragraph (4).

(c) EFFECTIVE DATE.—

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

(2) NO INFERENCE.—Nothing in the provisions of this section shall be construed as a change in the treatment of income derived by any cooperative housing corporation, or any corporation operating on a cooperative basis under section 1381 of the Internal Revenue Code of 1986, and the treatment of such income for any year to which the amendments made by this section does not apply shall be made as if this section had not been enacted.

SEC. 4545. TREATMENT OF SAFE HARBOR LEASES INVOLVING RURAL ELECTRIC COOPERATIVES.

(a) IN GENERAL.—In the case of a rural electric cooperative described in section 1381(a)(2)(C) of the Internal Revenue Code of 1986, any interest income in connection with a transaction involving qualified leased property which was treated as a lease under section 168(i) of the Internal Revenue Code of 1986 (as in effect before the amendments made by the Tax Reform Act of 1986) or any corresponding prior provision of law shall be offset by any rental expense in connection with such transaction before allocation of such income or expense to members and nonmembers of such cooperatives for purposes of such Code.

(b) EFFECTIVE DATE.—The provisions of subsection (a) shall apply to taxable years beginning before, on, or after the date of the enactment of this Act.

PART VI—EMPLOYMENT

SEC. 4551. CREDIT FOR PORTION OF EMPLOYER SOCIAL SECURITY TAXES PAID WITH RESPECT TO EMPLOYEE CASH TIPS.

(a) IN GENERAL.—Subpart D of part IV of subchapter A of chapter 1 of the Internal Revenue Code of 1986 (relating to business related credits) is amended by adding at the end the following new section:

"SEC. 45. CREDIT FOR PORTION OF EMPLOYER SOCIAL SECURITY TAXES PAID WITH RESPECT TO EMPLOYEE CASH TIPS.

"(a) GENERAL RULE.—For purposes of section 38, the employer social security credit determined under this section for the taxable year is an amount equal to the excess employer social security tax paid or incurred by the taxpayer during the taxable year.

"(b) EXCESS EMPLOYER SOCIAL SECURITY TAX.—For purposes of this section, the term 'excess employer social security tax' means any tax paid by an employer under section 3111 with respect to tips received by an employee during any month, to the extent such tips—

"(1) are deemed to have been paid by the employer to the employee pursuant to section 3121(q), and

"(2) exceed the amount by which the wages (excluding tips) paid by the employer to the employee during such month are less than the total amount which would be payable (with respect to such employment) at the minimum wage rate applicable to such individual under section 6(a)(1) of the Fair Labor Standards Act of 1938 (determined without regard to section 3(m) of such Act).

"(c) DENIAL OF DOUBLE BENEFIT.—No deduction shall be allowed under this chapter for any amount taken into account in determining the credit under this section."

(b) CREDIT TO BE PART OF GENERAL BUSINESS CREDIT.—

(1) IN GENERAL.—Subsection (b) of section 38 of such Code (relating to current year business credit) is amended by striking "plus" at the end of paragraph (6), by striking the period at the end of paragraph (7) and inserting ", plus", and by adding at the end the following new paragraph:

"(8) the employer social security credit determined under section 45(a)."

(2) LIMITATION ON CARRYBACKS.—Subsection (d) of section 39 of such Code (relating to transitional rules) is amended—

(A) by redesignating the paragraph added by section 11511(b)(2) of the Revenue Reconciliation Act of 1990 as paragraph (1),

(B) by redesignating the paragraph added by section 11611(b)(2) of such Act as paragraph (2), and

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

"(3) NO CARRYBACK OF SECTION 45 CREDIT BEFORE ENACTMENT.—No portion of the unused business credit for any taxable year which is attributable to the employer social security credit determined under section 45 may be carried back to a taxable year ending before the date of the enactment of section 45."

(c) CLERICAL AMENDMENT.—The table of sections for subpart D of part IV of subchapter A of chapter 1 of such Code is amended by adding at the end the following new item:

"Sec. 45. Employer social security credit."

(d) EFFECTIVE DATE.—The amendments made by this section shall apply with respect to tips received (and wages paid) after the date of the enactment of this Act.

SEC. 4552. ELIMINATION OF DEDUCTION FOR CLUB MEMBERSHIP FEES.

(a) IN GENERAL.—Section 162 (relating to trade or business expenses), as amended by sections 3006 and 4108, is amended by redesignating subsection (o) as subsection (p) and by inserting after subsection (n) the following new subsection:

"(o) CLUB MEMBERSHIP DUES.—No deduction shall be allowed under this chapter for amounts paid or incurred for membership in any club organized for business, pleasure, recreation, or other social purpose."

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

SEC. 4553. CLARIFICATION OF EMPLOYMENT TAX STATUS OF CERTAIN FISHERMEN.

(a) AMENDMENTS OF INTERNAL REVENUE CODE OF 1986.—

(1) DETERMINATION OF SIZE OF CREW.—Subsection (b) of section 3121 (defining employment) is amended by adding at the end thereof the following new sentence:

"For purposes of paragraph (20), the operating crew of a boat shall be treated as normally made up of fewer than 10 individuals if the average size of the operating crew on trips made during the preceding 4 calendar quarters consisted of fewer than 10 individuals."

(2) CERTAIN CASH REMUNERATION PERMITTED.—Subparagraph (A) of section 3121(b)(20) is amended to read as follows:

"(A) such individual does not receive any cash remuneration other than as provided in subparagraph (B) and other than cash remuneration—

"(i) which does not exceed $100 per trip;

"(ii) which is contingent on a minimum catch; and

"(iii) which is paid solely for additional duties (such as mate, engineer, or cook) for which additional cash remuneration is traditional in the industry,".

(b) AMENDMENT OF SOCIAL SECURITY ACT.—

(1) DETERMINATION OF SIZE OF CREW.—Subsection (a) of section 210 of the Social Security Act is amended by adding at the end thereof the following new sentence:

"For purposes of paragraph (20), the operating crew of a boat shall be treated as normally made up of fewer than 10 individuals if the average size of the operating crew on trips made during the preceding 4 calendar quarters consisted of fewer than 10 individuals."

(2) CERTAIN CASH REMUNERATION PERMITTED.—Subparagraph (A) of section 210(a)(20) of such Act is amended to read as follows:

"(A) such individual does not receive any additional compensation other than as provided in subparagraph (B) and other than cash remuneration—

"(i) which does not exceed $100 per trip;

"(ii) which is contingent on a minimum catch; and

"(iii) which is paid solely for additional duties (such as mate, engineer, or cook) for which additional cash remuneration is traditional in the industry,".

(c) EFFECTIVE DATE.—

(1) IN GENERAL.—The amendments made by this section shall apply to remuneration paid after December 31, 1992.

(2) SPECIAL RULE.—The amendments made by this section shall also apply to remuneration paid after December 31, 1984, and before January 1, 1993, unless the payor treated such remuneration (when paid) as being subject to tax under chapter 21 of the Internal Revenue Code of 1986.

PART VII—OTHER PROVISIONS

SEC. 4561. CLOSING OF PARTNERSHIP TAXABLE YEAR WITH RESPECT TO DECEASED PARTNER.

(a) GENERAL RULE.—Subparagraph (A) of section 706(c)(2) (relating to disposition of entire interest) is amended to read as follows:

"(A) DISPOSITION OF ENTIRE INTEREST.—The taxable year of a partnership shall close with respect to a partner whose entire interest in the partnership terminates (whether by reason of death, liquidation, or otherwise)."

(b) CLERICAL AMENDMENT.—The paragraph heading for paragraph (2) of section 706(c) is amended to read as follows:

"(2) TREATMENT OF DISPOSITIONS.—".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to partnership taxable years beginning after December 31, 1991.

SEC. 4562. REPEAL OF SPECIAL TREATMENT OF OWNERSHIP CHANGES IN DETERMINING ADJUSTED CURRENT EARNINGS.

(a) GENERAL RULE.—Paragraph (4) of section 56(g) (relating to adjustments) is amended by striking subparagraph (G) and by redesignating the following subparagraph as paragraph (G).

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to ownership changes after December 31, 1991.

SEC. 4563. AUTHORIZATION FOR BUREAU OF LAND MANAGEMENT USE OF REFORESTATION TRUST FUND.

Section 303 of Public Law 96-451 (16 U.S.C. 1606a) is amended—

(1) in subsection (b)—

(A) in paragraph (2), by striking "$30,000,000" and inserting "$45,000,000"; and

(B) by adding at the end thereof the following new paragraphs:

"(4) Of the amounts transferred to the Trust Fund under paragraph (1) in any fiscal year—

"(A) $30,000,000 shall be allocated and made available to the Secretary of Agriculture; and

"(B) the remaining balance shall be allocated and made available to the Secretary of the Interior.

"(5)(A) If the remaining balance allocated and made available to the Secretary of the Interior under paragraph (4)(B) is less than $15,000,000 in any fiscal year, the Secretary of the Treasury shall transfer to the Trust Fund and make available to the Secretary of the Interior, in accordance with subparagraph (B), an amount equal to the difference between $15,000,000 and the remaining balance.

"(B) The amount transferred pursuant to subparagraph (A) shall be obtained as follows:

"(i) 93⅓ percent of the amount shall be taken from the Federal portion of the Bureau of Land Management timber receipt payments from the Coos Bay Wagon Road grant lands in Oregon; and

"(ii) the remainder of the amount shall be taken from the Federal portion of the Bureau of Land Management timber receipt payments from public domain lands in the States.";

(2) in the first sentence of subsection (c)(1) by inserting "and the Secretary of the Interior" after "Secretary of Agriculture";

(3) in subsection (d)—

(A) by striking "available" and inserting "available to the Secretary of Agriculture"; and

(B) by striking "amounts" and inserting "amounts that were available to the Secretary of Agriculture but"; and

(4) by adding at the end thereof the following new subsection:

"(e)(1) In accordance with paragraph (2), the Secretary of the Interior may obligate, in each fiscal year, such sums as are available to the Secretary of the Interior in the Trust Fund to supplement expenditures of the Bureau of Land Management for, in order of priority—

"(A) reforestation and forest development of public lands administered by the Secretary of the Interior acting through the Bureau of Land Management, including projects to improve the overall health and productivity of the forest ecosystem;

"(B) negotiation and implementation of cooperative relationships, including the acquisition of voluntary cooperative conservation easements, when such relationships promote or enhance successful reforestation or forest development or contribute to the long-term productivity of the forest ecosystem; and

"(C) properly allocable administrative costs of the Federal Government for the activities described in subparagraphs (A) and (B).

"(2) The Secretary of the Interior shall allocate the sums described in paragraph (1) as follows:

"(A) $14,000,000 for Oregon and California Railroad and Coos Bay Wagon Road grant lands in Oregon; and

"(B) $1,000,000 for public domain lands, to be allocated among the States in which the lands are located by taking into account, in order of priority—

"(i) the level of timber sales (measured in board feet) from the public domain lands within each State in the previous calendar year;

"(ii) the amount of reforestation backlog in the State;

"(iii) the need for planting as part of the reforestation program; and

"(iv) the need for forest development as part of the reforestation program."

SEC. 4564. REPEAL OF INVESTMENT RESTRICTIONS APPLICABLE TO NUCLEAR DECOMMISSIONING FUNDS.

(a) IN GENERAL.—Subparagraph (C) of section 468A(e)(4) (relating to special rules for nuclear decommissioning funds) is amended by striking "described in section 501(c)(21)(B)(ii)".

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to taxable years beginning after December 31, 1991.

SEC. 4565. MODIFICATION OF CREDIT FOR PRODUCING FUEL FROM A NONCONVENTIONAL SOURCE.

(a) IN GENERAL.—Subparagraph (A) of section 29(c)(2) (relating to gas from geopressured brine, etc.) is amended by adding at the end the following new sentence: "If the Federal Energy Regulatory Commission ceases to make the determinations described in the preceding sentence, the Secretary shall make such determinations in accordance with section 503 of such Act."

(b) CONFORMING AMENDMENT.—Section 29(c)(2)(A) is amended by inserting "(as in effect before its repeal by the Natural Gas Wellhead Decontrol Act of 1989) after "Natural Gas Policy Act of 1978".

Subtitle F—Estate And Gift Tax Provisions

SEC. 4601. CLARIFICATION OF WAIVER OF CERTAIN RIGHTS OF RECOVERY.

(a) AMENDMENT TO SECTION 2207A.—Paragraph (2) of section 2207A(a) (relating to right of recovery in the case of certain marital deduction property) is amended to read as follows:

"(2) DECEDENT MAY OTHERWISE DIRECT.—Paragraph (1) shall not apply with respect to any property to the extent that the decedent in his will (or a revocable trust) specifically indicates an intent to waive any right of recovery under this subchapter with respect to such property."

(b) AMENDMENT TO SECTION 2207B.—Paragraph (2) of section 2207B(a) (relating to right of recovery where decedent retained interest) is amended to read as follows:

"(2) DECEDENT MAY OTHERWISE DIRECT.—Paragraph (1) shall not apply with respect to any property to the extent that the decedent in his will (or a revocable trust) specifically indicates an intent to waive any right of recovery under this subchapter with respect to such property."

(c) EFFECTIVE DATE.—The amendments made by this section shall apply with respect to the estates of decedents dying after the date of the enactment of this Act.

SEC. 4602. ADJUSTMENTS FOR GIFTS WITHIN 3 YEARS OF DECEDENT'S DEATH.

(a) GENERAL RULE.—Section 2035 is amended to read as follows:

"SEC. 2035. ADJUSTMENTS FOR CERTAIN GIFTS MADE WITHIN 3 YEARS OF DECEDENT'S DEATH.

"(a) INCLUSION OF CERTAIN PROPERTY IN GROSS ESTATE.—If—

"(1) the decedent made a transfer (by trust or otherwise) of an interest in any property, or relinquished a power with respect to any property, during the 3-year period ending on the date of the decedent's death, and

"(2) the value of such property (or an interest therein) would have been included in the decedent's gross estate under section 2036, 2037, 2038, or 2042 if such transferred interest or relinquished power had been retained by the decedent on the date of his death,

the value of the gross estate shall include the value of any property (or interest therein) which would have been so included.

"(b) INCLUSION OF GIFT TAX ON GIFTS MADE DURING 3 YEARS BEFORE DECEDENT'S DEATH.—The amount of the gross estate (determined without regard to this subsection) shall be increased by the amount of any tax paid under chapter 12 by the decedent or his estate on any gift made by the decedent or his spouse during the 3-year period ending on the date of the decedent's death.

"(c) OTHER RULES RELATING TO TRANSFERS WITHIN 3 YEARS OF DEATH.—

"(1) IN GENERAL.—For purposes of—

"(A) section 303(b) (relating to distributions in redemption of stock to pay death taxes),

"(B) section 2032A (relating to special valuation of certain farms, etc., real property), and

"(C) subchapter C of chapter 64 (relating to lien for taxes),

the value of the gross estate shall include the value of all property to the extent of any interest therein of which the decedent has at any time made a transfer, by trust or otherwise, during the 3-year period ending on the date of the decedent's death.

"(2) COORDINATION WITH SECTION 6166.—An estate shall be treated as meeting the 35 percent of adjusted gross estate requirement of section 6166(a)(1) only if the estate meets such requirement both with and without the application of paragraph (1).

"(3) SMALL TRANSFERS.—Paragraph (1) shall not apply to any transfer (other than a transfer with respect to a life insurance policy) made during a calendar year to any donee if the decedent was not required by section 6019 (other than by reason of section 6019(a)(2)) to file any gift tax return for such year with respect to transfers to such donee.

"(d) EXCEPTION.—Subsection (a) shall not apply to any bona fide sale for an adequate and full consideration in money or money's worth.

"(e) TREATMENT OF CERTAIN REVOCABLE TRUSTS.—For purposes of this section and section 2038, any transfer from any portion of a trust with respect to which the decedent was the grantor during any period when the decedent held the power to revest in the decedent title to such portion shall be treated as a transfer made directly by the decedent."

(b) CLERICAL AMENDMENT.—The table of sections for part III of subchapter A of chapter 11 is amended by striking "gifts" in the item relating to section 2035 and inserting "certain gifts".

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

SEC. 4603. CLARIFICATION OF QUALIFIED TERMINABLE INTEREST RULES.

(a) GENERAL RULE.—

(1) ESTATE TAX.—Subparagraph (B) of section 2056(b)(7) (defining qualified terminable interest property) is amended by adding at the end thereof the following new clause:

"(v)(i) TREATMENT OF CERTAIN INCOME DISTRIBUTIONS.—An income interest shall not fail to qualify as a qualified income interest for life solely because income for the period after the last distribution date and on or before the date of the surviving spouse's death is not required to be distributed to the surviving spouse or to the estate of the surviving spouse."

(2) GIFT TAX.—Paragraph (3) of section 2523(f) is amended by striking "and (iv)" and inserting ", (iv), and (vi)".

(b) CLARIFICATION OF SUBSEQUENT INCLUSIONS.—Section 2044 is amended by adding at the end thereof the following new subsection:

"(d) CLARIFICATION OF INCLUSION OF CERTAIN INCOME.—The amount included in the gross estate under subsection (a) shall include the amount of any income from the property to which this section applies for the period after the last distribution date and on or before the date of the decedent's death if such income is not otherwise included in the decedent's gross estate."

(c) EFFECTIVE DATE.—

(1) IN GENERAL.—The amendments made by this section shall apply with respect to the estates of decedents dying, and gifts made, after the date of the enactment of this Act.

(2) APPLICATION OF SECTION 2044 TO TRANSFERS BEFORE DATE OF ENACTMENT.—In the case of the estate of any decedent dying after the date of the enactment of this Act, if there was a transfer of property on or before such date—

(A) such property shall not be included in the gross estate of the decedent under section 2044 of the Internal Revenue Code of 1986 if no prior marital deduction was allowed with respect to such a transfer of such property to the decedent, but

(B) such property shall be so included if such a deduction was allowed.

SEC. 4604. TREATMENT OF PORTIONS OF PROPERTY UNDER MARITAL DEDUCTION.

(a) ESTATE TAX.—Subsection (b) of section 2056 (relating to limitation in case of life estate or other terminable interest) is amended by adding at the end thereof the following new paragraph:

"(10) SPECIFIC PORTION.—For purposes of paragraphs (5), (6), and (7)(B)(iv), the term 'specific portion' only includes a portion determined on a fractional or percentage basis."

(b) GIFT TAX.—

(1) Subsection (e) of section 2523 is amended by adding at the end thereof the following new sentence: "For purposes of this subsection, the term 'specific portion' only includes a portion determined on a fractional or percentage basis."

(2) Paragraph (3) of section 2523(f) is amended by inserting before the period at the end thereof the following: "and the rules of section 2056(b)(10) shall apply".

(c) EFFECTIVE DATES.—

(1) SUBSECTION (a).—

(A) IN GENERAL.—Except as provided in subparagraph (B), the amendment made by subsection (a) shall apply to the estates of decedents dying after the date of the enactment of this Act.

(B) EXCEPTION.—The amendment made by subsection (a) shall not apply to any interest in property which passes (or has passed) to the surviving spouse of the decedent pursuant to a will (or revocable trust) in existence on the date of the enactment of this Act if—

(i) the decedent dies on or before the date 3 years after such date of enactment, or

(ii) the decedent was, on such date of enactment, under a mental disability to change the disposition of his property and did not regain his competence to dispose of such property before the date of his death.

The preceding sentence shall not apply if such will (or revocable trust) is amended at any time after such date of enactment in any respect which will increase the amount of the interest which so passes or alters the terms of the transfer by which the interest so passes.

(2) SUBSECTION (b).—The amendments made by subsection (b) shall apply to gifts made after the date of the enactment of this Act.

SEC. 4605. TRANSITIONAL RULE UNDER SECTION 2056A.

(a) GENERAL RULE.—In the case of any trust created under an instrument executed before the date of the enactment of the Revenue Reconciliation Act of 1990, such trust shall be treated as meeting the requirements of paragraph (1) of section 2056A(a) of the Internal Revenue Code of 1986 if the trust instrument requires that all trustees of the trust be individual citizens of the United States or domestic corporations.

(b) EFFECTIVE DATE.—The provisions of subsection (a) shall take effect as if included in the provisions of section 11702(g) of the Revenue Reconciliation Act of 1990.

SEC. 4606. OPPORTUNITY TO CORRECT CERTAIN FAILURES UNDER SECTION 2032A.

(a) GENERAL RULE.—Paragraph (3) of section 2032A(d) (relating to modification of election and agreement to be permitted) is amended to read as follows:

"(3) MODIFICATION OF ELECTION AND AGREEMENT TO BE PERMITTED.—The Secretary shall prescribe procedures which provide that in any case in which the executor makes an election under paragraph (1) (and submits the agreement referred to in paragraph (2)) within the time prescribed therefor, but—

"(A) the notice of election, as filed, does not contain all required information, or

"(B) signatures of 1 or more persons required to enter into the agreement described in paragraph (2) are not included on the agreement as filed, or the agreement does not contain all required information,

the executor will have a reasonable period of time (not exceeding 90 days) after notification of such failures to provide such information or signatures."

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to the estates of decedents dying after the date of the enactment of this Act.

SEC. 4607. REPEAL OF CERTAIN THROWBACK RULES APPLICABLE TO DOMESTIC TRUSTS.

(a) ACCUMULATION DISTRIBUTIONS.—

(1) IN GENERAL.—Section 665 is amended by adding at the end the following new subsection:

"(f) ACCUMULATION DISTRIBUTIONS AFTER 1992.—For purposes of this subpart—

"(1) IN GENERAL.—In the case of a qualified trust, the accumulation distribution for any taxable year beginning after December 31, 1992, shall be computed without regard to any undistributed net income attributable to any taxable year beginning after December 31, 1992.

"(2) QUALIFIED TRUST.—For purposes of this subsection, the term 'qualified trust' means any trust other than—

"(A) a foreign trust, or

"(B) a trust created before March 1, 1984, unless it is established that the trust would not be aggregated with other trusts under section 643(f) if such section applied to such trust."

(2) CONFORMING AMENDMENT.—Subsection (b) of section 665 is amended by inserting "except as provided in subsection (b)," after "subpart,"

(b) PROPERTY TRANSFERRED TO TRUSTS.—Subsection (e) of section 644 is amended by striking "or" at the end of paragraph (3), by striking the period at the end of paragraph (4) and inserting ", or ", and by adding at the end the following new paragraph:

"(5) in the case of a qualified trust (as defined in section 665(f)(2)), any sale or exchange of property after December 31, 1992."

(c) EFFECTIVE DATES.—

(1) ACCUMULATION DISTRIBUTION.—The amendments made by subsection (a) shall apply to taxable years beginning after December 31, 1992.

(2) TRANSFERRED PROPERTY.—The amendments made by subsection (b) shall apply to sales or exchanges after December 31, 1992.

Subtitle G—Excise Tax Simplification

PART I—FUEL TAX PROVISIONS

SEC. 4701. REPEAL OF CERTAIN RETAIL AND USE TAXES.

(a) IN GENERAL.—Section 4041 is amended to read as follows:

"SEC. 4041. SPECIAL MOTOR FUELS AND NONCOMMERCIAL AVIATION GASOLINE.

"(a) SPECIAL MOTOR FUELS.—

"(1) IN GENERAL.—There is hereby imposed a tax on benzol, benzene, naphtha, liquefied petroleum gas, casing head and natural gasoline, or any other liquid—

"(A) sold by any person to an owner, lessee, or other operator of a motor vehicle or a motorboat for use as a fuel in such motor vehicle or motorboat, or

"(B) used by any person as a fuel in a motor vehicle or motorboat unless there was a taxable sale of such liquid under subparagraph (A).

"(2) RATE OF TAX.—The rate of the tax imposed by this subsection shall be the aggregate rate of tax in effect under section 4081 at the time of such sale or use.

"(3) CERTAIN FUELS EXEMPT FROM TAX.—The tax imposed by this subsection shall not apply to gasoline (as defined in section 4082), diesel fuel (as defined in section 4092), kerosene, gas oil, or fuel oil.

"(4) REDUCED RATES OF TAX ON CERTAIN FUELS.—

"(A) QUALIFIED METHANOL AND ETHANOL FUEL.—

"(i) IN GENERAL.—In the case of any qualified methanol or ethanol fuel—

"(I) the Highway Trust Fund financing rate applicable under paragraph (2) shall be 5.4 cents per gallon less than the otherwise applicable rate (6 cents per gallon less in the case of a mixture none of the alcohol in which consists of ethanol), and

"(II) the Leaking Underground Storage Tank Trust Fund financing rate applicable under paragraph (2) shall be 0.05 cent per gallon.

"(ii) QUALIFIED METHANOL OR ETHANOL FUEL.—The term 'qualified methanol or ethanol fuel' means any liquid at least 85 percent of which consists of methanol, ethanol, or other alcohol produced from a substance other than petroleum or natural gas.

"(iii) TERMINATION.—Clause (i) shall not apply to any sale or use after September 30, 2000.

"(B) NATURAL GAS-DERIVED METHANOL OR ETHANOL FUEL.—

"(i) IN GENERAL.—In the case of natural gas-derived methanol or ethanol fuel—

"(I) the Highway Trust Fund financing rate applicable under paragraph (2) shall be 5.75 cents per gallon, and

"(II) the deficit reduction rate applicable under paragraph (2) shall be 1.25 cents per gallon.

"(ii) NATURAL GAS-DERIVED METHANOL OR ETHANOL FUEL.—The term 'natural-gas derived methanol or ethanol fuel' means any liquid at least 85 percent of which consists of methanol, ethanol, or other alcohol produced from natural gas.

"(C) OTHER FUELS CONTAINING ALCOHOL.—

"(i) IN GENERAL.—Under regulations prescribed by the Secretary, in the case of any liquid at least 10 percent of which consists of alcohol (as defined in section 4081(c)(3)), the Highway Trust Fund financing rate applicable under paragraph (2) shall be the comparable rate under section 4081.

"(ii) LATER SEPARATION.—If any person separates the liquid fuel from a mixture of the liquid fuel and alcohol to which clause (i) applies, such separation shall be treated as a sale of the liquid fuel. Any tax imposed on such sale shall be reduced by the amount (if any) of the tax imposed on the sale of such mixture.

"(iii) TERMINATION.—Clause (i) shall not apply to any sale or use after September 30, 2000.

"(D) LIQUEFIED PETROLEUM GAS.—The rate of tax applicable under paragraph (2) to liquefied petroleum gas shall be determined without regard to the Leaking Underground Storage Tank Trust Fund financing rate under section 4081.

"(5) EXEMPTION FOR OFF-HIGHWAY BUSINESS USE.—No tax shall be imposed by paragraph (1) on liquids sold for use or used in an off-highway business use (within the meaning of section 6420(f)).

"(b) NONCOMMERCIAL AVIATION GASOLINE.—

"(1) IN GENERAL.—There is hereby imposed a tax on gasoline—

"(A) sold by any person to an owner, lessee, or other operator of an aircraft for use as a fuel in such aircraft in noncommercial aviation, or

"(B) used by any person as a fuel in an aircraft in noncommercial aviation unless there was a taxable sale of such gasoline under subparagraph (A).

The tax imposed by this paragraph shall be in addition to any tax imposed by section 4081.

"(2) RATE OF TAX.—The rate of the tax imposed by paragraph (1) on any gasoline is the excess of 15 cents a gallon over the sum of the Highway Trust Fund financing rate plus the deficit reduction rate at which tax was imposed on such gasoline under section 4081.

"(3) NONCOMMERCIAL AVIATION.—For purposes of this subsection, the term 'noncommercial aviation' means any use of an aircraft other than use in a business of transporting persons or property for compensation or hire by air. Such term includes any use of an aircraft, in a business described in the preceding sentence, which is properly allocable to any transportation exempt from the taxes imposed by sections 4261 and 4271 by reason of section 4281 or 4282.

"(4) EXEMPTION FOR FUELS CONTAINING ALCOHOL.—No tax shall be imposed by this subsection on any liquid at least 10 percent of which consists of alcohol (as defined in section 4081(c)(3)).

"(5) EXEMPTION FOR CERTAIN HELICOPTER USES.—No tax shall be imposed by this subsection on gasoline sold for use or used in a helicopter for purposes of providing transportation with respect to which the requirements of subsection (e) or (f) of section 4261 are met.

"(6) REGISTRATION.—Except as provided in regulations prescribed by the Secretary, if any gasoline is sold by any person for use as a fuel in an aircraft, it shall be presumed for purposes of this subsection that a tax imposed by this subsection applies to the sale of such gasoline unless the purchaser is registered in such manner (and furnished such information in respect of the use of the gasoline) as the Secretary shall by regulations provide.

"(7) GASOLINE.—For purposes of this subsection, the term 'gasoline' has the meaning given such term by section 4082.

"(8) TERMINATION.—Paragraph (1) shall not apply to any sale or use after December 31, 1995.

"(c) EXEMPTION FOR FARM USE.—

"(1) IN GENERAL.—Under regulations prescribed by the Secretary, no tax shall be imposed under this section on any liquid sold for use or used on a farm for farming purposes (determined in accordance with paragraphs (1), (2), and (3) of section 6420(e)).

"(2) TERMINATION.—Except with respect to so much of the tax imposed by subsection (a) as is determined by reference to the Leaking Underground Storage Tank Trust Fund financing rate under section 4081, paragraph (1) shall not apply after September 30, 1999.

"(d) EXEMPTIONS FOR STATE AND LOCAL GOVERNMENTS, SCHOOLS, EXPORTATION, AND SUPPLIES FOR VESSELS AND AIRCRAFT.—

"(1) IN GENERAL.—Under regulations prescribed by the Secretary, no tax shall be imposed under this section on any liquid sold for use, or used, in an exempt use described in paragraph (4), (5), (6), or (7) of section 6420(b).

"(2) TERMINATION.—Except with respect to so much of the tax imposed by subsection (a) as is determined by reference to the Leaking Underground Storage Tank Trust Fund financing rate under section 4081, after September 30, 1999, paragraph (1) shall not apply to exempt uses described in paragraph (4) and (5) of section 6420(b).

"(e) EXEMPTION FOR USE BY CERTAIN AIRCRAFT MUSEUMS.—Under regulations prescribed by the Secretary, no tax shall be imposed under this section on any liquid sold for use or used in an exempt use described in section 6420(b)(11)."

(b) CERTAIN ADDITIONAL PURCHASERS OF FUEL TREATED AS PRODUCERS.—

(1) IN GENERAL.—Subparagraph (C) of section 4092(b)(1) is amended to read as follows:

"(C) REDUCED-TAX PURCHASERS TREATED AS PRODUCERS.—Any person to whom any fuel is sold in a sale on which the amount of tax otherwise required to be paid under section 4091 is reduced under section 4093 shall be treated as the producer of such fuel. The amount of tax imposed by section 4091 on any sale of such fuel by such person shall be reduced by the amount of tax imposed under section 4091 (and not credited or refunded) on any prior sale of such fuel."

(2) CONFORMING AMENDMENT.—Subsection (b) of section 4093 is amended by inserting "(as defined in section 4092(b) without regard to paragraph (1)(C) thereof)" after "producer".

SEC. 4702. REVISION OF FUEL TAX CREDIT AND REFUND PROCEDURES.

(a) REFUNDS TO CERTAIN SELLERS OF DIESEL FUEL AND AVIATION FUEL.—

(1) IN GENERAL.—Paragraph (2) of section 6416(b) is amended by striking "4091 or 4121" and inserting "4121 or 4091; except that this paragraph shall apply to a person selling diesel fuel or aviation fuel for a use described in the first sentence if such person meets such requirements as the Secretary may by regulations prescribe".

(2) LIMITATIONS ON AMOUNT OF TAX ONLY HIGHWAY TRUST FUND FINANCING RATE TO BE REFUNDABLE.—Paragraph (2) of section 6416(b) is amended by adding at the end thereof the following new sentence: "This paragraph shall not apply to the taxes imposed by sections 4081 and 4091 with respect to any use to the same extent that section 6420(a) does not apply to such use by reason of paragraph (1) or (2) of section 6420(c)."

(b) CONSOLIDATION OF REFUND PROVISIONS; REPEAL OF CONSENT REQUIREMENT FOR REFUND OF FUEL TAXES TO CROPDUSTERS, ETC.—Section 6420 (relating to gasoline used on farms) is amended to read as follows:

"SEC. 6420. CERTAIN TAXES ON FUELS USED FOR EXEMPT PURPOSES.

"(a) IN GENERAL.—Except as otherwise provided in this section, if any fuel on which tax was imposed under section 4041, 4081, or 4091 is used in an exempt use, the Secretary shall pay (without interest) to the ultimate purchaser of such fuel the amount equal to the aggregate tax imposed on such fuel under such sections.

"(b) EXEMPT USES.—For purposes of this section, the term 'exempt use' means—

"(1) in the case of diesel fuel, use other than as a fuel in a diesel-powered highway vehicle or a diesel-powered motorboat,

"(2) in the case of aviation fuel, use other than as a fuel in an aircraft,

"(3) in the case of gasoline or aviation fuel, use in an aircraft other than in noncommercial aviation (as defined in section 4041(b)),

"(4) use by any State, any political subdivision of a State, or the District of Columbia,

"(5) use by a nonprofit educational organization (as defined in section 4221(d)(5)),

"(6) export,

"(7) use as supplies for vessels or aircraft (within the meaning of section 4221(d)(3)),

"(8) use on a farm for farming purposes (within the meaning of subsection (e)),

"(9) use in an off-highway business use (within the meaning of subsection (f)),

"(10) use in qualified bus transportation (within the meaning of subsection (g)),

"(11) use by an aircraft museum (within the meaning of subsection (h)),

"(12) use in a nonpurpose use (within the meaning of subsection (i)),

"(13) use in a helicopter for purposes of providing transportation with respect to which the requirements of subsection (e) or (f) of section 4261 are met, and

"(14) use in producing a mixture of a fuel if at least 10 percent of such mixture consists of alcohol (as defined in section 4081(c)(3)) and if such mixture is sold or used in the trade or business of the person producing such mixture.

Paragraph (14) shall not apply with respect to any mixture sold or used after September 30, 2000.

"(c) LIMITATIONS ON AMOUNT OF PAYMENT.—

"(1) NO REFUND OF LEAKING UNDERGROUND STORAGE TANK TRUST FUND TAXES IN CERTAIN CASES.—Subsection (a) shall not apply to so much of the taxes imposed by sections 4081 and 4091 as are attributable to a Leaking Underground Storage Tank Trust Fund financing rate in the case of—

"(A) fuel used in a train, and

"(B) fuel used in any aircraft (except as supplies for vessels or aircraft within the meaning of section 4221(d)(3)).

"(2) NO REFUND OF DEFICIT REDUCTION TAX ON DIESEL FUEL USED IN TRAINS.—Subsection

(a) shall not apply to so much of the tax imposed by section 4091 as is attributable to a deficit reduction rate in the case of diesel fuel used in a diesel-powered train.

"(3) NO REFUND OF PORTION OF TAX ON DIESEL FUEL USED IN CERTAIN BUSES.—

"(A) IN GENERAL.—Except as provided in subparagraphs (B) and (C), the rate of tax taken into account under subsection (a) with respect to diesel fuel used in qualified bus transportation (within the meaning of subsection (g)(1)) shall be 3.1 cents per gallon less than the aggregate rate of tax imposed on such fuel by section 4091.

"(B) EXCEPTION FOR SCHOOL BUS TRANSPORTATION.—Subparagraph (A) shall not apply to fuel used in an automobile bus while engaged in transportation described in subsection (g)(1)(B).

"(C) EXCEPTION FOR CERTAIN INTRACITY TRANSPORTATION.—Subparagraph (A) shall not apply to fuel used in any automobile bus while engaged in furnishing (for compensation) intracity passenger land transportation—

"(i) which is available to the general public, and

"(ii) which is scheduled and along regular routes,

but only if such bus is a qualified local bus.

"(D) QUALIFIED LOCAL BUS.—For purposes of this paragraph, the term 'qualified local bus' means any local bus—

"(i) which has a seating capacity of at least 20 adults (not including the driver), and

"(ii) which is under contract with (or is receiving more than a nominal subsidy from) any State or local government (as defined in section 4221(d)) to furnish such transportation.

"(4) ALCOHOL FUELS.—

"(A) IN GENERAL.—In the case of a fuel used as described in subsection (b)(14) and on which tax was imposed at regular tax rate, the rate of tax taken into account under subsection (a) with respect to the fuel so used shall equal the excess of the regular tax rate over the incentive tax rate.

"(B) REGULAR TAX RATE.—The term 'regular tax rate' means—

"(i) in the case of gasoline, the aggregate rate of tax imposed by section 4081 determined without regard to subsection (c) thereof,

"(ii) in the case of diesel fuel, the aggregate rate of tax imposed by section 4091 on such fuel determined without regard to subsection (c) thereof, and

"(iii) in the case of aviation fuel, the aggregate rate of tax imposed by section 4091 on such fuel determined without regard to subsection (d) thereof.

"(C) INCENTIVE TAX RATE.—The term 'incentive tax rate' means—

"(i) in the case of gasoline, the aggregate rate of tax imposed by section 4081 with respect to fuel described in subsection (c)(1) thereof,

"(ii) in the case of diesel fuel, the aggregate rate of tax imposed by section 4091 with respect to fuel described in subsection (c)(1)(B) thereof, and

"(iii) in the case of aviation fuel, the aggregate rate of tax imposed by section 4091 with respect to fuel described in subsection (d)(1)(B) thereof.

"(5) GASOHOL USED IN NONCOMMERCIAL AVIATION.—If—

"(A) tax is imposed by section 4081 at the rate determined under subsection (c) thereof on gasohol (as defined in such subsection), and

"(B) such gasohol is used as a fuel in any aircraft in noncommercial aviation (as defined in section 4041(b)),

the payment under subsection (a) shall be equal to 1.4 cents (2 cents in the case of gasohol none of the alcohol in which consists of ethanol) per gallon of gasohol so used.

"(d) TIME FOR FILING CLAIMS; PERIOD COVERED.—

"(1) GENERAL RULE.—Except as provided in paragraphs (2) and (3), not more than one claim may be filed under this section by any person with respect to fuel used (or a qualified diesel powered highway vehicle purchased) during his taxable year; and no claim shall be allowed under this paragraph with respect to fuel used (or a qualified diesel powered highway vehicle purchased) during any taxable year unless filed by the purchaser not later than the time prescribed by law for filing a claim for credit or refund of overpayment of income tax for such taxable year. For purposes of this subsection, a person's taxable year shall be his taxable year for purposes of subtitle A.

"(2) EXCEPTIONS.—

"(A) IN GENERAL.—If as of the close of any quarter of a person's taxable year, $750 or more is payable under this section to such person with respect to fuel used (or a qualified diesel powered highway vehicle purchased) during such quarter or any prior quarter of such taxable year (and for which no other claim has been filed), a claim may be filed under this section with respect to fuel so used (or qualified diesel powered highway vehicles so purchased).

"(B) TIME FOR FILING CLAIM.—No claim filed under this paragraph shall be allowed unless filed during the first quarter following the last quarter included in the claim.

"(3) SPECIAL RULE FOR GASOHOL CREDIT.—

"(A) IN GENERAL.—A claim may be filed for gasoline used to produce gasohol (as defined in section 4081(c)(1)) for any period—

"(i) for which $200 or more is payable by reason of subsection (b)(14), and

"(ii) which is not less than 1 week.

"(B) PAYMENT OF CLAIM.—Notwithstanding subsection (a), if the Secretary has not paid a claim filed pursuant to subparagraph (A) within 20 days of the date of the filing of such claim, the claim shall be paid with interest from such date determined by using the overpayment rate and method under section 6621.

"(e) USE ON A FARM FOR FARMING.—For purposes of subsection (b)(8)—

"(1) IN GENERAL.—Fuel shall be treated as used on a farm for farming purposes only if used—

"(A) in carrying on a trade or business,

"(B) on a farm situated in the United States, and

"(C) for farming purposes.

"(2) FARM.—The term 'farm' includes stock, dairy, poultry, fruit, fur-bearing animal, and truck farms, plantations, ranches, nurseries, ranges, greenhouses or other similar structures used primarily for the raising of agricultural or horticultural commodities, and orchards.

"(3) FARMING PURPOSES.—Fuel shall be treated as used for farming purposes only if used—

"(A) by the owner, tenant, or operator of a farm, in connection with cultivating the soil, or in connection with raising or harvesting any agricultural or horticultural commodity, including the raising, shearing, feeding, caring for, training, and management of livestock, bees, poultry, and fur-bearing animals and wildlife, on a farm of which he is the owner, tenant, or operator;

"(B) by the owner, tenant, or operator of a farm, in handling, drying, packing, grading, or storing any agricultural or horticultural commodity in its unmanufactured state; but only if such owner, tenant, or operator produced more than one-half of the commodity which he so treated during the period with respect to which claim is filed;

"(C) by the owner, tenant, or operator of a farm, in connection with—

"(i) the planting, cultivating, caring for, or cutting of trees, or

"(ii) the preparation (other than milling) of trees for market, incidental to farming operations; or

"(D) by the owner, tenant, or operator of a farm, in connection with the operation, management, conservation, improvement, or maintenance of such farm and its tools and equipment.

"(4) CERTAIN FARMING USE OTHER THAN BY OWNER, ETC.—In applying paragraph (3)(A) to a use on a farm for any purpose described in paragraph (3)(A) by any person other than the owner, tenant, or operator of such farm—

"(A) the owner, tenant, or operator of such farm shall be treated as the user and ultimate purchaser of the fuel, except that

"(B) if the person so using the fuel is an aerial or other applicator of fertilizers or other substances and is the ultimate purchaser of the fuel, then subparagraph (A) of this paragraph shall not apply and the aerial or other applicator shall be treated as having used such fuel on a farm for farming purposes.

"(f) OFF-HIGHWAY BUSINESS USE.—For purposes of subsection (b)(9)—

"(1) IN GENERAL.—The term 'off-highway business use' means any use by a person in a trade or business of such person or in an activity of such person described in section 212 (relating to production of income) otherwise than as a fuel in a highway vehicle—

"(A) which (at the time of such use) is registered, or is required to be registered, for highway use under the laws of any State or foreign country, or

"(B) which, in the case of a highway vehicle owned by the United States, is used on the highway.

"(2) USES IN MOTORBOATS.—The term 'off-highway business use' does not include any use in a motorboat; except that such term shall include any use in—

"(A) a vessel employed in the fisheries or in the whaling business, and

"(B) for purposes of the tax imposed under section 4091, a motorboat in the active conduct of—

"(i) a trade or business of commercial fishing or transporting persons or property for compensation or hire, or

"(ii) any other trade or business unless the motorboat is used predominantly in any activity which is of a type generally considered to constitute entertainment, amusement or recreation.

"(g) QUALIFIED BUS TRANSPORTATION.—For purposes of subsection (b)(10)—

"(1) IN GENERAL.—Fuel is used in qualified bus transportation if it is used in an automobile bus while engaged in—

"(A) furnishing (for compensation) passenger land transportation available to the general public, or

"(B) the transportation of students and employees of schools (as defined in the last sentence of section 4221(d)(7)(C)).

"(2) LIMITATION IN THE CASE OF NONSCHEDULED INTERCITY OR LOCAL BUSES.—Paragraph (1)(A) shall not apply in respect of fuel used in any automobile bus while engaged in furnishing transportation which is not along regular routes unless the seating capacity of such bus is at least 20 adults (not including the driver).

"(h) USE BY AN AIRCRAFT MUSEUM.—For purposes of subsection (b)(11)—

"(1) IN GENERAL.—Fuel is used by an aircraft museum if it is used in an aircraft or vehicle owned by such museum and used exclusively for purposes set forth in paragraph (2)(C).

"(2) AIRCRAFT MUSEUM.—For purposes of this subsection, the term 'aircraft museum' means an organization—

"(A) described in section 501(c)(3) which is exempt from income tax under section 501(a),

"(B) operated as a museum under charter by a State or the District of Columbia, and

"(C) operated exclusively for the procurement, care, and exhibition of aircraft of the type used for combat or transport in World War II.

"(i) USE IN A NONPURPOSE USE.—For purposes of subsection (b)(12), fuel is used in a nonpurpose use if—

"(1) tax was imposed by section 4041 on the sale thereof and the purchaser—

"(A) uses such fuel other than for the use for which it is sold, or

"(B) resells such fuel, or

"(2) tax was imposed by section 4081 on any gasoline blend stock or product commonly used as an additive in gasoline and the purchaser establishes that the ultimate use of such blend stock or product is not to produce gasoline.

"(j) ADVANCE REPAYMENT OF INCREASED DIESEL FUEL TAX TO ORIGINAL PURCHASERS OF DIESEL-POWERED AUTOMOBILES AND LIGHT TRUCKS.—

"(1) IN GENERAL.—Except as provided in subsection (d), the Secretary shall pay (without interest) to the original purchaser of any qualified diesel-powered highway vehicle an amount equal to the diesel fuel differential amount.

"(2) QUALIFIED DIESEL-POWERED HIGHWAY VEHICLE.—For purposes of this subsection, the term 'qualified diesel-powered highway vehicle' means any diesel-powered highway vehicle which—

"(A) has at least 4 wheels,

"(B) has a gross vehicle weight rating of 10,000 pounds or less, and

"(C) is registered for highway use in the United States under the laws of any State.

"(3) DIESEL FUEL DIFFERENTIAL AMOUNT.—For purposes of this subsection, the term 'diesel fuel differential amount' means—

"(A) except as provided in subparagraph (B), $102, or

"(B) in the case of a truck or van, $198.

"(4) ORIGINAL PURCHASER.—For purposes of this subsection—

"(A) IN GENERAL.—Except as provided in subparagraph (B), the term 'original purchaser' means the first person to purchase the qualified diesel-powered vehicle for use other than resale.

"(B) EXCEPTION FOR CERTAIN PERSONS NOT SUBJECT TO FUELS TAX.—The term 'original purchaser' shall not include any State or local government (as defined in section 4221(d)(4)) or any nonprofit educational organization (as defined in section 4221(d)(5)).

"(C) TREATMENT OF DEMONSTRATION USE BY DEALER.—For purposes of subparagraph (A), use as a demonstrator by a dealer shall not be taken into account.

"(5) VEHICLES TO WHICH SUBSECTION APPLIES.—This subsection shall only apply to qualified diesel-powered highway vehicles originally purchased after January 1, 1985, and before January 1, 1995.

"(6) BASIS REDUCTION.—For the purposes of subtitle A, the basis of any qualified diesel-powered highway vehicle shall be reduced by the amount payable under this subsection with respect to such vehicle.

"(k) INCOME TAX CREDIT IN LIEU OF PAYMENT; OTHER SPECIAL RULES.—

"(1) INCOME TAX CREDIT IN LIEU OF PAYMENT.—

"(A) PERSONS NOT SUBJECT TO INCOME TAX.—Payment shall be made under this section only to—

"(i) the United States or an agency or instrumentality thereof, a State, a political subdivision of a State, or any agency or instrumentality of one or more States or political subdivisions, or

"(ii) an organization exempt from tax under section 501(a) (other than an organization required to make a return of the tax imposed under subtitle A for its taxable year).

"(B) EXCEPTION.—Subparagraph (A) shall not apply to a payment of a claim filed under paragraph (2) or (3) of subsection (d).

"(C) ALLOWANCE OF CREDIT AGAINST INCOME TAX.—

"For allowances of credit against the income tax imposed by subtitle A for fuel used by the purchaser in an exempt use, see section 34.

"(2) APPLICABLE LAWS.—

"(A) IN GENERAL.—All provisions of law, including penalties, applicable in respect of the tax with respect to which a payment is claimed under this section shall, insofar as applicable and not inconsistent with this section, apply in respect of such payment to the same extent as if such payment constituted a refund of overpayments of such tax.

"(B) EXAMINATION OF BOOKS AND WITNESSES.—For the purpose of ascertaining the correctness of any claim made under this section, or the correctness of any payment made in respect of any such claim, the Secretary shall have the authority granted by paragraphs (1), (2), and (3) of section 7602(a) (relating to examination of books and witnesses) as if the claimant were the person liable for tax.

"(3) COORDINATION WITH SECTION 6416, ETC.—No amount shall be payable under this section to any person with respect to any fuel if the Secretary determines that the amount of tax for which such payment is sought was not included in the price paid by such person for such fuel. The amount which would (but for this sentence) be payable under this section with respect to any fuel shall be reduced by any other amount which the Secretary determines is payable under this section, or is refundable under any other provision of this title, to any person with respect to such fuel.

"(4) REGULATIONS.—The Secretary may by regulations prescribe the conditions, not inconsistent with the provisions of this section, under which payments may be made under this section.

"(l) FUELS—For purposes of this section, the terms 'gasoline', 'diesel fuel', and 'aviation fuel' have the respective meanings given such terms by sections 4082 and 4092.

"(m) TERMINATION.—Except as otherwise provided in this section, this section shall not apply to any liquid purchased after September 30, 1999. The preceding sentence shall not apply to taxes attributable to any Leaking Underground Storage Tank Trust Fund financing rate."

SEC. 4703. AUTHORITY TO PROVIDE EXCEPTIONS FROM INFORMATION REPORTING WITH RESPECT TO DIESEL FUEL AND AVIATION FUEL.

(a) RETURNS BY PRODUCERS AND IMPORTERS.—Subparagraph (A) of section 4093(c)(4) (relating to returns by producers and importers) is amended by striking "Each producer" and inserting "Except as provided by the Secretary by regulations, each producer".

(b) RETURNS BY PURCHASERS.—Subparagraph (C) of section 4093(c)(4) (relating to returns by purchasers) is amended by striking "Each person" and inserting "Except as provided by the Secretary by regulations, each person".

SEC. 4704. TECHNICAL AND CONFORMING AMENDMENTS.

(1) Sections 6421 and 6427 are hereby repealed.

(2) Section 34 is amended to read as follows:

"SEC. 34. EXCISE TAXES ON FUEL USED FOR EXEMPT PURPOSES.

"There shall be allowed as a credit against the tax imposed by this subtitle for the taxable year an amount equal to the excess of—

"(1) the aggregate amount payable to the taxpayer under section 6420 (determined without regard to section 6420(k)(1)) with respect to—

"(A) exempt uses (as defined in section 6420(b)) during such taxable year, and

"(B) qualified diesel-powered highway vehicles purchased during such taxable year, over

"(2) the portion of such amount for which a claim payable under section 6420(d) is timely filed."

(3) Subsection (c) of section 40 is amended by striking "subsection (b)(2), (k), or (m)" and inserting "subsection (a)(4) or (b)(4)"

(4) Paragraph (2) of section 451(e) is amended by striking "section 6420(c)(3)" and inserting "section 6420(e)(3)".

(5) Clause (i) of section 1274(c)(3)(A) is amended by striking "section 6420(c)(2)" and inserting "section 6420(e)(2)".

(6) Sections 874(a) and 1366(f)(1) are each amended by striking "gasoline and special" and inserting "taxable".

(7) Paragraph (2) of section 882(c) is amended by striking "gasoline" and inserting "taxable fuels".

(8) Subsection (b) of section 4042 is amended by striking paragraph (3) and by redesignating paragraph (4) as paragraph (3).

(9) Subsection (b) of section 4082 is amended by striking "special fuels referred to in section 4041" and inserting "special motor fuels referred to in section 4041(a)".

(10) Section 4083 is amended to read as follows:

"SEC. 4083. CROSS REFERENCE.

"For provision allowing a credit or refund for gasoline used for exempt purposes, see section 6420."

(11) Subsections (c)(2) and (d)(2) of section 4091 are each amended by striking "section 6427(f)(1)" and inserting "section 6420(b)(14)".

(12) Paragraph (1) of section 4093(c) is amended by striking "by the purchaser" and all that follows and inserting "by the purchaser in an exempt use (as defined in section 6420(b) other than paragraph (14) thereof)."

(13) Subparagraph (C) of section 4093(c)(2) is amended by striking "section 6427(b)(2)(A)" and inserting "section 6420(c)(3)(A)".

(14) Clause (i) of section 4093(c)(4)(C) is amended to read as follows:

"(i) whether such use was an exempt use (as defined in section 6420(b)) and the amount of fuel so used,".

(15) Section 4093 is amended by redesignating subsection (e) as subsection (f) and by inserting after subsection (d) the following new subsection:

"(e) USE BY PRODUCER OR IMPORTER.—If any producer or importer uses any taxable fuel, then such producer or importer shall be liable for tax under section 4091 in the same manner as if such fuel were sold by him for such use."

(16) Subsection (f) of section 4093, as redesignated by paragraph (15), is amended to read as follows:

"(e) CROSS REFERENCE.—

"For provision allowing a credit or refund for fuel used for exempt purposes, see section 6420."

(17) Section 6206 is amended to read as follows:

"SEC. 6206. SPECIAL RULES APPLICABLE TO EXCESSIVE FUEL TAX REFUND CLAIMS.

"Any portion of a payment made under section 6420 which constitutes an excessive amount (as defined in section 6675(b)), and any civil penalty provided by section 6675, may be assessed and collected as if—

"(1) it were a tax imposed by the section to which the claim relates, and

"(2) the person making the claim were liable for such tax.

The period for assessing any such portion, and for assessing any such penalty, shall be 3 years from the last day prescribed for filing the claim under section 6420."

(18) Subparagraph (A) of section 6416(a)(2) is amended by striking "(relating to tax on special fuels)" and inserting "(relating to special motor fuels and noncommercial aviation gasoline)".

(19) Paragraph (2) of section 6416(b) is amended—

(A) in the matter preceding subparagraph (A) by striking "subsection (a) or (d) of section 4041" and inserting "section 4041(a)", and

(B) in subparagraph (F) by striking "special fuels referred to in section 4041" and inserting "special motor fuels referred to in section 4041(a)".

(20) Paragraph (9) of section 6504 is amended to read as follows:

"(9) Assessments to recover excessive amounts paid under section 6420 (relating to certain taxes on fuels used for exempt purposes) and assessments of civil penalties under section 6675 for excessive claims under section 6420, see section 6206."

(21) Subsection (h) of section 6511 is amended by striking paragraphs (5) and (6), by redesignating paragraph (7) as paragraph (6), and by inserting after paragraph (4) the following new paragraph:

"(5) For limitations in the case of payments under section 6420 (relating to certain taxes on fuels used for exempt purposes), see section 6420(d)."

(22) Subsection (c) of section 6612 is amended by striking "6420 (relating to payments in the case of gasoline used on the farm for farming purposes) and 6421 (relating to payments in the case of gasoline used for certain nonhighway purposes or by local transit systems)" and inserting "and 6420 (relating to certain taxes on fuels used for exempt purposes)".

(23) Subsection (a) of section 6675 is amended by striking "section 6420 (relating to gasoline used on farms), 6421 (relating to gasoline used for certain nonhighway purposes or by local transit systems), or 6427 (relating to fuels not used for taxable purposes)" and inserting "section 6420 (relating to certain taxes on fuels used for exempt purposes)".

(24) Paragraph (1) of section 6675(b) is amended by striking ", 6421, or 6427, as the case may be,".

(25) Section 7210 is amended by striking "sections 6420(e)(2), 6421(g)(2), 6427(j)(2)" and inserting "sections 6420(k)(3)(B)".

(26) Section 7603, subsections (b) and (c)(2) of section 7604, section 7605, and 7610(c) are each amended by striking "section 6420(e)(2), 6421(g)(2), 6427(j)(2)," each place it appears and inserting "section 6420(k)(2)(B)".

(27) Sections 7605 and 7609(c)(1) are each amended by striking "section 6420(e)(2), 6421(g)(2), or 6427(j)(2)" and inserting "section 6420(k)(2)(B)".

(28) Paragraph (1) of section 9502(b) is amended by striking "subsections (c) and (e) of section 4041 (taxes on aviation fuel)" and inserting "section 4041(b) (relating to taxes on noncommercial aviation gasoline)".

(29) Paragraph (2) of section 9502(d) is amended by striking "fuel used in aircraft" and all that follows and inserting "fuel used in aircraft, under section 6420 (relating to certain taxes on fuels used for exempt purposes)."

(30) Paragraph (1) of section 9502(e) is amended by striking "4041(c)(1) and".

(31) Subparagraph (A) of section 9503(b)(1) is amended to read as follows:

"(A) section 4041 (relating to special motor fuels and noncommercial aviation gasoline),".

(32) Paragraph (4) of section 9503(b) is amended to read as follows:

"(4) CERTAIN ADDITIONAL TAXES NOT TRANSFERRED TO HIGHWAY TRUST FUND.—For purposes of paragraphs (1) and (2), the taxes imposed by sections 4041, 4081, and 4091 shall be taken into account only to the extent attributable to the Highway Trust Fund financing rates under such sections."

(33)(A) Clause (i) of section 9503(c)(2)(A) is amended to read as follows:

"(i) the amounts paid before July 1, 1996, under section 6420 (relating to certain taxes on fuels used for exempt purposes) on the basis of claims filed for periods ending before October 1, 1995, and".

(B) For purposes of section 9503(c)(2)(A)(i) of the Internal Revenue Code of 1986, the reference to section 6420 shall be treated as including a reference to sections 6420, 6421, and 6427 of such Code as in effect before the enactment of this Act.

(34) Clause (ii) of section 9503(c)(2)(A) is amended by striking "gasoline, special fuels, and lubricating oil" each place it appears and inserting "taxable fuels".

(35) Subparagraph (D) of section 9503(c)(4) is amended by striking "section 4041(a)(2)" and inserting "section 4041(a)".

(36) Subparagraph (A) of section 9503(e)(5) is amended by striking "section 6427(g)" and inserting "section 6420(j)".

(37) Paragraph (1) of section 9508(b) is amended to read as follows:

"(1) taxes received in the Treasury under section 4041 (relating to special motor fuels and noncommercial aviation gasoline) to the extent attributable to the Leaking Underground Storage Tank Trust Fund financing rates applicable under such section,".

(38) Subparagraph (A) of section 9508(c)(2) is amended by striking "equivalent to—" and all that follows and inserting the following: "equivalent to—

"(i) amounts paid under section 6420 (relating to certain taxes on fuels used for exempt purposes), and

"(ii) credits allowed under section 34,

with respect to so much of the taxes imposed by sections 4041, 4081, and 4091 as are attributable to the Leaking Underground Storage Tank Trust Fund financing rates applicable under such sections."

(39) The table of sections for subpart C of part IV of subchapter A of chapter 1 is amended by striking the item relating to section 34 and inserting the following:

"Sec. 34. Excise taxes on fuels used for exempt purposes."

(40) The table of sections for subchapter B of chapter 31 is amended by striking the item relating to section 4041 and inserting the following:

"Sec. 4041. Special motor fuels and noncommercial aviation gasoline."

(41) The table of sections for subpart A of part III of subchapter A of chapter 32 is amended by striking the item relating to section 4083 and inserting the following:

"Sec. 4083. Cross reference."

(42) The table of sections for subchapter B of chapter 65 is amended by striking the items relating to sections 6421 and 6427 and by striking the item relating to section 6420 and inserting the following new item:

"Sec. 6420. Certain taxes on fuels used for exempt purposes."

(43) The table of sections for subchapter A of chapter 63 is amended by striking the item relating to section 6206 and inserting the following new item:

"Sec. 6206. Special rules applicable to excessive fuel tax refund claims."

SEC. 4705. EFFECTIVE DATE.

The amendments made by this part shall take effect on January 1, 1993.

PART II—PROVISIONS RELATED TO DISTILLED SPIRITS, WINES, AND BEER

SEC. 4711. CREDIT OR REFUND FOR IMPORTED BOTTLED DISTILLED SPIRITS RETURNED TO DISTILLED SPIRITS PLANT.

(a) IN GENERAL.—Paragraph (1) of section 5008(c) (relating to distilled spirits returned to bonded premises) is amended by striking "withdrawn from bonded premises on payment or determination of tax" and inserting "on which tax has been determined or paid".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall take effect on the 180th day after the date of the enactment of this Act.

SEC. 4712. AUTHORITY TO CANCEL OR CREDIT EXPORT BONDS WITHOUT SUBMISSION OF RECORDS.

(a) IN GENERAL.—Subsection (c) of section 5175 (relating to export bonds) is amended by striking "on the submission of" and all that follows and inserting "if there is such proof of exportation as the Secretary may by regulations require."

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall take effect on the 180th day after the date of the enactment of this Act.

SEC. 4713. REPEAL OF REQUIRED MAINTENANCE OF RECORDS ON PREMISES OF DISTILLED SPIRITS PLANT.

(a) IN GENERAL.—Subsection (c) of section 5207 (relating to records and reports) is amended by striking "shall be kept on the premises where the operations covered by the record are carried on and".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall take effect on the 180th day after the date of the enactment of this Act.

SEC. 4714. FERMENTED MATERIAL FROM ANY BREWERY MAY BE RECEIVED AT A DISTILLED SPIRITS PLANT.

(a) IN GENERAL.—Paragraph (2) of section 5222(b) (relating to production, receipt, removal, and use of distilling materials) is amended to read as follows:

"(2) beer conveyed without payment of tax from brewery premises, beer which has been lawfully removed from brewery premises upon determination of tax, or".

(b) CLARIFICATION OF AUTHORITY TO PERMIT REMOVAL OF BEER WITHOUT PAYMENT OF TAX FOR USE AS DISTILLING MATERIAL.—Section 5053 (relating to exemptions) is amended by redesignating subsection (f) as subsection (i)

and by inserting after subsection (e) the following new subsection:

"(f) REMOVAL FOR USE AS DISTILLING MATERIAL.—Subject to such regulations as the Secretary may prescribe, beer may be removed from a brewery without payment of tax to any distilled spirits plant for use as distilling material."

(c) CLARIFICATION OF REFUND AND CREDIT OF TAX.—Section 5056 (relating to refund and credit of tax, or relief from liability) is amended—

(1) by redesignating subsection (c) as subsection (d) and by inserting after subsection (b) the following new subsection:

"(c) BEER RECEIVED AT A DISTILLED SPIRITS PLANT.—Any tax paid by any brewer on beer produced in the United States may be refunded or credited to the brewer, without interest, or if the tax has not been paid, the brewer may be relieved of liability therefor, under regulations as the Secretary may prescribe, if such beer is received on the bonded premises of a distilled spirits plant pursuant to the provisions of section 5222(b)(2), for use in the production of distilled spirits.", and

(2) by striking "or rendering unmerchantable" in subsection (d) (as so redesignated) and inserting "rendering unmerchantable, or receipt on the bonded premises of a distilled spirits plant".

(d) EFFECTIVE DATE.—The amendments made by this section shall take effect on the 180th day after the date of the enactment of this Act.

SEC. 4715. REPEAL OF REQUIREMENT FOR WHOLESALE DEALERS IN LIQUORS TO POST SIGN.

(a) IN GENERAL.—Section 5115 (relating to sign required on premises) is hereby repealed.

(b) CONFORMING AMENDMENTS.—

(1) Subsection (a) section 5681 is amended by striking ", and every wholesale dealer in liquors," and by striking "section 5115(a) or".

(2) Subsection (c) of section 5681 is amended—

(A) by striking "or wholesale liquor establishment, on which no sign required by section 5115(a) or" and inserting "on which no sign required by", and

(B) by striking "or wholesale liquor establishment, or who" and inserting "or who".

(3) The table of sections for subpart D of part II of subchapter A of chapter 51 is amended by striking the item relating to section 5115.

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

SEC. 4716. REFUND OF TAX TO WINE RETURNED TO BOND NOT LIMITED TO UNMERCHANTABLE WINE.

(a) IN GENERAL.—Subsection (a) of section 5044 (relating to refund of tax on unmerchantable wine) is amended by striking "as unmerchantable".

(b) CONFORMING AMENDMENTS.—

(1) Section 5361 is amended by striking "unmerchantable".

(2) The section heading for section 5044 is amended by striking "UNMERCHANTABLE".

(3) The item relating to section 5044 in the table of sections for subpart C of part I of subchapter A of chapter 51 is amended by striking "unmerchantable".

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect on the 180th day after the date of the enactment of this Act.

SEC. 4717. USE OF ADDITIONAL AMELIORATING MATERIAL IN CERTAIN WINES.

(a) IN GENERAL.—Subparagraph (D) of section 5384(b)(2) (relating to ameliorated fruit and berry wines) is amended by striking "loganberries, currants, or gooseberries," and inserting "any fruit or berry with a natural fixed acid of 20 parts per thousand or more (before any correction of such fruit or berry)".

(b) EFFECTIVE DATE.—The amendment made by this section shall take effect on the 180th day after the date of the enactment of this Act.

SEC. 4718. DOMESTICALLY-PRODUCED BEER MAY BE WITHDRAWN FREE OF TAX FOR USE OF FOREIGN EMBASSIES, LEGATIONS, ETC.

(a) IN GENERAL.—Section 5053 (relating to exemptions) is amended by inserting after subsection (f) the following new subsection:

"(g) REMOVALS FOR USE OF FOREIGN EMBASSIES, LEGATIONS, ETC.—

"(1) IN GENERAL.—Subject to such regulations as the Secretary may prescribe—

"(A) beer may be withdrawn from the brewery without payment of tax for transfer to any customs bonded warehouse for entry pending withdrawal therefrom as provided in subparagraph (B), and

"(B) beer entered into any customs bonded warehouse under subparagraph (A) may be withdrawn for consumption in the United States by, and for the official and family use of, such foreign governments, organizations, and individuals as are entitled to withdraw imported beer from such warehouses free of tax.

Beer transferred to any customs bonded warehouse under subparagraph (A) shall be entered, stored, and accounted for in such warehouse under such regulations and bonds as the Secretary may prescribe, and may be withdrawn therefrom by such governments, organizations, and individuals free of tax under the same conditions and procedures as imported beer.

"(2) OTHER RULES TO APPLY.—Rules similar to the rules of paragraphs (2) and (3) of section 5362(e) of such section shall apply for purposes of this subsection."

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall take effect on the 180th day after the date of the enactment of this Act.

SEC. 4719. BEER MAY BE WITHDRAWN FREE OF TAX FOR DESTRUCTION.

(a) IN GENERAL.—Section 5053 is amended by inserting after subsection (g) the following new subsection:

"(h) REMOVALS FOR DESTRUCTION.—Subject to such regulations as the Secretary may prescribe, beer may be removed from the brewery without payment of tax for destruction."

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall take effect on the 180th day after the date of the enactment of this Act.

SEC. 4720. AUTHORITY TO ALLOW DRAWBACK ON EXPORTED BEER WITHOUT SUBMISSION OF RECORDS.

(a) IN GENERAL.—The first sentence of section 5055 (relating to drawback of tax on beer) is amended by striking "found to have been paid" and all that follows and inserting "paid on such beer if there is such proof of exportation as the Secretary may by regulations require."

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall take effect on the 180th day after the date of the enactment of this Act.

SEC. 4721. TRANSFER TO BREWERY OF BEER IMPORTED IN BULK WITHOUT PAYMENT OF TAX.

(a) IN GENERAL.—Part II of subchapter G of chapter 51 is amended by adding at the end thereof the following new section:

"SEC. 5418. BEER IMPORTED IN BULK.

"Beer imported or brought into the United States in bulk containers may, under such regulations as the Secretary may prescribe, be withdrawn from customs custody and transferred in such bulk containers to the premises of a brewery without payment of the internal revenue tax imposed on such beer. The proprietor of a brewery to which such beer is transferred shall become liable for the tax on the beer withdrawn from customs custody under this section upon release of the beer from customs custody, and the importer, or the person bringing such beer into the United States, shall thereupon be relieved of the liability for such tax."

(b) CLERICAL AMENDMENT.—The table of sections for such part II is amended by adding at the end thereof the following new item:

"Sec. 5418. Beer imported in bulk."

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect on the 180th day after the date of the enactment of this Act.

PART III—OTHER EXCISE TAX PROVISIONS

SEC. 4731. AUTHORITY TO GRANT EXEMPTIONS FROM REGISTRATION REQUIREMENTS.

(a) IN GENERAL.—The first sentence of section 4222 (relating to registration) is amended to read as follows: "Except as provided in subsection (b), section 4221 shall not apply with respect to the sale of any article by or to any person who is required by the Secretary to be registered under this section and who is not so registered."

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to sales after the 180th day after the date of the enactment of this Act.

SEC. 4732. SMALL MANUFACTURERS EXEMPT FROM FIREARMS EXCISE TAX.

(a) IN GENERAL.—Section 4182 (relating to exemptions) is amended by redesignating subsection (c) as subsection (d) and by inserting after subsection (b) the following new subsection:

"(c) SMALL MANUFACTURERS, ETC.—

"(1) IN GENERAL.—The tax imposed by section 4181 shall not apply to any article described in such section if manufactured, produced, or imported by a manufacturer, producer, or importer who manufactures, produces, or imports less than 50 of such articles during the calendar year.

"(2) CONTROLLED GROUP.—Persons who are members of the same controlled group of corporations shall be treated as 1 manufacturer, producer, or importer. For purposes of the preceding sentence, the term 'controlled group of corporations' has the meaning given to such term by section 1563(a), except that 'more than 50 percent' shall be substituted for 'at least 80 percent' each place it appears in such section.".

(b) EFFECTIVE DATE; REFUNDS.—

(1) EFFECTIVE DATE.—The amendments made by this section shall apply to articles sold by the manufacturer, producer, or importer after September 30, 1983.

(2) WAIVER OF STATUTE OF LIMITATIONS.—In the case of any taxable year ending before the date of the enactment of this Act—

(A) the period for claiming a credit or refund of any overpayment of tax resulting from the application of the amendments made by this section shall not expire before the date which is 1 year after the date of the enactment of this Act, and

(B) if, after the application of subparagraph (A), credit or refund of any overpay-

ment of tax resulting from the application of the amendments made by this section is prevented at any time before the close of such 1-year period by the operation of any law or rule of law (including res judicata), credit or refund of such overpayment (to the extent attributable to the application of the amendments made by this section) may, nevertheless, be made or allowed if claim therefor is filed before the close of such 1-year period.

SEC. 4733. REPEAL OF EXPIRED PROVISIONS.

(a) PIGGY-BACK TRAILERS.—Section 4051 is amended by striking subsection (d) and by redesignating subsection (e) as subsection (d).

(b) DEEP SEABED MINING.—

(1) Subchapter F of chapter 36 (relating to tax on removal of hard mineral resources from deep seabed) is hereby repealed.

(2) The table of subchapters for chapter 36 is amended by striking the item relating to subchapter F.

Subtitle H—Administrative Provisions

PART I—GENERAL PROVISIONS

SEC. 4801. SIMPLIFICATION OF DEPOSIT REQUIREMENTS FOR SOCIAL SECURITY, RAILROAD RETIREMENT, AND WITHHELD INCOME TAXES.

(a) IN GENERAL.—Subsection (g) of section 6302 (relating to deposits of social security taxes and withheld income taxes) is amended to read as follows:

"(g) DEPOSITS OF SOCIAL SECURITY, RAILROAD RETIREMENT, AND WITHHELD INCOME TAXES.—

"(1) GENERAL RULE.—Except as otherwise provided in this subsection—

"(A) employment taxes attributable to payments on Wednesday, Thursday, or Friday of any week shall be deposited on or before the following Tuesday, and

"(B) employment taxes attributable to payments on Saturday, Sunday, Monday, or Tuesday of any week shall be deposited on or before the following Friday.

"(2) SMALL DEPOSITORS.—

"(A) IN GENERAL.—If any person is a small depositor for any calendar quarter, such person shall make deposits of employment taxes attributable to payments during any month in such quarter on or before the 15th day of the following month.

"(B) SMALL DEPOSITOR.—For purposes of this subsection, a person is a small depositor for any calendar quarter if, for each calendar quarter in the base period, the amount of employment taxes attributable to payments made by such person during such calendar quarter was $12,000 or less. For purposes of the preceding sentence, the base period for any calendar quarter is the 4 calendar quarters ending with the second preceding calendar quarter.

"(C) CESSATION AS SMALL DEPOSITOR.—A person shall cease to be treated as a small depositor for a calendar quarter after any day on which such person is required to make a deposit under paragraph (3).

"(3) LARGE DEPOSITORS.—Notwithstanding paragraphs (1) and (2), if, on any day, any person has $100,000 or more of employment taxes for deposit, such taxes shall be deposited on or before the next day.

"(4) SAFE HARBOR.—

"(A) IN GENERAL.—A person shall be treated as depositing the required amount of employment taxes in any deposit if the shortfall does not exceed the greater of—

"(i) $100, or

"(ii) 2 percent of the amount of employment taxes required to be deposited in such deposit (determined without regard to this paragraph).

Such shortfall shall be deposited as required by the Secretary by regulations.

"(B) SHORTFALL.—For purposes of this paragraph, the term 'shortfall' means, with respect to any deposit, the excess of the amount of employment taxes required to be deposited in such deposit (determined without regard to this paragraph) over the amount (if any) thereof deposited on or before the last date prescribed therefor.

"(5) DEPOSIT REQUIRED ONLY ON BANKING DAYS.—If taxes are required to be deposited under this subsection on any day which is not a banking day, such taxes shall be treated as timely deposited if deposited on the first banking day thereafter.

"(6) EMPLOYMENT TAXES.—For purposes of this subsection, the term 'employment taxes' means the taxes imposed by chapters 21, 22, and 24.

"(7) SUBSECTION TO APPLY ONLY TO REQUIRED DEPOSITS.—This subsection shall not apply to employment taxes which are not required to be deposited under the regulations prescribed by the Secretary under this section.

"(8) REGULATIONS.—The Secretary may prescribe regulations—

"(A) specifying employment tax deposit requirements for persons who fail to comply with the requirements of this subsection,

"(B) specifying circumstances under which a person shall be treated as a small depositor for purposes of this subsection notwithstanding that such person is not described in paragraph (2)(B),

"(C) specifying modifications to the provisions of this subsection for end-of-quarter periods, and

"(D) establishing deposit requirements for taxes imposed by section 3406 which apply in lieu of the requirements of this subsection."

(b) CONFORMING AMENDMENT.—Section 226 of the Railroad Retirement Solvency Act of 1983 is hereby repealed.

(c) EFFECTIVE DATE.—The amendment made by this section shall apply to amounts attributable to payments made after December 31, 1992.

SEC. 4802. SIMPLIFICATION OF EMPLOYMENT TAXES ON DOMESTIC SERVICES.

(a) THRESHOLD REQUIREMENT FOR SOCIAL SECURITY TAXES.—

(1) Subparagraph (B) of section 3121(a)(7) (defining wages) is amended to read as follows:

"(B) cash remuneration paid by an employer in any calendar year to an employee for domestic service in a private home of the employer, if the cash remuneration paid in such year by the employer to the employee for such service is less than $300. As used in this subparagraph, the term 'domestic service in a private home of the employer' does not include service described in subsection (g)(5);"

(2) Subparagraph (B) of section 209(a)(6) of the Social Security Act is amended to read as follows:

"(B) Cash remuneration paid by an employer in any calendar year to an employee for domestic service in a private home of the employer, if the cash remuneration paid in such year by the employer to the employee for such service is less than $300. As used in this subparagraph, the term 'domestic service in a private home of the employer' does not include service described in section 210(f)(5)."

(3) The second sentence of section 3102(a) is amended—

(A) by striking "calendar quarter" each place it appears and inserting "calendar year", and

(B) by striking "$50" and inserting "$300".

(b) COORDINATION OF COLLECTION OF DOMESTIC SERVICE EMPLOYMENT WITH COLLECTION OF INCOME TAXES.—

(1) IN GENERAL.—Chapter 25 (relating to general provisions relating to employment taxes) is amended by adding at the end thereof the following new section:

"SEC. 3510. COORDINATION OF COLLECTION OF DOMESTIC SERVICE EMPLOYMENT TAXES WITH COLLECTION OF INCOME TAXES.

"(a) GENERAL RULE.—Except as otherwise provided in this section—

"(1) returns with respect to domestic service employment taxes shall be made on a calendar year basis,

"(2) any such return for any calendar year shall be filed on or before the 15th day of the fourth month following the close of the employer's taxable year which begins in such calendar year, and

"(3) no requirement to make deposits (or to pay installments under section 6157) shall apply with respect to such taxes.

"(b) DOMESTIC SERVICE EMPLOYMENT TAXES SUBJECT TO ESTIMATED TAX PROVISIONS.—

"(1) IN GENERAL.—Solely for purposes of section 6654, domestic service employment taxes imposed with respect to any calendar year shall be treated as a tax imposed by chapter 2 for the taxable year of the employer which begins in such calendar year.

"(2) ANNUALIZATION.—Under regulations prescribed by the Secretary, appropriate adjustments shall be made in the application of section 6654(d)(2) in respect of the amount treated as tax under paragraph (1).

"(3) TRANSITIONAL RULE.—For purposes of applying section 6654 to a taxable year beginning in 1992, the amount referred to in clause (ii) of section 6654(d)(1)(B) shall be increased by 90 percent of the amount treated as tax under paragraph (1) for such taxable year.

"(c) DOMESTIC SERVICE EMPLOYMENT TAXES.—For purposes of this section, the term 'domestic service employment taxes' means—

"(1) any taxes imposed by chapter 21 or 23 on remuneration paid for domestic service in a private home of the employer, and

"(2) any amount withheld from such remuneration pursuant to an agreement under section 3402(p).

For purposes of this subsection, the term 'domestic service in a private home of the employer' does not include service described in section 3121(g)(5).

"(d) EXCEPTION WHERE EMPLOYER LIABLE FOR OTHER EMPLOYMENT TAXES.—To the extent provided in regulations prescribed by the Secretary, this section shall not apply to any employer for any calendar year if such employer is liable for any tax under this subtitle with respect to remuneration for services other than domestic service in a private home of the employer.

"(e) AUTHORITY TO ENTER INTO AGREEMENTS TO COLLECT STATE UNEMPLOYMENT TAXES.—

"(1) IN GENERAL.—The Secretary is hereby authorized to enter into an agreement with any State to collect, as the agent of such State, such State's unemployment taxes imposed on remuneration paid for domestic service in a private home of the employer. Any taxes to be collected by the Secretary pursuant to such an agreement shall be treated as domestic service employment taxes for purposes of this section.

"(2) TRANSFERS TO STATE ACCOUNT.—Any amount collected under an agreement referred to in paragraph (1) shall be transferred by the Secretary to the account of the State in the Unemployment Trust Fund.

"(3) SUBTITLE F MADE APPLICABLE.—For purposes of subtitle F, any amount required to be collected under an agreement under paragraph (1) shall be treated as a tax imposed by chapter 23.

"(4) STATE.—For purposes of this subsection, the term 'State' has the meaning given such term by section 3306(j)(1)."

(2) CLERICAL AMENDMENT.—The table of sections for chapter 25 is amended by adding at the end thereof the following:

"Sec. 3510. Coordination of collection of domestic service employment taxes with collection of income taxes."

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to remuneration paid in calendar years after 1992.

SEC. 4803. USE OF REPRODUCTIONS OF RETURNS STORED IN DIGITAL IMAGE FORMAT.

(a) IN GENERAL.—Paragraph (2) of section 6103(p) (relating to procedure and recordkeeping) is amended by adding at the end thereof the following new subparagraph:

"(D) REPRODUCTION FROM DIGITAL IMAGES.—For purposes of this paragraph, the term 'reproduction' includes a reproduction from digital images."

(b) STUDY.—The Comptroller General of the United States shall conduct a study of available digital image technology for the purpose of determining the extent to which reproductions of documents stored using that technology accurately reflect the data on the original document and the appropriate period for retaining the original document. Not later than 1 year after the date of the enactment of this Act, a report on the results of such study shall be submitted to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate.

SEC. 4804. REPEAL OF AUTHORITY TO DISCLOSE WHETHER PROSPECTIVE JUROR HAS BEEN AUDITED.

(a) IN GENERAL.—Subsection (h) of section 6103 (relating to disclosure to certain Federal officers and employees for purposes of tax administration, etc.) is amended by striking paragraph (5) and by redesignating paragraph (6) as paragraph (5).

(b) CONFORMING AMENDMENT.—Paragraph (4) of section 6103(p) is amended by striking "(h)(6)" each place it appears and inserting "(h)(5)".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to judicial proceedings pending on, or commenced after, the date of the enactment of this Act.

SEC. 4805. REPEAL OF SPECIAL AUDIT PROVISIONS FOR SUBCHAPTER S ITEMS.

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

(b) CONSISTENT TREATMENT REQUIRED.—Section 6037 (relating to return of S corporation) is amended by adding at the end thereof the following new subsection:

"(c) SHAREHOLDER'S RETURN MUST BE CONSISTENT WITH CORPORATE RETURN OR SECRETARY NOTIFIED OF INCONSISTENCY.—

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

"(2) NOTIFICATION OF INCONSISTENT TREATMENT.—

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

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

"(II) the corporation has not filed a return, and

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

paragraph (1) shall not apply to such item.

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

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

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

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

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

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

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

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

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

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

(c) CONFORMING AMENDMENTS.—

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

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

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

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

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

SEC. 4806. CLARIFICATION OF STATUTE OF LIMITATIONS.

(a) IN GENERAL.—Subsection (a) of section 6501 (relating to limitations on assessment and collection) is amended by adding at the end thereof the following new sentence: "For purposes of this chapter, the term 'return' means the return required to be filed by the taxpayer (and does not include a return of any person from whom the taxpayer has received an item of income, gain, loss, deduction, or credit)."

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

PART II—TAX COURT PROCEDURES

SEC. 4811. OVERPAYMENT DETERMINATIONS OF TAX COURT.

(a) APPEAL OF ORDER.—Paragraph (2) of section 6512(b) (relating to jurisdiction to enforce) is amended by adding at the end the following new sentence: "An order of the Tax Court disposing of a motion under this paragraph shall be reviewable in the same manner as a decision of the Tax Court, but only with respect to the matters determined in such order."

(b) DENIAL OF JURISDICTION REGARDING CERTAIN CREDITS AND REDUCTIONS.—Subsection (b) of section 6512 (relating to overpayment determined by Tax Court) is amended by adding at the end the following new paragraph:

"(4) DENIAL OF JURISDICTION REGARDING CERTAIN CREDITS AND REDUCTIONS.—The Tax Court shall have no jurisdiction under this subsection to restrain or review any credit or reduction made by the Secretary under section 6402."

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

SEC. 4812. AWARDING OF ADMINISTRATIVE COSTS.

(a) RIGHT TO APPEAL TAX COURT DECISION.—Subsection (f) of section 7430 (relating to right of appeal) is amended by adding at the end the following new paragraph:

"(3) APPEAL OF TAX COURT DECISION.—An order of the Tax Court disposing of a petition under paragraph (2) shall be reviewable in the same manner as a decision of the Tax Court, but only with respect to the matters determined in such order."

(b) PERIOD FOR APPLYING TO IRS FOR COSTS.—Subsection (b) of section 7430 (relating to limitations) is amended by adding at the end the following new paragraph:

"(5) PERIOD FOR APPLYING TO IRS FOR ADMINISTRATIVE COSTS.—An award may be made under subsection (a) for reasonable administrative costs only if the prevailing party files an application for such costs before the 91st day after the date on which the party was determined to be the prevailing party under subsection (c)(4)(B)."

(c) PERIOD FOR PETITIONING OF TAX COURT FOR REVIEW OF DENIAL OF COSTS.—Paragraph (2) of section 7430(f) (relating to right of appeal) is amended—

(1) by striking "appeal to" and inserting "the filing of a petition for review with", and

(2) by adding at the end the following new sentence: "If the Secretary sends by certified or registered mail a notice of such decision to the petitioner, no proceeding in the Tax Court may be initiated under this paragraph unless such petition is filed before the 91st day after the date of such mailing."

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to civil actions or proceedings commenced after the date of the enactment of this Act.

SEC. 4813. REDETERMINATION OF INTEREST PURSUANT TO MOTION.

(a) IN GENERAL.—Paragraph (3) of section 7481(c) (relating to jurisdiction over interest determinations) is amended by striking "petition" and inserting "motion".

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

SEC. 4814. APPLICATION OF NET WORTH REQUIREMENT FOR AWARDS OF LITIGATION COSTS.

(a) IN GENERAL.—Paragraph (4) of section 7430(c) (defining prevailing party) is amended by adding at the end thereof the following new subparagraph:

"(C) SPECIAL RULES FOR APPLYING NET WORTH REQUIREMENT.—In applying the requirements of section 2412(d)(2)(B) of title 28, United States Code, for purposes of subparagraph (A)(iii) of this paragraph—

"(i) the net worth limitation in clause (i) of such section shall apply to—

"(I) an estate but shall be determined as of the date of the decedent's death, and

"(II) a trust but shall be determined as of the last day of the taxable year involved in the proceeding, and

"(ii) individuals filing a joint return shall be treated as 1 individual for purposes of clause (i) of such section, except in the case of a spouse relieved of liability under section 6013(e)."

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

PART III—AUTHORITY FOR CERTAIN COOPERATIVE AGREEMENTS

SEC. 4821. COOPERATIVE AGREEMENTS WITH STATE TAX AUTHORITIES.

(a) GENERAL RULE.—Chapter 77 (relating to miscellaneous provisions) is amended by adding at the end thereof the following new section:

"SEC. 7524. COOPERATIVE AGREEMENTS WITH STATE TAX AUTHORITIES.

"(a) AUTHORIZATION OF AGREEMENTS.—The Secretary is hereby authorized to enter into cooperative agreements with State tax authorities for purposes of enhancing joint tax administration. Such agreements may provide for—

"(1) joint filing of Federal and State income tax returns,

"(2) single processing of such returns,

"(3) joint collection of taxes (other than Federal income taxes), and

"(4) such other provisions as may enhance joint tax administration.

"(b) SERVICES ON REIMBURSABLE BASIS.—Any agreement under subsection (a) may require reimbursement for services provided by either party to the agreement.

"(c) AVAILABILITY OF FUNDS.—Any funds appropriated for purposes of the administration of this title shall be available for purposes of carrying out the Secretary's responsibility under an agreement entered into under subsection (a). Any reimbursement received pursuant to such an agreement shall be credited to the amount so appropriated.

"(d) STATE TAX AUTHORITY.—For purposes of this section, the term 'State tax authority' means agency, body, or commission referred to in section 6103(d)(1)."

(b) CLERICAL AMENDMENT.—The table of sections for chapter 77 is amended by adding at the end thereof the following new item:

"Sec. 7524. Cooperative agreements with State tax authorities."

TITLE V—TAXPAYER BILL OF RIGHTS 2

SEC 5000. SHORT TITLE.

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

Subtitle A—Taxpayer Advocate

SEC. 5001. ESTABLISHMENT OF POSITION OF TAXPAYER ADVOCATE WITHIN INTERNAL REVENUE SERVICE.

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

"(d) OFFICE OF TAXPAYER ADVOCATE.—

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

"(2) FUNCTIONS OF OFFICE.—

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

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

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

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

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

"(B) ANNUAL REPORTS.—

"(i) OBJECTIVES.—Not later than October 31 of each calendar year after 1991, the Taxpayer Advocate shall report to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate on the objectives of the Taxpayer Advocate for the following calendar year. Any such report shall contain full and substantive analysis, in addition to statistical information.

"(ii) ACTIVITIES.—Not later than December 31 of each calendar year after 1991, the Taxpayer Advocate shall report to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate on the activities of the Taxpayer Advocate during the fiscal year ending during such calendar year. Any such report shall contain full and substantive analysis, in addition to statistical information, and shall—

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

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

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

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

"(V) contain an inventory of the items described in subclauses (I), (II), and (III) for which action remains to be completed and the period during which each item has remained on such inventory,

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

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

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

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

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

(b) CONFORMING AMENDMENTS.—

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

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

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

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

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

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

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

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

SEC. 5002. EXPANSION OF AUTHORITY TO ISSUE TAXPAYER ASSISTANCE ORDERS.

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

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

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

(2) by striking "cease any action" and inserting "cease any action, take any action".

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

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

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

Subtitle B—Modifications to Installment Agreement Provisions

SEC. 5101. NOTIFICATION OF REASONS FOR TERMINATION OR DENIAL OF INSTALLMENT AGREEMENTS.

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

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

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

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

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

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

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

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

"(2) such notice includes an explanation why the Secretary intends to deny such request.

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

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

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

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

SEC. 5102. ADMINISTRATIVE REVIEW OF DENIAL OF REQUEST FOR, OR TERMINATION OF, INSTALLMENT AGREEMENT.

(a) GENERAL RULE.—Section 6159 (relating to agreements for payment of tax liability in installments), as amended by section 5101, is amended by adding at the end thereof the following new subsection:

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

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

Subtitle C—Interest

SEC. 5201. EXPANSION OF AUTHORITY TO ABATE INTEREST.

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

(1) by striking "any error or delay" each place it appears and inserting "any unreasonable and excessive error or delay",

(2) by striking "in performing a ministerial act" each place it appears,

(3) by striking "may abate" and inserting "shall abate (or refund)",

(4) by inserting "the taxpayer has fully cooperated in resolving outstanding issues," after "taxpayer involved,", and

(5) by adding at the end thereof the following new sentence: "In order to allow the taxpayer to develop the facts of such error or delay, the Internal Revenue Service shall provide to the taxpayer, within 30 days of the taxpayer's written request (in such form as the Secretary provides), all information and copies of relevant records in the possession of the Internal Revenue Service with respect to such taxpayer's case."

(b) CLERICAL AMENDMENT.—The subsection heading for subsection (e) of section 6404 is amended by striking "ASSESSMENTS" and inserting "ABATEMENT".

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

SEC. 5202. EXTENSION OF INTEREST-FREE PERIOD FOR PAYMENT OF TAX AFTER NOTICE AND DEMAND.

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

"(3) PAYMENTS MADE WITHIN SPECIFIED PERIOD AFTER NOTICE AND DEMAND.—If notice and demand is made for payment of any amount and if such amount is paid within 21 days (10 days if the amount for which such notice and demand is made equals or exceeds $100,000) after the date of such notice and demand, interest under this section on the amount so paid shall not be imposed for the period after the date of such notice and demand."

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply in the case of any notice and demand given after the date 6 months after the date of the enactment of this Act.

Subtitle D—Joint Returns

SEC. 5301. REQUIREMENT OF SEPARATE DEFICIENCY NOTICES IN CERTAIN CASES.

(a) GENERAL RULE.—Paragraph (2) of section 6212(b) (relating to address for notice of deficiency) is amended to read as follows:

"(2) JOINT INCOME TAX RETURN.—In the case of a joint income tax return filed by a husband and wife, any notice of deficiency (described in paragraph (1)) may be a single joint notice, except that if—

"(A) such spouses did not file a joint return within each other for the most recent taxable year for which data are available on the master files of the Internal Revenue Service, or

"(B) the Secretary has been notified by either spouse that separate residences have been established,

then, in lieu of the single joint notice, a duplicate original of the joint notice shall be sent by certified mail or registered mail to each spouse at such spouse's last known address."

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall take effect on the date 6 months after the date of the enactment of this Act.

SEC. 5302. DISCLOSURE OF COLLECTION ACTIVITIES.

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

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

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

SEC. 5303. JOINT RETURN MAY BE MADE AFTER SEPARATE RETURNS WITHOUT FULL PAYMENT OF TAX.

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

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

SEC. 5304. REPRESENTATION OF ABSENT DIVORCED OR SEPARATED SPOUSE BY OTHER SPOUSE.

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

"(c) REPRESENTATION OF ABSENT DIVORCED OR SEPARATED SPOUSE BY OTHER SPOUSE.—In the case of an examination of an individual with respect to a joint income tax return filed by such individual and the individual's spouse who is no longer married to such individual or no longer resides in the same household and is absent from such examination, the individual may not represent the absent spouse at the examination unless the absent spouse acknowledges such representation in writing."

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

Subtitle E—Collection Activities

SEC. 5401. NOTICE OF PROPOSED DEFICIENCY.

(a) IN GENERAL.—Subchapter B of chapter 63 (relating to assessment) is amended by inserting after section 6211 the following new section:

"SEC. 6211A. NOTICE OF PROPOSED DEFICIENCY.

"(a) IN GENERAL.—If, after the examination of a return, the Secretary determines that there may be a deficiency in respect of any tax imposed by subtitle A or B or chapter 41, 42, 43, 44, or 45, the Secretary shall send a notice of proposed deficiency to the taxpayer by certified mail or registered mail to an address as determined under section 6212(b).

"(b) TIMING OF NOTICE.—

"(1) IN GENERAL.—The mailing of the notice of proposed deficiency shall precede any mailing of a deficiency notice under section 6212 by at least 60 days.

"(2) AGREEMENT TO SUSPEND PERIOD OF LIMITATIONS.—If less than a 6-month period remains in the period of limitations provided in section 6501, 6502, or 6229, the taxpayer may agree, in writing, to a period of suspension of such period of limitations in order to allow the Secretary to send a notice of proposed deficiency.

"(c) NO NOTICE IN JEOPARDY ASSESSMENT.—Paragraph (1) shall not apply if the Secretary makes a jeopardy assessment."

(b) CONFORMING AMENDMENT.—Section 6503 (relating to suspension of running of period of limitation) is amended by inserting after subsection (i) the following new subsection:

"(j) SUSPENSION PENDING NOTICE.—The running of the period of limitations provided in section 6501, 6502, or 6229 on the making of assessments or the collection by levy or a proceeding in court, in respect of any deficiency defined in section 6211A(a) shall be suspended for any period described in section 6211A(b)(2)."

(c) CLERICAL AMENDMENT.—The table of sections for subchapter B of chapter 63 is amended by inserting after the item relating to section 6211 the following new item:

"Sec. 6211A. Notice of proposed deficiency."

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect with respect to deficiencies determined on or after 1 year after the date of the enactment of this Act.

SEC. 5402. MODIFICATIONS TO LIEN AND LEVY PROVISIONS.

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

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

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

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

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

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

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

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

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

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

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

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

"(2) the Secretary determines that—

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

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

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

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

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

(c) MODIFICATIONS IN CERTAIN LEVY EXEMPTION AMOUNTS.—

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

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

(B) by striking "$1,650 ($1,500 in the case of levies issued during 1989)" and inserting "$1,700".

(2) BOOKS, ETC.—Paragraph (3) of section 6334(a) (relating to books and tools of a trade, business, or profession exempt from levy) is amended by striking "$1,100 ($1,050 in the case of levies issued during 1989)" and inserting "$1,200".

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

"(f) INFLATION ADJUSTMENTS.—

"(1) IN GENERAL.—In the case of any calendar year beginning after 1993, each dollar amount referred to in paragraphs (2) and (3) of subsection (a) shall be increased by an amount equal to—

"(A) such dollar amount, multiplied by

"(B) the cost-of-living adjustment determined under section 1(f)(3), for such calendar year, by substituting 'calendar year 1992' for 'calendar year 1989' in subparagraph (B) thereof.

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

(d) EFFECTIVE DATES.—

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

(2) EXEMPT AMOUNTS.—The amendments made by subsection (c) shall take effect with respect to levies issued after December 31, 1992.

SEC. 5403. OFFERS-IN-COMPROMISE.

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

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

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

SEC. 5404. NOTIFICATION OF EXAMINATION.

(a) IN GENERAL.—Subsection (b) of section 7605 (relating to restrictions on examination of taxpayer) is amended by inserting "No examination described in subsection (a) shall be made unless the Secretary notifies the taxpayer in writing by mail to an address determined under section 6212(b) that the taxpayer is under examination and provides the taxpayer with an explanation of the process as described in section 7521(b)(1)." before "No taxpayer".

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

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

SEC. 5405. MODIFICATION OF CERTAIN LIMITS ON RECOVERY OF CIVIL DAMAGES FOR UNAUTHORIZED COLLECTION ACTIONS.

(a) STANDARD OF CONDUCT.—Subsection (a) of section 7433 (relating to civil damages for certain unauthorized collection actions) is amended by striking "recklessly or intentionally" and inserting "negligently, or recklessly or intentionally,".

(b) DOLLAR LIMITS WITH RESPECT TO STANDARD OF CONDUCT.—Section 7433(b) (relating to damages) is amended—

(1) by inserting ($1,000,000, in the case of reckless or intentional disregard)" after "$100,000", and

(2) by inserting "negligent, or" before "reckless or intentional" in paragraph (1).

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to actions by officers or employees of the Internal Revenue Service after the date of the enactment of this Act.

SEC. 5406. SAFEGUARDS RELATING TO DESIGNATED SUMMONS.

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

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

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

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

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

Subtitle F—Information Returns

SEC. 5501. PHONE NUMBER OF PERSON PROVIDING PAYEE STATEMENTS REQUIRED TO BE SHOWN ON SUCH STATEMENT.

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

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

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall apply to statements required to be furnished after December 31, 1992 (determined without regard to any extension).

SEC. 5502. CIVIL DAMAGES FOR FRAUDULENT FILING OF INFORMATION RETURNS.

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

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

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

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

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

"(2) the costs of the action.

"(c) PERIOD FOR BRINGING ACTION.—Notwithstanding any other provision of law, an

action to enforce the liability created under this section may be brought without regard to the amount in controversy and may be brought only within 6 years after the filing of the false or fraudulent information return.

"(d) INFORMATION RETURN.—For purposes of this section, the term 'information return' means any statement described in section 6724(d)(1)(A)."

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

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

"Sec. 7435. Cross references."

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

SEC. 5503. REQUIREMENT TO VERIFY ACCURACY OF INFORMATION RETURNS.

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

"(d) REQUIRED REASONABLE VERIFICATION OF INFORMATION RETURNS.—In any court proceeding, if a taxpayer asserts a reasonable dispute with respect to any item of income reported on an information return filed with the Secretary under chapter 61 by a third party and the taxpayer has fully cooperated with the Secretary, the Secretary, in presenting evidence of the deficiency based on such information return, shall present reasonable evidence of such deficiency in addition to such information return."

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

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

SEC. 5601. TRUST FUND TAXES.

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

"(b) PRELIMINARY NOTICE AND DECLARATORY JUDGMENT PROCEEDING.—

"(1) PRELIMINARY NOTICE.—No penalty shall be imposed under subsection (a) unless the Secretary notifies the taxpayer in writing by mail to an address as determined under section 6212(b) that the taxpayer shall be subject to an assessment of such penalty and provides the taxpayer with an explanation of the declaratory judgment process under paragraph (3).

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

"(3) DECLARATORY JUDGMENT.—

"(A) IN GENERAL.—In a case of an actual controversy involving a determination by the Secretary with respect to the taxpayer's liability for the penalty imposed under subsection (a), upon the filing of an appropriate pleading, the Tax Court may make a declaration with respect to such liability. Any such declaration shall have the force and effect of a decision of the Tax Court and shall be reviewable as such.

"(B) EXHAUSTION OF ADMINISTRATIVE REMEDIES.—The Tax Court shall not issue a declaratory judgment or decree under this paragraph in any proceeding unless it determines that the petitioner has exhausted administrative remedies available to the petitioner within the Internal Revenue Service.

"(C) TIME FOR BRINGING ACTION.—No proceeding may be initiated under this paragraph by any person unless the pleading is filed before the 31st day after the day the notice under paragraph (1) is mailed to such person."

(b) CONFORMING AMENDMENTS.—Section 6672 is amended—

(1) by striking paragraphs (4) and (5) of subsection (c) (as redesignated by this section), and

(2) by adding at the end thereof the following new subsections:

"(e) SUSPENSION OF RUNNING OF PERIOD OF LIMITATIONS ON COLLECTION.—The running of the period of limitations provided in section 6502 on the collection by levy or by a proceeding in court in respect to any penalty under subsection (a) shall be suspended for the period during which the Secretary is prohibited from collecting the penalty by levy or a proceeding in court.

"(f) JEOPARDY COLLECTION.—If the Secretary makes a finding that the collection of the penalty is in jeopardy, nothing in this section shall prevent the immediate collection of such penalty."

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

SEC. 5602. DISCLOSURE OF CERTAIN INFORMATION WHERE MORE THAN 1 PERSON SUBJECT TO PENALTY.

(a) IN GENERAL.—Subsection (e) of section 6103 (relating to disclosure to persons having material interest), as amended by section 402, is amended by adding at the end thereof the following new paragraph:

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

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

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

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

SEC. 5603. PENALTIES UNDER SECTION 6672.

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

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

(2) the development of a special information packet.

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

(1) VOLUNTARY BOARD MEMBERS.—The penalty under section 6672 of the Internal Revenue Code of 1986 shall not be imposed on unpaid, volunteer members of any board of trustees or directors of an organization referred to in section 501 of such Code to the extent such members do not participate in the day-to-day or financial operations of the organization.

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

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

(c) PROMPT NOTIFICATION.—To the maximum extent practicable, the Secretary shall notify all persons who have failed to make timely and complete deposit of any taxes of such failure within 30 days after the date on which the Secretary is first aware of such failure.

Subtitle H—Awarding of Costs and Certain Fees

SEC. 5701. COMMENCEMENT DATE OF REASONABLE ADMINISTRATIVE COSTS.

(a) IN GENERAL.—The second sentence of section 7430(c)(2) (defining reasonable administrative costs) is amended to read as follows:

"Such term shall only include costs incurred on or after the earlier of (i) the date of the notice of proposed deficiency under section 6211A or similar notice of assessment or proposed assessment, or (ii) the date of the notice of deficiency."

(b) CONFORMING AMENDMENT.—Clause (i) of section 7430(c)(7)(B) (defining position of United States) is amended to read as follows:

"(i) the date of the notice of proposed deficiency under section 6211A or similar notice of assessment or proposed assessment, or".

SEC. 5702. INTERIM NOTICE REQUIREMENT.

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

"(C) INTERIM NOTICE.—Once a taxpayer substantially prevails as described in subparagraph (A)(ii) and in order to allow such taxpayer to develop the facts relating to the position of the United States, the Internal Revenue Service shall provide to the taxpayer, within 30 days of the taxpayer's written request (in such form as the Secretary provides), all information and copies of relevant records in the possession of the Internal Revenue Service with respect to such taxpayer's case and the substantial justification for the position taken by the Internal Revenue Service."

SEC. 5703. INCREASED LIMIT ON ATTORNEY FEES.

Paragraph (1) of section 7430(c) (defining reasonable litigation costs) is amended by inserting after clause (iii) the following:

"In the case of any calendar year beginning after 1981, the dollar amount referred to in clause (iii) shall be increased by an amount equal to such dollar amount, multiplied by the cost-of-living adjustment determined under section 1(f)(3), for such calendar year, by substituting 'calendar year 1980' for 'calendar year 1989' in subparagraph (B) thereof. If any dollar amount after being increased under the preceding sentence is not a multiple of $10, such dollar amount shall be

rounded to the nearest multiple of $10 (or, if such dollar amount is a multiple of $5, such dollar amount shall be increased to the next higher multiple of $10)."

SEC. 5704. FAILURE TO AGREE TO EXTENSION NOT TAKEN INTO ACCOUNT.

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

SEC. 5705. EFFECTIVE DATE.

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

Subtitle I—Other Provisions

SEC. 5801. REQUIRED CONTENT OF CERTAIN NOTICES.

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

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

SEC. 5802. RELIEF FROM RETROACTIVE APPLICATION OF TREASURY DEPARTMENT REGULATIONS.

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

"(b) RETROACTIVITY OF REGULATIONS.—

"(1) IN GENERAL.—Except as provided in paragraphs (2) and (3), any temporary or proposed regulation issued by the Secretary shall apply prospectively from the date of publication of such regulation in the Federal Register.

"(2) CONGRESSIONAL AUTHORIZATION.—The prospective only treatment of paragraph (1) may be superseded by a specific legislative grant from Congress authorizing the Secretary to prescribe the effective date with respect to a statutory provision.

"(3) ELECTION TO APPLY RETROACTIVELY.—The Secretary may provide for any taxpayer to elect to apply any temporary or proposed regulation retroactively from the date of publication of such regulation in the Federal Register.

"(4) APPLICATION TO FINAL REGULATIONS.—The Secretary may provide that any final regulation relating to any temporary or proposed regulation take effect from the date of publication of such temporary or proposed regulation in the Federal Register."

(b) EFFECTIVE DATE.—The amendment made by this section shall apply with respect to—

(1) any temporary or proposed regulation published on or after February 20, 1992, and

(2) any temporary or proposed regulation published before February 20, 1992, and published as a final regulation after such date.

SEC. 5803. REQUIRED NOTICE OF CERTAIN PAYMENTS.

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

SEC. 5804. UNAUTHORIZED ENTICEMENT OF INFORMATION DISCLOSURE.

(a) IN GENERAL.—Part I of chapter 75 of subtitle F (relating to crimes, other offenses, and forfeitures) is amended by adding at the end thereof the following section:

"SEC. 7217. UNAUTHORIZED ENTICEMENT OF INFORMATION DISCLOSURE.

Any officer or employee of the United States who defers or offers to defer, or forgives or offers to forgive, the determination or collection of any tax due to an attorney, certified public accountant, or enrolled agent representing a taxpayer, in exchange for information concerning such taxpayer, shall be guilty of a felony, and upon conviction thereof, shall be fined not more than $5,000, or imprisoned not more than 5 years, or both, together with the costs of the prosecution."

(b) CLERICAL AMENDMENT.—The table of sections for part I of chapter 75 of subtitle F is amended by adding at the end thereof the following new item:

"Sec. 7217. Unauthorized enticement of information disclosure."

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

Amend the title so as to read: "An Act to amend the Internal Revenue Code of 1986 to provide tax fairness for families, incentives for increased economic growth, and improved access to health care, and for other purposes.".

AUTHORITY FOR COMMITTEES TO MEET

COMMITTEE ON ENERGY AND NATURAL RESOURCES

Mr. FORD. Mr. President, I ask unanimous consent that the Committee on Energy and Natural Resources be authorized to meet during the session of the Senate, 9:30 a.m., March 12, 1992, to consider agenda item No. 13, and any other items ready for consideration.

BUSINESS MEETING AGENDA

AGENDA AND DATE PUT ON AGENDA

1. S. 484, to establish conditions for the sale and delivery of water from the Central Valley Project, California, a Bureau of Reclamation facility, and for other purposes; 7-19-91.

2. S. 106, to amend the Federal Power Act; 9-20-91.

3. S. 1501, to amend the Reclamation Reform Act of 1982, and for other purposes; 11-08-91.

4. H.R. 429, to amend certain Federal reclamation laws to improve enforcement of acreage limitations, and for other purposes; 11-08-91.

5. S. 1225, to designate certain lands in California as wilderness, and for other purposes; 11-08-91.

6. S. 979, to provide for strong Department of Energy support of research and development of technologies identified in the most recent National Critical Technologies Report as critical to U.S. economic prosperity and national security, and for other purposes; 11-15-91.

7. S. 1351, to encourage partnerships between Department of Energy Laboratories and educational institutions, industry, and other Federal laboratories in support of critical national objectives in energy, national security, the environment, and scientific and technological competitiveness; 11-15-91.

8. S. 1228, to provide for a comprehensive review by the Secretary of the Interior of western water resource problems and programs administered by the Geological Survey, the Bureau of Reclamation, and for other operations of the Department of the Interior, and for other purposes; 11-15-91.

9. S. 233, the Central Utah Project Completion Act; 2-21-92.

10. S. 927, to provide for a transfer of lands between the United States Forest Service and Eagle and Pitkin Counties in Colorado; 2-21-92.

11. S. 1156, to provide for the protection and management of certain areas on public domain lands managed by the Bureau of Land Management and lands withdrawn from the public domain managed by the Forest Service in the States of California, Oregon, and Washington; to ensure proper conservation of the natural resources of such lands, including enhancement of habitat; to provide assistance to communities and individuals affected by management decisions on such lands; to facilitate the implementation of land management plans for such public domain lands and Federal lands elsewhere; and for other purposes; 2-21-92.

12. S. 1625, to provide for the settlement of certain claims under the Alaska Native Claims Settlement Act, and for other purposes; 2-21-92.

13. S. 1882, to authorize extensions of time limitations in a FERC-issued license; 3-06-92.

The PRESIDING OFFICER. Without objection, it is so ordered.

COMMITTEE ON SMALL BUSINESS

Mr. FORD. Mr. President, I ask unanimous consent that the Small Business Committee be authorized to meet during the session of the Senate on Thursday, March 12, 1992, at 9:30 a.m. The committee will hold a full committee hearing on the Small Business Administration's fiscal year 1993 budget proposal, as well as the administration's fiscal year 1992 supplemental and reprogramming requests.

The PRESIDING OFFICER. Without objection, it is so ordered.

COMMITTEE ON INTELLIGENCE

Mr. FORD. Mr. President, I ask unanimous consent that the Select Committee on Intelligence be authorized to meet during the session of the Senate on Thursday, March 12, 1992, at 2 p.m. to hold an open hearing on intelligence reorganization.

The PRESIDING OFFICER. Without objection, it is so ordered.

COMMITTEE ON THE JUDICIARY

Mr. FORD. Mr. President, I ask unanimous consent that the Committee on the Judiciary be authorized to hold a business meeting during the session of the Senate on Thursday, March 12, 1992, at 10 a.m.

AGENDA

I. Nominations

U.S. DISTRICT JUDGES

Robert L. Echols, to be U.S. district judge for the Middle District of Tennessee.

Jimm L. Hendren, to be U.S. district judge for the Western District of Arkansas.

John R. Padova, to be U.S. district judge for the Eastern District of Pennsylvania.

Ira DeMent, to be U.S. district judge for the Middle District of Alabama.

II. Bills

S. 1521. A bill to provide a cause of action for victims of sexual abuse, rape, and murder, against producers and distributors of hard-core pornographic material; McConnell.

S. 1941. A bill to amend the Immigration and Nationality Act for the purpose of reforming procedures for the resettlement of refugees of the United States; Kennedy.

S. 1985. A bill to establish a commission to review the Bankruptcy Code, to amend the Bankruptcy Code in certain aspects of its application to cases involving commerce and credit and individuals debtors and add a temporary chapter to govern reorganization of small businesses, and for other purposes; Heflin.

S. 1096. A bill to ensure the protection of motion picture copyrights, and for other purposes; Kohl.

The PRESIDING OFFICER. Without objection, it is so ordered.

COMMITTEE ON RULES AND ADMINISTRATION

Mr. FORD. Mr. President, I ask unanimous consent that the Committee on Rules and Administration be authorized to meet during the session of the Senate on Thursday, March 12, 1992, at 9:30 a.m., 10:30 a.m., and 11 a.m. At 9:30 a.m., the committee will hold a hearing on S. 523, the National African-American Memorial Museum Act; at 10:30 a.m., testimony will be received on Senate Joint Representatives 259, providing for the appointment of Barber B. Conable, Jr., as a citizen regent of the Smithsonian Institution; and at 11 a.m., a hearing will be held on the request of the Library of Congress to authorize the American Folklife Center for fiscal year 1993 through fiscal year 1997.

The PRESIDING OFFICER. Without objection, it is so ordered.

COMMITTEE ON ARMED SERVICES

Mr. FORD. Mr. President, I ask unanimous consent that the Committee on Armed Services be authorized to meet on Thursday, March 12, 1992, at 2 p.m., in closed session, to receive testimony on the Department of Defense's "1994–1999 Defense Planning Guidance Scenarios."

The PRESIDING OFFICER. Without objection, it is so ordered.

SUBCOMMITTEE ON GOVERNMENT INFORMATION AND REGULATION

Mr. FORD. Mr. President, I ask unanimous consent that the Subcommittee on Government Information and Regulation be authorized to meet on Thursday, March 12, 1992, at 9:30 a.m. on the subject: "Technology Policy and Competitiveness: The Federal Government's Role."

The PRESIDING OFFICER. Without objection, it is so ordered.

COMMITTEE ON FOREIGN RELATIONS

Mr. FORD. Mr. President, I ask unanimous consent that the Committee on Foreign Relations be authorized to meet during the session of the Senate on Thursday, March 12, at 2 p.m., to hold a hearing on "The Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal"—(Treaty Doc. 102–5).

The PRESIDING OFFICER. Without objection, it is so ordered.

COMMITTEE ON FOREIGN RELATIONS

Mr. FORD. Mr. President, I ask unanimous consent that the Committee on Foreign Relations be authorized to meet during the session of the Senate on Thursday, March 12, at 4 p.m. to hold a business meeting to vote on pending nominations.

NOMINATIONS

Mr. Robert C. Frasure, of West Virginia, to be Ambassador to Estonia.

Mr. Darryl Norman Johnson, of Washington, to be Ambassador to Lithuania.

Mr. Ints M. Silins, of Virginia, to be Ambassador to Latvia.

Mr. Parker W. Borg, of Minnesota, to be Ambassador to the Union of Burma (Myanmar).

The PRESIDING OFFICER. Without objection, it is so ordered.

COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS

Mr. FORD. Mr. President, I ask unanimous consent that the Committee on Banking, Housing, and Urban Affairs be authorized to meet during the session of the Senate on Thursday, March 12, 1992, at 10 a.m. to conduct a hearing on the condition of the banking industry, the bank insurance fund, and its treatment in the President's budget.

The PRESIDING OFFICER. Without objection, it is so ordered.

BUDGET SCOREKEEPING REPORT

• Mr. SASSER. Mr. President, I hereby submit to the Senate the budget scorekeeping report prepared by the Congressional Budget Office under section 308(b) of the Congressional Budget Act of 1974, as amended. This report serves as the scorekeeping report for the purposes of section 605(b) and section 311 of the Budget Act.

This report shows that current level spending exceeds the budget resolution by $6.4 billion in budget authority and by $5.9 billion in outlays. Current level is $3 billion above the revenue target in 1992 and $3.5 billion above the revenue target over the 5 years, 1992–96.

The current estimate of the deficit for purposes of calculating the maximum deficit amount is $354.1, $2.9 billion above the maximum deficit amount for 1992 of $351.2 billion.

The report follows:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, March 10, 1992.

Hon. JIM SASSER,
Chairman, Committee on the Budget, U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: The attached report shows the effects of Congressional action on the budget for fiscal year 1992 and is current through March 6, 1992. The estimates of budget authority, outlays, and revenues are consistent with the technical and economic assumptions of the Concurrent Resolution on the Budget (H. Con. Res. 121). This report is submitted under Section 308(b) and in aid of Section 311 of the Congressional Budget Act, as amended, and meets the requirements for Senate scorekeeping of Section 5 of S. Con. Res. 32, the 1986 First Concurrent Resolution on the Budget.

Since my last report, dated March 3, 1992, there has been no action that affects the current level of budget authority, outlays or revenues.

Sincerely,

ROBERT D. REISCHAUER,
Director.

THE CURRENT LEVEL REPORT FOR THE U.S. SENATE, 102D CONG., 2D SESS., AS OF MAR. 6, 1992

[In billions of dollars]

	Budget resolution (H. Con. Res. 121)	Current Level [1]	Current level +/− resolution
On-budget:			
Budget authority	1,270.6	1,277.0	+6.4
Outlays	1,201.6	1,207.5	+5.9
Revenues:			
1992	850.4	853.4	+3.0
1992–96	4,832.0	4,835.5	+3.5
Maximum deficit amount	351.2	354.1	+2.9
Debt subject to limit	3,982.2	3,754.2	−228.0
Off-budget:			
Social Security outlays:			
1992	246.8	246.8	
1992–96	1,331.5	1,331.5	
Social Security revenues:			
1992	318.8	318.8	
1992–96	1,830.3	1,830.3	

[1] Current level represents the estimated revenue and direct spending effects of all legislation that Congress has enacted or sent to the President for his approval. In addition, full-year funding estimates under current law are included for entitlement and mandatory programs requiring annual appropriations even if the appropriations have not been made. The current level of debt subject to limit reflects the latest U.S. Treasury information on public debt transactions.

THE ON-BUDGET CURRENT LEVEL REPORT FOR THE U.S. SENATE, 102D CONG., 2D SESS., SENATE SUPPORTING DETAIL FOR FISCAL YEAR 1992 AS OF CLOSE OF BUSINESS MAR. 6, 1992

	Budget authority	Outlays	Revenues
ENACTED IN PREVIOUS SESSIONS			
Revenues			853,364
Permanents and other spending legislation	807,567	727,184	
Appropriation legislation	686,331	703,643	
Continuing resolution authority	13,992	5,454	
Mandatory adjustments [1]	(1,041)	1,105	
Offsetting receipts	(232,542)	(232,542)	
Total previously enacted	1,274,306	1,204,844	853,364
ENACTED THIS SESSION			
Emergency unemployment compensation extension (Public Law 102–244)	2,706	2,706	
American Technology Preeminence Act (Public Law 102–245)			(2)
Total current level	1,277,012	1,207,550	853,364
Total budget resolution	1,270,612	1,201,600	850,400
Amount remaining:			
Over budget resolution	6,400	5,950	2,964
Under budget resolution			

[1] Adjustments required to conform with current law estimates for entitlements and other mandatory programs in the concurrent resolution on the budget (H.Con.Res. 121).

[2] Less than $500,000.•

THE STATE OF HUMAN RIGHTS IN KUWAIT

• Mr. DECONCINI. Mr. President, as we have passed February 26, the first anniversary of the Al Sabah family's return to rule in Kuwait, the Senate should pause and reflect on these words from Middle East Watch's report on the Kuwaiti record of human rights.

Far from recognizing the importance of upholding human rights standards after witnessing the atrocities committed by Iraqi occupying forces, the reinstated Kuwaiti Government disregarded those standards as soon as it returned from exile on February 26, 1991.

While we have witnessed a decline in the most serious of the atrocities, such as killings, torture, arbitrary arrests, and deportations as a result of international pressure, Kuwait still suffers from serious civil and human rights abuses. Today's concerns about human rights in Kuwait stem from the treatment the stateless Palestinians, Kurds, and others who previously lived in Kuwait. Many of these people are long time residents of Kuwait; some were even born in Kuwait. Yet they have been denied citizenship because they are not Kuwaiti, and have been subjected to various forms of persecution and discrimination.

For example, at the outset of the Iraqi invasion, approximately 180,000 Palestinians, along with tens of thousands of Kuwaitis, understandably fled their homes in Kuwait—leaving behind all of their possessions—in order to avoid the harsh conditions of war and occupation. Almost without exception, the Kuwaiti Government has denied these people the right to return to their homes even for the purpose of retrieving their personal possessions. Furthermore, the Kuwaiti Government has allowed the landlords to remove these belongings at their discretion, thus reducing any future hopes for the Palestinians of regaining their personal property, much less their homes.

In addition, most expatriates, such as the Kurds who fled Iraq in order to escape Saddam Hussein's brutal regime, have been forced out of their jobs and their children have been denied the ability to return to school. These people are currently being refused the right to work and to feed their families because the Kuwaiti Government refuses to issue them a security card, a necessity for employment in Kuwait.

This Senator condemns the inexcusable behavior and policies of the apparently uncaring Government of Kuwait. This Senate should not sit silently by while these heartless actions continue to occur. I urge my colleagues to join me in bringing this issue to the attention of the President and his State Department. We did not expel one ruthless dictator from Kuwait only to have him replaced by another, albeit a somewhat more benign and discriminating one.•

DESALINATION

• Mr. SIMON. Mr. President, the November/December 1991 issue of World Watch carried an excellent article by Peter Weber entitled, "Desalination's Appeal Evaporates." Mr. Weber succinctly summarizes the benefits to be gained from desalination technology and the barriers that currently exist to wider application.

As the article states, "At $1,000 to $2,000 per acre-foot of desalted seawater, the price is well beyond the $300 per acre-foot that the world's average urban dweller pays for delivered water." The article then ends on what I view as a pessimistic note "* * * desalination will likely remain too expensive to be more than an occasional solution to water shortages." I believe we have the opportunity to prevent this last sentence from being an accurate forecast.

My legislation, S. 481, the Water Research Act, would get the Federal Government involved again in the business of supporting efforts to develop low-cost desalination technology. Sometimes research and development on new technologies takes a long time, so I encourage my colleagues to act on this legislation quickly once it comes to the Senate floor and get U.S. brain power to work again in this area.

I ask that the article be inserted into the RECORD.

The article follows:

[From World Watch, November-December 1991]

DESALINATION'S APPEAL EVAPORATES

(By Peter Weber)

In 1961, President John F. Kennedy said that if an inexpensive way could be found to extract fresh water from salt water, it "would really dwarf any other scientific accomplishments." Presumably, Kennedy foresaw that fresh water—once considered a limitless resource—would soon be in short supply. By comparison, the oceans are virtually limitless. Encouraged by the prospect of cheap nuclear energy to power the process, the U.S. committed tens of millions of dollars for desalination research over the next decade.

The U.S. push, however, failed to make the ocean a low-cost source of water. Nuclear power "too cheap to meter" never materialized to satisfy desalination's high energy demand, and technology improvements made desalting cheaper but not cheap enough. Federal funding ended in 1982.

Nonetheless, coastal communities from Virginia to California are now looking into building desalting plants to supplement existing supplies. California legislators, desperate to combat the drought and make way for continued growth, have introduced eight desalination bills in the state assembly, and the U.S. Congress is considering legislation to restart the federal research program. Is desalting making a comeback?

Currently, the world's 7,500 desalting plants have a capacity of just 3.9 million acre-feet per year. Pumping at full capacity, they would cover less than one-tenth of 1 percent of world water use.

Only the world's elite get their water from the sea. Saudi Arabia, whose embattled desalination plants made international news during the Persian Gulf War, is the largest producer, with 30 percent of the world's desalting capacity. Kuwait, the United Arab Emirates, and a few other oil-rich, water-poor Middle East nations account for another 30 percent. In other regions, ocean desalting is limited mainly to island tourist havens, such as the Virgin Islands, and military installations, such as the U.S. base at Cuba's Guantanamo Bay.

A smaller but growing portion (25 percent) of desalination capacity is applied to brackish waters, which are typically only a third as salty as seawater. The United States is the biggest brackish water desalinator, with nearly half of the world's capacity. Most of this is used by industry, either to make ultra-pure water or to detoxify industrial discharge. A smaller portion is used by households, mostly in southwest Florida, where rapid growth is drying up existing water supplies and an extensive, slightly salty aquifer is readily available.

Cost has been the single biggest factor preventing desalting from becoming a font of fresh water. At $1,000 to $2,000 per acre-foot of desalted seawater, the price is well beyond the $300 per acre-foot that the world's average urban dweller pays for delivered water. (Equal to 326,000 gallons, one acre-foot is double the average U.S. household's annual water use.) Farmers, by far the world's biggest water users, typically pay much less because of government subsidies.

Although water is essential for communities, industry, and agriculture, most people conserve before paying such high prices. Israel, a leader in desalination technology, recently closed its major desalting plant because it is cheaper at present to curtail irrigation and recycle water.

In principle, getting salt out of water is fairly simple. The most common and time-tested approach, distillation, involves boiling water, collecting the salt-free steam, and discharging the leftover brine. Alternatively, water can be forced through semi-permeable membranes, essentially filtering out the salt in a reverse osmosis process. Developed in the 1960s, reverse osmosis is the method of choice in the United States.

In practice, however, seawater desalination is expensive because boiling water or pushing it through membranes requires large amounts of energy—roughly 6,000 kilowatt-hours per acre-foot for the most efficient methods. Desalting 100 percent of a residential community's water would raise its electricity use by one-third, based on current electricity and water use in the U.S. Solar desalination would eliminate the big energy bills, but low output and high equipment costs make solar stills even more expensive.

Desalination costs are compounded by efforts to prevent corrosion and clogging of equipment. For instance, without anti-scaling chemicals, the distillation boiler becomes caked with a salty crust. Reverse osmosis's salt-filtering membranes are easily fouled if algae and other organic matter isn't first killed and removed. Disposing of the resulting pretreatment sludges and post-process brines adds still more to costs.

Compared to seawater desalting, brackish water desalting has somewhat better prospects. At $500 to $800 per acre-foot, it's the right method for regions where dwindling freshwater supplies are pushing up rates, such as southwest Florida. Its big savings come from the fact that removing less salt requires less energy—up to 80 percent less than when desalting ocean water.

Nonetheless, the brackish application has its downsides. Brine disposal is tricky without the ocean nearby, and brackish water supplies—unlike seawater—are usually in limited supply. The city of Virginia Beach, Virginia, for instance, was poised to start its own brackish water plant, says city water engineer Thomas Leahy III, until a groundwater study revealed that the plant would quickly draw down the region's water table.

The bottom line for both brackish water and seawater is that desalting is not going to relieve the water shortages now surfacing from Beijing to the Middle East. Jack Jorgensen, executive director of the National Water Improvement Association, notes that seawater capacity especially will not expand much now that the oil-producing Middle Eastern countries have enough capacity for present needs. In the foreseeable future, most new desalination plants will treat brackish water in Florida and a few other states and countries.

Desalting's future could be further compromised as the process comes under closer environmental scrutiny. Its high energy use runs contrary to the goals of reducing air pollution, acid rain, greenhouse gas emissions, and fossil fuel dependence. And according to Phil McGillivery, a marine biologist for the National Oceanic and Atmospheric Administration (NOAA), no scientist has ever studied the cumulative effects of drawing water from and discharging brine to the ocean.

So far, environmental concerns have not limited desalting—cost has. Despite its appeal—especially to politicians—desalination will likely remain too expensive to be more than an occasional solution to water shortages. "Put it this way," says Jorgensen; "it is never going to be cheap water."•

INDIAN HEAD'S HAZMAT VEHICLE

• Mr. SARBANES. Mr. President, I want to pay tribute to the outstanding personnel at the Indian Head Division, Naval Surface Warfare Center at Indian Head, MD, who have successfully implemented the principles of total quality leadership [TQL]. At a time when all of our military installations must do more with less, Indian Head has successfully used TQL to enhance its environmental protection efforts.

During my visits to this unique Navy installation, located on a peninsula between the Potomac River and the Mattawoman Creek, I have noticed a strong commitment to the environment which appears to go well beyond that required by law. The base's work force has demonstrated genuine concern for the environment through a diverse array of projects from comprehensive recycling to reintroduction of wild turkeys.

Because Indian Head's mission requires use of a number of hazardous chemicals and materials, Capt. Ed Nicholson, the commanding officer, and Roger Smith, the facility's technical director, have emphasized safety and environmental protection. In order to be ready for an accident that could endanger the environment or human lives, the leaders formed an emergency response team.

Under the direction of Lt. Comdr. Charles Moore, a team of well-qualified personnel established an emergency response capability using TQL. They rejected the conventional solution of purchasing a preequipped emergency response vehicle that would have been quite costly. Instead, using a large pool of volunteers, the response team purchased a 24-foot trailer for under $10,000. Specialized equipment already owned by Indian Head was installed in the trailer and customized by volunteer efforts. The base has estimated that more than $150,000 was saved by avoiding the purchase of a preequipped vehicle.

A response capability for accidents in the water was also established using three boats declared surplus by commands at Indian Head. Volunteers rebuilt the boats and rehabilitated a storage building near the water which has become the headquarters of the emergency response team. If the Navy had procured new boats to fulfill this need, the cost would have been over $125,000.

Last spring, I was pleased to participate in a ribbon-cutting ceremony at Indian Head celebrating the completion of the emergency response vehicle. I was impressed with its capability as well as the obvious pride and dedication for those associated with it.

Mr. President, total quality leadership paid big dividends at Indian Head. As a result of these efforts, the station has a well-trained, well-equipped emergency response team. It can quickly respond to on-base and off-base incidents and assess the resulting threat. The vehicles and equipment are customized to meet the unique requirements of the Indian Head Division and, most importantly, were completed at a fraction of usual procurement costs.

I want to thank all of the individuals who assisted in this effort which should serve as a model for other projects. By using total quality leadership the team developed a quality product at great savings to the American people. I urge my colleagues in the Senate to join me in saluting their efforts.•

THE UGLY GROWTH OF ANTI-SEMITISM IN RUSSIA

• Mr. SIMON. Mr. President, even as democracy begins to take root in the Russian Republic, there is a mounting backlash of discrimination and anti-Semitism that could subvert these new found freedoms. Russia, home to more than half a million Jews, has been a fertile ground for the growth of several major anti-Semitic movements.

A brief overview clearly illustrates that the recent rash of anti-Semitic violence and rhetoric has a firm foundation in history. Over four centuries ago, Czars Ivan III and Ivan IV in the 16th century held many anti-Semitic beliefs, asserting that Judaism was a subversive influence leading the Russian people astray from Christianity. Later, in the 18th century, the Russian Government developed a system of more than 1,000 laws intended to separate Jews from the rest of the population. The system resembled apartheid in present day South Africa.

Another major provision of Russian anti-Semitism has been to designate Jews as scapegoats. Everything from the Bolshevik Revolution and Stalin's purges to the fall of communism and the present state of economic, social, and political chaos has been pinned on the Jewish scapegoats.

Today, that tradition of scapegoating is particularly threatening to the Russian Jewish population. Most observers agree that what the Jews fear most now is the political and economic instability. And, in the present climate of uncertainty and suffering that has accompanied the transition to democracy and a free market system, there is the impetus for a new scapegoating movement. That onus has fallen on the Jews.

Emerging from nearing nine decades of Communist-imposed Soviet unity, distinct nationalistic movements have become the rule in the former Soviet Union. With the growth of these movements, the call for ethnic purity has been the warning to the minority Jewish populations throughout Russia. The call by many for a Russian national identity necessarily disregards Jews and opens the door for more persecution.

A pair of groups has taken the lead in the present Russian anti-Semitic movement, Pamyat and the Union of Writers of the Russian Republic.

Pamyat, which takes its name from the Russian word for memory, was founded in the early 1980's as a literary and historical society, but quickly came to its present form, that of an anti-Semitic, Russian nationalistic organization. Though egos and personalities have splintered the group into several different factions, Pamyat still maintains a significant power base among ultranationalist and other rightwing organizations.

Pamyat spreadsits message of hate in several distinct manners. The first mode is the distribution of propaganda such as the long-discredited "Protocols of the Elders of Zion" and pamphlets urging the removal of Jews from not only the government but also the country. For those of you unfamiliar with protocol, it is an infamous anti-Semitic work that played an important role in Adolf Hitler's rise to power. Another way Pamyat disseminates its message is through crimes of hate ranging from direct physical attacks, including numerous deaths, to desecration of Jewish cemeteries, destruction of personal property, and threats of renewed pogroms. A third manner in which Pamyat operates is by organizing protests that draw their strength from the growing social, political and economic upheaval facing the Russian state.

But perhaps the most threatening of Pamyat's modes of operation is the group's establishment of ties to powers within the dissolving Russian military structure. Best summarized by leader Dmitri Vasiliev, Pamyat's philosophy

is, "If we have to, we will take up arms to defend our ideals." Not only have Pamyat leaders begun to call for the organization of armed patrols, but they have also recognized the potential for cooperation within the Russian military and KGB as those areas face an uncertain future. As a Newsweek magazine article of May 7, 1990, states:

> But they (Pamyat's followers) are plying for influence beyond their numbers. Pursuing allies among disgruntled soldiers and workers, they have cultivated the Soviet army and the United Workers Front, a rightwing labor group.

Pamyat is not alone. Among the other major anti-Semitic groups is the Union of Writers of the Russian Republic. Headed by such prominent anti-Semitic writers as Valentin Rasputin and Piotr Proscurin, the Union has emerged as one of the more powerful hate movements directed against Jews in the Russian Republic.

A pair of prominent Union leaders were, at one point, appointed to former President Gorbachev's Presidential Cabinet. Those appointments sent a clear message to members of the Russian Jewish community that these anti-Semitic movements, to some degree, had official backing. And though Gorbachev is no longer in control, the inroads and political power these two groups and others like them have established stand as a reminder of the constant threat facing the Russian Jewish population.

Over the course of the past 2 years, the number of large meetings and public demonstrations organized by these and other anti-Semitic groups has been on the rise. Intended to capitalize on the mounting difficulties facing President Yeltsin and the Russian government, many of these rallies have been successful in attracting crowds of anywhere from hundreds to tens of thousands.

These rallies have been held throughout Russia, including the 1991 May Day parade in Moscow and the rally in Red Square near the Kremlin in December of 1991, both supported by Pamyat and other anti-Semitic groups for the purpose of spreading their hostility. The American Association of Russian Jews has estimated that in 1989 alone there were at least 1,000 anti-Semitic demonstrations staged throughout the former Soviet Union. Experts assure us that number is not declining.

Probably the most telling of these anti-Semitic demonstrations was one held in June of 1991 in Leningrad as several candidates battled in the election for the presidency of the Russian Republic. Amidst the openly discriminatory slogans and placards of the rally, Vladimir Zhirinovsky, who ran on an openly nationalistic and anti-Semitic platform, emerged third in the election, with over 6 million votes.

For all of these reasons, I believe there is cause to worry about increased hostility toward Jews in Russia. There are many who disregard the warning signs and downplay the significance of what is happening. There are others who deny the very occurrence of many of the hate crimes and anti-Semitic movements.

Nevertheless, many of these instances have been substantiated and confirmed by various independent agencies and newspapers. I hope we all realize that people are being attacked and even killed, solely on the basis of their beliefs. This must be stopped.

There is some cause for hope, however. The news out of Russia is not all bad. In October of last year, then-President Gorbachev recognized publicly that anti-Semitism and persecution of Jews was still present in his country, and he condemned it. A leader of one of Pamyat's splinter groups, Konstantin Smirnov-Ostashvili, became one of only two people ever tried in a Russian court for violation of article 74 of the Russian Criminal Code. That article, which prohibits the incitement of national enmity or discord, became the focal point of Ostashvili's trial in July of 1990. In October of that same year, Ostashvili was convicted and sentenced to 2 years of hard labor for his role in stirring up ethnic hatred.

By publicly condemning anti-Semitism and by making Article 74 applicable to anti-Semitic harassment and physical abuse, the Russians are taking strides in the right direction to combat these rightwing groups. Nevertheless, there is much more to be done. For when the liberties of one people can so easily be threatened, whose freedom is truly safe?•

"HELENE C. MONBERG DAY" IN LEADVILLE, CO

• Mr. WIRTH. Mr. President, today is a very special day in Leadville, CO. Its mayor, Robert J. Zaitz, has proclaimed today as "Helene C. Monberg Day" in recognition of one of Colorado's truly inspirational and independent women.

Leadville is usually signified by its being the highest spot in the country as well as host to a tradition of independent women. Baby Doe Tabor and Molly Brown are a few who come to mind. Add to that list Helene Monberg whose life has also been a tremendous inspiration to Leadville and the West in many ways.

Although Helene has lived in Washington for many years—she arrived as one of the first female UPI Washington correspondents—she always makes it clear that the small mining town of Leadville is her home. Helene often talks about what a great childhood she had growing up there. "A kid couldn't have had a better place to grow up," she often says. Living under the grandeur of Mount Elbert and the Collegiate Peaks, whether snow covered and ablaze in the morning light of winter or swept with purples, golds, and whites of spring flowers, she developed a sense of the Western ethos—independence and an open spirit—which left her with a great appreciation for the West and the richness of its endowment of natural resources.

But her life in Leadville also showed her, as she often puts it, "the tragedy of natural resources mismanagement." To the west, she says, one would see the splendor of the mountains—vast frontiers yet to be conquered—yet closer to home there was the blatant evidence of the disregard for these resources; vast slopes potted with open-faced mines, mountains scarred by erosion.

It was probably her experiences as a child that led to her dedication to following and reporting on the evolution of Federal policy toward managing the West's natural resources. For the last several years, she has faithfully produced a weekly newsletter, Western Resources Wrap-up, which has provided westerners with a clear picture of water management and natural resources policy issues from Washington.

And there is another side to Helene. She has provided a deep, tireless commitment to volunteer service for the public good. Over the years, she has soley run a pioneering program, the Achievement Scholarship Program, to help ex-offenders obtain the training and guidance they needed to restart their lives. That meant cajoling friends and supporters for financial support again and again. She has raised more than $300,000 for the cause. That also meant gaining the trust and support of ex-offenders whose lives were mired in a pattern of criminal activity, arrests and imprisonment. Hundreds of ex-offenders have participated in this program which has proven to be a unique success story—over 200 students have successfully gone straight—one that has received several citations, including recognition from a local magazine, the Washingtonian.

She has also been a tremendous supporter of public education. A graduate of the University of Colorado, Helene will endow the university with scholarship funds to give disadvantaged students an opportunity to obtain a college education that would otherwise not be available. She has made personal sacrifices to ensure that the generation that will inherit this country's leadership positions have the same, if not better opportunities for public education that we and our forefathers had. She is making investments in our nation's future—our children and their children to come.

In closing, Mr. President, all who have worked with and come to know Helene feel very fortunate; for she becomes one of your greatest and most faithful friends. If someone loses a job, Helene is calling friends to help find

another. If a friend's son is having a birthday, Helene insists on taking him to the toy store to buy a special toy. The list of generosities she shows towards friends, the West and the world makes it truly appropriate that she is being recognized in her home town of Leadville today.

So, I join with the town of Leadville and all Coloradans in sharing this special day with Helene.

I ask that Mayor Zaitz's proclamation be inserted in the RECORD.

The proclamation follows:

PROCLAMATION

Whereas, Helene C. Monberg is a native of Leadville, Colorado; and,

Whereas, she has always regarded and loved Leadville as "home", though she has spent many years away; and,

Whereas, she has maintained her affection for and interest in Leadville and its people by her frequent contacts with her close friends in Leadville; and,

Whereas, she has provided Leadville with valuable information and insight through her Herald Democrat column, "Washington Roundup", thereby bringing a national perspective to a local daily newspaper in her home-town; and,

Whereas, her love and respect for Leadville is a part of her larger, passionate devotion to the people, issues, and resources of the Great American West; and,

Whereas, her information and commentary on federal policy regarding the West, as founder and "guiding spirit" of Western Resources Wrap Up, is comprehensive, timely, knowledgeable, and invaluable to the people and businesses of the West; and,

Whereas, such dedication, scholarship, and love of tradition are true hallmarks of the Western American pioneer heritage,

Now, therefore, I, Robert J. Zaitz, Mayor of the City of Leadville, in the County of Lake, and State of Colorado, do, with all the gratitude, respect, and administration appropriate to this happy occasion, proudly declare Thursday, March 12, A.D. 1992, to be observed in Leadville as "HELENE C. MONBERG DAY" and call upon all citizens of Leadville to join in tribute to one who exemplifies the spirit of Leadville * * * of Colorado * * * and all the West.

I FURTHER DIRECT that the publication of this Proclamation be made by the Leadville Herald Democrat, in salute to Helene C. Monberg's many years of association therewith.

ROBERT J. ZAITZ,
Mayor.•

HATE CRIMES

• Mr. SIMON. Mr. President, I rise again to bring to the Senate's attention the nationwide increase in racially motivated crimes. As I mentioned last week, I intend to monitor incidents of hate crime and report about them in the Senate RECORD. Unfortunately, finding these incidents is not a difficult task. Last week, I spoke to you about the unprovoked murder of Yasuo Kato, a Japanese businessman in Camarillo, CA, who was stabbed to death apparently because of his nationality. It appears that his attacker blamed Japan for the recession and the loss of his job. It is an unfortunate fact that Mr. Kato's death is not an isolated incident. This is not just a California problem. While we await data now being collected by the FBI which should give us a very clear sense of the extent of the problem, newspaper accounts indicate that hate crimes are on the rise throughout the Nation.

Today, I wish to direct your attention to a racial attack against Myrtle Guillory and Johnnie McRae which occurred in Wheaton, MD—an incident so unbelievably appalling, that it is hard to fathom the level of hatred which motivated the attack against those two women.

In the early morning hours on Tuesday, March 3, the two women were accosted by John R. Ayers Jr., 21, of Rockville, and Sean T. Riley, 19, of north Wheaton. According to police reports, the two men yelled out "I'm going to kill you, nigger," and proceeded to chase after the women. Guillory managed to escape from her assailant, Sean Riley, and rushed to a nearby house to seek assistance. McRae was less fortunate. John Ayers chased her down and caught her, beat her on the head, ripped off her blouse, and dragged her onto an old bridge trestle. Then, in a truly inhuman act, he soaked Ms. McRae in lighter fluid and attempted to set her on fire. If the police had not intervened at this point, Johnnie McRae could have been burned alive.

Ayers and Riley were both arrested on the spot. According to police reports, they said they were out hunting for black people, because on the previous Friday night, three black men had called them "honkies." Riley, when caught and pinned down by the police, could only scream: "I hate niggers! I hate niggers!"

"I have never known any racial hate like this," Ms. Guillory said. "I felt like I was being judged just because I was black, and they were the judge, jury, and executioner."

Mr. President, we cannot let this inexplicable, yet overwhelming hatred go unnoticed. We must continue to keep these crimes in the forefront of our discussions. Through these weekly statements I intend to do just that. We need not only to be aware of the prevalence of this crime, but we also need to begin working together to address the problem. Montgomery County Executive Neal Potter has taken a step in the right direction by formally urging the criminal justice system "to send a clear message to all of our citizens that we will not tolerate these sick and unconscionable acts of hate and violence against any human being."

I am deeply impressed with the willingness of the Aspen Hill community residents to respond to this terrible incident in a positive fashion. It would have been easy to turn the attack on Ms. Guillory and Ms. McRae into an excuse for racial tension in this normally peaceful community. Yet nearly 20 neighbors marched in protest the following evening at the site of the attack, carrying signs which said: "Love thy neighbor no matter what color," "Stop Hating," and "WE the people." Mr. President, let us hope that the neighborhood's message of unity and peace will be heard. At least this one neighborhood can again be free from the evil of hate-related violence.•

MR. LAMARQUE'S PERSONAL GUARANTEE

• Mr. JOHNSTON. Mr. President, in the preceding few weeks we have heard a great deal of sound and fury from politicians, businessmen, and citizens alike, prompted by the enormous trade imbalance that currently exists between the United States and Japan. As we have all seen, our relationship with Japan, made tense simply by the brute fact of a trade deficit of over $40 billion, was made worse by the perception, accurate or not, of a President turned car salesman, and further damaged by the inflammatory remarks of some Japanese politicians. Not surprisingly, we have returned fire, and our responses have ranged from the public demolition of Japanese cars in Pennsylvania to threats of protectionist trade measures by politicians everywhere. Today, I rise to praise a Louisianian who has done more than merely talk; who has, in fact, put his money where a lot of other people have put their mouths.

Mr. Ronnie LaMarque owns a Ford-Lincoln-Mercury dealership in New Orleans, and employs about 250 people. Mr. LaMarque has reacted to the apparent crisis of confidence in American automobiles and the arrogance and intransigence of the Japanese leadership by offering an unprecedented personal guarantee on all cars sold at his dealership. This guarantee entitles buyers to a full refund of the purchase amount if they wish to return their car for any reason. Mr. LaMarque has undertaken this unprecedented measure completely on his own, with no backing from the manufacturer, and those who would be tempted to interpret his offer as a last-ditch effort to sell cars should note that his dealership's success in recent years has defied the current downturn in the industry as a whole. Mr. LaMarque's action, I believe, is a perfect example of the kind of medicine that will be required to heal the wounds that the recession has inflicted and which this latest and most severe round of mutual bashing by the United States and Japan has only exacerbated.

The harsh realities of global economic competition have made more evident the very tangible way in which the citizens of this country depend upon one another for their economic livelihood. We do ourselves no favors in the long run by purchasing goods, if

they are substandard, simply because they are American made, and Mr. LaMarque makes no appeals on this ground. However, we certainly cannot do ourselves any greater disservice than by failing to choose U.S.-made products when they are equal in quality to foreign-made ones.

Mr. LaMarque's personal guarantee makes a simple, unvarnished statement: It does not call for protectionist measures that run counter to the American spirit of competition, nor join in xenophobic finger pointing that flies in the face of the basic American values of decency and fairness. It neither asks for sympathy nor begs for special favors. Rather, it is a bold and unequivocal statement of confidence in the quality of an American-made automobile made by a man who knows cars. Perhaps most significantly, it is not directed at either Japan or Detroit, but at the community that Ronnie LaMarque depends on and that, to a certain degree, depends on him. I commend and congratulate Ronnie LaMarque, wish him the best of luck, and sincerely hope that his example is not lost on other business leaders looking for creative ways to inspire confidence in the American consumer.●

HONORING CHARLES PHILIP HOLMES

● Mr. RIEGLE. Mr. President, today I rise to pay tribute to one of the truly outstanding leaders from my hometown community of Genesee County, MI, Charles Philip Holmes. He will retire this month after more than 20 years of leading our community in the fight against substance abuse.

Mr. Holmes organized and implemented Genesee County's Regional Drug Abuse Commission in 1971 and is to be commended for his irreplaceable service and commitment to helping the people of Genesee County with drug and alcohol problems.

In 1974, the Genesee County Regional Drug Abuse Commission was reorganized and expanded into the Genesee County Commission on Substance Abuse Services and became the designated coordinating agency for drug and alcohol programs within the county. Charles "Chuck" Holmes was appointed president and CEO and has been serving in that capacity ever since.

Under Mr. Holmes leadership, the Genesee County Commission on Substance Abuse Services gained the community's first nationally funded drug abuse grant for an 8-year period in the amount of $9 million. This grant enabled the commission to develop treatment, education, intervention, prevention, and outreach programs in the field of drug abuse.

Prior to coming to Genesee County, Mr. Holmes held various positions in the Oakland County Michigan Commission of Economic Opportunity. In addition, Mr. Holmes worked as executive director of the Fairborn branch of the Dayton, Ohio YMCA.

In addition to numerous awards and honors, including my own Key Volunteer Award, Mr. Holmes is one of only seven to receive the Michigan Governor's Leadership Award. He and his wife Phyllis are the parents of three adult children and are very active in the community and their church.

Again, let me commend Mr. Holmes for his longstanding dedication to the people of Genesee County. His tireless efforts and service have made our community a better place to live. I wish him a fulfilling retirement and hope that he finds it as rewarding and challenging as his working career.●

COSPONSORSHIP OF S. 240 THE AIRLINE BANKRUPTCY PASSENGER PROTECTION ACT OF 1991

● Mr. D'AMATO. Mr. President, I rise to add my name as a cosponsor of S. 240, the Airline Bankruptcy Passenger Protection Act of 1991. This important bill will ensure that passengers are not left with worthless airline tickets in the event of airline bankruptcies.

My distinguished colleague, Senator KASSEBAUM, introduced S. 240 on January 22, 1991. It is now pending in the Commerce Committee and has broad bipartisan support. This bill would ensure that passengers are not stranded, and that travel agents—many of them small businesses—are not left to foot the bill. S. 240 gives the airline industry 6 months to write a plan to either honor the tickets of insolvent carriers, or to provide for reimbursement. If the airline industry fails to act, or their plan is disapproved, then the Secretary of Transportation must issue rules within 90 days setting up a plan.

Congressman BOEHLERT introduced this legislation in the House on January 3, 1991. His bill is H.R. 66, and it has 102 cosponsors. Hearings were held last May on this legislation.

Airline ticket buyers should not have to address the situation on a case-by-case basis when airlines enter bankruptcy. Generally, passengers have not lost money on their tickets; however, it is unfair that the public, or travel agents, must sometimes pay the bill for airline mismanagement, or other circumstances. Clearly, airlines encourage the public to buy tickets in advance and the industry benefits from this practice. They also should accept responsibility for dealing with air carrier insolvencies with some degree of certainty for the traveling public. It is unfortunate that the industry has not seized the initiative to form a plan on its own.

I encourage my colleagues to add their names as cosponsors of this bill.●

THE UNINTENDED VICTIMS OF THE GULF WAR

● Mr. RIEGLE. Mr. President, last month marked the first anniversary of President George Bush's declaration of victory in the Persian Gulf war. Certainly we can be proud of the brave American men and women who served their country in the gulf. However, 1 year after the President declared Kuwait liberated, not only is Saddam Hussein still in power, but we have also lost sight of the war's unintended victims. In the wake of the war, there remain hundreds of thousands of displaced peoples from many ethnic groups including Palestinians, Kurds, Shiites, and Christian Chaldeans, and Assyrians.

This humanitarian problem has been deemed the "fastest growing refugee situation in modern history." (U.N. Chronicle, September 1991.) Since the end of the gulf war, it is estimated that over 5 million persons have been displaced. The mass exodus of the Kurds from Iraq, which received much media attention, and the expelling of non-nationals from Kuwait are only part of the current gulf refugee crisis.

Despite the Kuwaiti Government's assurances that there have been no general expulsions, hundreds of thousands of Egyptians, Yemenis, Palestinians, and other nationals are being evicted from Kuwait without any opportunity for deportation hearings and without any legal recourse to resist their expulsion. In fact, the al-Sabahs, the restored Kuwaiti royal family, seem to have forgotten that in their absence, many of those being deported stayed behind and resisted the cruel Iraqi regime while they fled the country.

Moreover, despite first-hand knowledge of Saddam Hussein's atrocities, the Kuwaiti Government has mandated the return of non-national workers carrying foreign passports to their country of origin. In many cases, those expelled are people who were born in Kuwait or had lived there for several decades. Moreover, they are being sent to countries without the capacity to absorb them, such as Jordan, or nations with poor human rights records, such as Iraq. Having fought for the liberation of Kuwait, many Americans are deeply disturbed by the Kuwaiti Emir's lack of respect for ethnic minorities living in his country.

Palestinian refugees, in particular, face a unique economic and political crisis. Prior to the gulf war over 400,000 Palestinians lived and worked in Kuwait. The majority of those were part of a highly educated work force that had lived in the emirate for decades. Until the gulf crisis, the Palestinians were considered valuable members of the Kuwaiti community.

Following Saddam's invasion of Kuwait, more than 230,000 Palestinians either fled or have subsequently been

forced out of the country. Those who escaped during the invasion have been denied visas to allow them to return. Those who remained in Kuwait are now being forced to leave. For the Palestinian people, this mass expulsion has created a new trauma. Not only are they a people in diaspora around the Middle East, but Palestinians from Kuwait have been forced to leave their jobs and the homes in which they have lived for decades.

During the war, President Bush called upon Iraqi minorities, such as the Kurds and Shiites, to rise up and overthrow Saddam Hussein and his Ba'thist government. The uprisings failed to dislodge the Iraqi Government—and Saddam Hussein's response was swift and brutal. With his remaining tanks and infantry, Saddam crushed the popular rebellions with a ruthless application of military force.

Nevertheless, after calling on the Kurds and Shiites to overthrow Saddam, George Bush failed to support them in their moment of need—resulting in the waves of refugees flowing into Iran and Turkey. Not only have these people faced inhospitable mountain and desert terrain, but they remain entrenched in refugee camps, and have little food, medical, or fuel supplies. The Bush administration, moreover, has been unwilling to enforce Iraqi compliance with U.N. Security Council resolutions designed to alleviate the Kurds' deplorable conditions.

Other ethnic minorities also continue to suffer greatly in the wake of the Persian Gulf war. There are over 12,000 Christian Assyrians and Chaldeans, as well as other minorities, who fled Iraq during and after the war and remain refugees. Fearing negative consequences if they return to Iraq, they remain stranded in foreign lands.

Despite the Bush administration's proclamation of victory, for these forgotten victims, the gulf crisis persists. Those who continue to suffer in the aftermath of the gulf war must receive the full attention of the United States and must no longer be ignored by the current administration. On this 1-year anniversary of the end of the Persian Gulf war, while we should not forgo commemorations of America's victory, let us recall the war's unintended victims.●

HONORING LEROY NICHOLS

● Mr. RIEGLE. Mr. President, I rise this day to pay tribute to Mr. LeRoy Nichols, one of Flint and Genesee County, MI's most outstanding public servants. Mr. Nichols has served as executive director of the Genesee County Community Action Agency for 16 years. Before becoming executive director, Mr. Nichols was a senior community organizer with the agency.

Born in East Chicago, IN, Mr. Nichols is a graduate of Flint public schools. He received an honorable discharge from the U.S. Army, and attended all four of Flint's institutions of higher learning: Baker Junior College, Mott Community College, the General Motors Institute, and the University of Michigan-Flint.

Prior to Mr. Nichols' work with the Community Action Agency, he was employed by General Motors Corp. and was active in many United Auto Workers functions and committees. In addition to a number of appointed leadership positions throughout our community, Mr. Nichols is a member of numerous civic and fraternal organizations, and he is an ordained Baptist minister.

The Genesee Community Action Agency has admirably fought the war on poverty, and under the capable leadership of LeRoy Nichols, the agency has made Genesee County a better place to live for countless residents. I wish him the best in his retirement and hope it is as fulfilling and challenging as his working career has been.●

UNANIMOUS-CONSENT REQUEST

Mr. FORD. Mr. President, I ask unanimous consent that when the Senate completes its business today, it stand in recess until 9 a.m., Friday, March 13; that following the prayer, the Journal of Proceedings be deemed approved to date and the time for the 2 leaders be reserved for their use later in the day; that there then be a period for morning business, not to extend beyond 9:30 a.m., with Senators permitted to speak therein for up to 5 minutes each; with Senator BYRD recognized for up to 20 minutes and Senator SEYMOUR recognized for up to 5 minutes; that at 9:30 a.m., when the Senate resumes consideration of H.R. 4210, Senator MCCAIN be recognized to offer an amendment relative to super-majority for tax increase.

Mr. SEYMOUR. Mr. President, I object.

Mr. SIMPSON. There was an opportunity for him to object, and I think the Chair will indicate that, and the Senator has been here through the evening to do just that.

The PRESIDING OFFICER. Objection is heard.

Mr. FORD. Would we be allowed to recess? Can we go home without making objection? The Senator made a mistake and is sitting there exercising his prerogative, and that is fine. The majority leader and minority leader had an agreement.

We try to exercise that agreement. We get an objection. The Senator voted to increase taxes. How he does not want the RECORD to reflect it. It will under these circumstances when tomorrow arrives and he reads the RECORD and the name is there.

Mr. President, I ask unanimous consent, then that the Senate recess until——

Mr. SIMPSON. May he speak?

Mr. FORD. Yes, I was trying to get out of here.

Mr. SEYMOUR. I thank the Senator.

The PRESIDING OFFICER. The Senator from California.

Mr. SEYMOUR. Mr. President, I would just like to, perhaps, express my views relative to what the distinguished Senator from Kentucky was describing as my vote. It is mischaracterized. A vote that I cast is on the RECORD. It was a rollcall vote of some scheduled 15 minutes. That rollcall was kept open for, in my opinion, purely partisan purposes. And as I came through those doors wanting to correct the RECORD, the rollcall was shut down.

It certainly can be argued that rollcalls are often violated as far as the time rule goes, but I do not believe it is too often that it goes 45 minutes.

All I am asking for is equity. I can understand partisan politics and respect that process. I think, in this instance, it has been carried too far.

I do not mean and I do not want to disrupt these proceedings nor delay these proceedings, but I guess there are times when the Senator, in order to protect what he believes to be his intellectual record, has to stand. So I will continue to stand and withhold unanimous consent until I receive equity relative to this rollcall.

Mr. FORD. Will the Senator yield for a question?

Mr. SEYMOUR. Certainly.

Mr. FORD. Will the Senator allow us to go for the evening?

Mr. SEYMOUR. Sure.

ORDERS FOR FRIDAY

Mr. FORD. Mr. President, I ask unanimous consent that when the Senate completes its business today, it stand in recess until 9 a.m., Friday, March 13; that following the prayer, the Journal of the proceedings be deemed approved to date and the time for the two leaders be reserved for their use later in the day; that there then be a period for morning business not to extend beyond 9:30 a.m., with Senators permitted to speak therein for up to 5 minutes each, with Senator BYRD recognized for up to 20 minutes and Senator SEYMOUR recognized for up to 5 minutes; and that at 9:30 a.m., the Senate resume consideration of H.R. 4210.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

RECESS UNTIL 9 A.M. TOMORROW

Mr. FORD. Mr. President, if there be no further business to come before the Senate, I now ask unanimous consent that the Senate stand in recess as previously ordered.

There being no objection, the Senate, at 12:04 a.m., recessed until Friday, March 13, 1992, at 9 a.m.

NOMINATIONS

Executive nominations received by the Senate March 12, 1992:

DEPARTMENT OF DEFENSE

GREGORI LEBEDEV, OF VIRGINIA, TO BE INSPECTOR GENERAL, DEPARTMENT OF DEFENSE, VICE SUSAN J. CRAWFORD.

IN THE AIR FORCE

THE FOLLOWING NAMED OFFICER FOR APPOINTMENT TO THE GRADE OF LIEUTENANT GENERAL ON THE RETIRED LIST UNDER THE PROVISIONS OF TITLE 10, UNITED STATES CODE, SECTION 1370:

To be lieutenant general

LT. GEN. DAVID J. TEAL [redacted] U.S. AIR FORCE.

IN THE ARMY

THE FOLLOWING NAMED OFFICER TO BE PLACED ON THE RETIRED LIST IN THE GRADE INDICATED UNDER THE PROVISIONS OF TITLE 10, UNITED STATES CODE, SECTION 1370:

To be lieutenant general

LT. GEN. JEROME B. HILMES [redacted] U.S. ARMY.

THE FOLLOWING NAMED OFFICER TO BE PLACED ON THE RETIRED LIST IN THE GRADE INDICATED UNDER THE PROVISIONS OF TITLE 10, UNITED STATES CODE, SECTION 1370:

To be lieutenant general

LT. GEN. FRANK F. LEDFORD, JR. [redacted] U.S. ARMY.

THE FOLLOWING NAMED OFFICER FOR REAPPOINTMENT TO THE GRADE OF LIEUTENANT GENERAL WHILE ASSIGNED TO A POSITION OF IMPORTANCE AND RESPONSIBILITY UNDER TITLE 10, UNITED STATES CODE, SECTION 601(A):

To be lieutenant general

LT. GEN. DAVID M. MADDOX [redacted] U.S. ARMY.

THE U.S. ARMY RESERVE OFFICERS NAMED HEREIN FOR APPOINTMENT IN THE RESERVE OF THE ARMY OF THE UNITED STATES IN THE GRADES INDICATED BELOW, UNDER THE PROVISIONS OF TITLE 10, UNITED STATES CODE, SECTIONS 593(A), 3371 AND 3384:

To be major general

BRIG. GEN. WILLIAM C. COCKERHAM [redacted]
BRIG. GEN. ROLLYN C. GIBBS [redacted]
BRIG. GEN. FRED E. MARQUIS [redacted]
BRIG. GEN. THOMAS E. MATTSON [redacted]
BRIG. GEN. JOHN C.C. ROTH [redacted]
BRIG. GEN. ROBERT L. RUTH [redacted]
BRIG. GEN. JOSEPH E. TURNER [redacted]

To be brigadier general

COL. WAYNE W. HOFFMAN [redacted]
COL. KENNETH J. KAVANAUGH [redacted]
COL. GERALD L. DEBACKER [redacted]
COL. DOUGLAS E. CATON [redacted]
COL. RALPH L. HAYNES [redacted]
COL. JAMES C. SULLIVAN [redacted]
COL. PETER A. GANNON [redacted]
COL. JAMES D. SLAVIN [redacted]
COL. ANTHONY R. KROPP [redacted]
COL. ROBERT H. BEAHM [redacted]
COL. WILLIAM C. MERCURIO [redacted]
COL. JOHN M. O'CONNELL [redacted]
COL. EVO RIGUZZI [redacted]
COL. CURTIS A. LOOP [redacted]
COL. JORGE ARZOLA [redacted]
COL. JOHN H. BECKROGE [redacted]

IN THE NAVY

THE FOLLOWING-NAMED REAR ADMIRALS (LOWER HALF) IN THE STAFF CORPS OF THE U.S. NAVY FOR PROMOTION TO THE PERMANENT GRADE OF REAR ADMIRAL, PURSUANT TO TITLE 10, UNITED STATES CODE, SECTION 624, SUBJECT TO QUALIFICATIONS THEREFOR AS PROVIDED BY LAW:

MEDICAL CORPS

To be rear admiral

REAR ADM. HAROLD MARTIN KOENIG [redacted] U.S. NAVY.
REAR ADM. WILLIAM JAMES MCDANIEL [redacted] U.S. NAVY.

SUPPLY CORPS

To be rear admiral

REAR ADM. PETER ALBERT BONDI [redacted] U.S. NAVY.
REAR ADM. JAMES PATRICK DAVIDSON [redacted] U.S. NAVY.

IN THE COAST GUARD

PURSUANT TO THE PROVISIONS OF 14 USC, 729, THE FOLLOWING NAMED COMMANDERS OF THE COAST GUARD RESERVE TO BE PERMANENT COMMISSIONED OFFICERS IN THE COAST GUARD RESERVE IN THE GRADE OF CAPTAIN:

WILLIAM I. NORTON
DURHAM J. MONSMA
THOMAS D. LINCOLN
GEORGE A. WELLER
KIM I. MACCARTNEY
JOHN M. KINSEY
THOMAS E. CARROLL
KARL L. RUSSO
STEVEN E. BARTA
GORDON L. BELL
WILLIAM W. COTTER
ROBERT C. MARCOTTE
MICHAEL E. STANGO
PAUL H. MILLEWICH
GEORGE S. KARAVITIS